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The President

Proclamation 7521 of February 1, 2002

American Heart Month, 2002

By the President of the United States of America

A Proclamation

A new era in the prevention and treatment of cardiovascular diseases has created renewed hope for those suffering from heart-related disorders. Anticoagulant drugs and other technologically innovative artery-opening treatments, like angioplasty, are enabling doctors to better treat cardiovascular problems in their early stages. Armed with the knowledge that lifestyle plays a significant role in the prevention of heart disease, more and more Americans have recognized the importance of not smoking, getting regular exercise, and maintaining a healthy diet.

Despite these advances, cardiovascular disease, including heart disease and stroke, remains the leading cause of death in the United States and greatly increases disability among Americans. This year, cardiovascular disease will be the primary or contributing cause in about 60 percent of all deaths and will cost our Nation more than $330 billion in lost wages, diminished productivity, and medical expenses. It is a little known fact that heart disease is the leading cause of death among women, with over 370,000 deaths every year.

According to the Archives of Internal Medicine, most heart attack patients wait more than 2 hours before seeking emergency care, primarily because they do not recognize the symptoms of a heart attack. Delayed awareness of the onset of a heart attack means that only one in five heart attack victims gets to the hospital quickly enough to benefit from life-saving medical treatments.

Fortunately, many new public-private partnerships are working to educate Americans about the warning signs of a heart attack and the need for rapid response. The National Heart, Lung, and Blood Institute and the American Heart Association have recently joined with other national organizations to sponsor a campaign called ''Act in Time to Heart Attack Signs.'' This public awareness initiative emphasizes preventing heart attacks, recognizing sometimes subtle heart attack symptoms, and immediately calling 911 when those symptoms first appear.

The AHA has developed an educational campaign, ''Operation Heartbeat,'' that focuses on reducing sudden deaths from cardiac arrest. Cardiac arrest, an abnormal heart rhythm that stops the heart from effectively pumping blood through the body, usually results in death within 10 to 14 minutes. Currently, only about five percent of those who experience sudden cardiac arrest survive. Operation Heartbeat is educating the public about the signs of cardiac arrest, reinforcing the importance of calling 911 immediately and promoting the benefits of knowing and administering cardiopulmonary resuscitation, until advanced care can be given to restore a normal heartbeat.

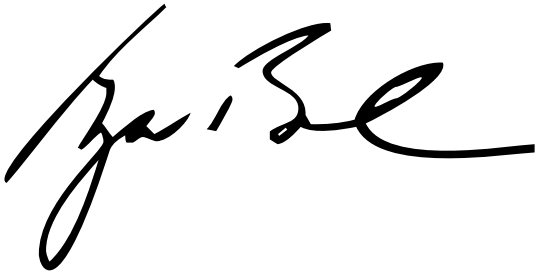
At this observance of American Heart Month, we pay tribute to the researchers, physicians, and other health professionals, public education professionals, and volunteers for their tireless efforts in preventing, treating, and researching heart disease. We recognize the critical importance of developing tools that will increase survival rates from heart attacks and cardiac arrest.

By incorporating these new tools into aggressive education programs and partnerships, we can save tens of thousands of lives annually.

In recognition of the important needs in the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as ''American Heart Month.''

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 February 2002 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular disease and stroke.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, 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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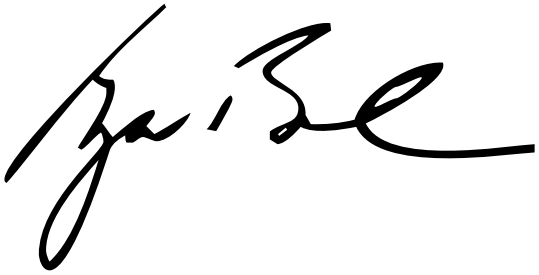

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Presidential Documents

Proclamation 7522 of February 1, 2002

National African American History Month, 2002

By the President of the United States of America

A Proclamation

During these extraordinary times, America looks forward to new challenges and opportunities with a reinvigorated sense of unity and common purpose. We are a strong and vibrant Nation, thanks to the creativity, fortitude, and resilience of people of every race and background. During National African American History Month, we celebrate the many achievements and contributions made by African Americans to our economic, cultural, spiritual, and political development.

In 1915, Dr. Carter Godwin Woodson founded The Association for the Study of Negro Life and History. Through that Association, he began pressing for the establishment of Negro History Week as a way to bring national attention to the accomplishments of African Americans. He hoped to neutralize the apparent distortions in Black history and to provide a more objective and scholarly balance to American and World history.

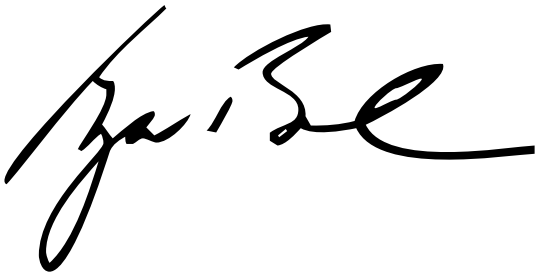
Dr. Woodson's dream became a reality in 1926. He chose the second week of February for the observance because of its proximity to the birthdays of Abraham Lincoln and Frederick Douglass, two individuals whom Dr. Woodson felt had dramatically affected the lives of African Americans. And in 1976, the Association succeeded in expanding the observance, which then became Black History Month.

The theme of National African American History Month for 2002 is ''The Color Line Revisited: Is Racism Dead?'' The observance calls our Nation's attention to the continued need to battle racism and to build a society that fully lives up to its democratic ideals. This commitment includes ensuring a high-quality education for all Americans, so that no child is left behind, and challenges us to continue to rebuild and restore our communities, to fight crime and violence, and to pursue equal opportunity and equal justice in every part of our society. At the same time, the United States must look beyond its borders and take an active role in helping to alleviate poverty, stimulate economic growth and trade, enhance democracy, and combat HIV/AIDS in Africa.

This annual event gives all Americans a chance to recognize and commemorate the global history of people of African descent. As we celebrate National African American History Month, I join with all Americans in celebrating our diverse heritage and culture and continuing our efforts to create a world that is more just, peaceful, and prosperous for all.

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 February 2002 as National African American History Month. I call upon public officials, educators, librarians, and all of the people of the United States to observe this month with appropriate programs and activities that highlight and honor the myriad contributions of African Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, 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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Presidential Documents

Proclamation 7522 of February 1, 2002

National African American History Month, 2002

By the President of the United States of America

A Proclamation

During these extraordinary times, America looks forward to new challenges and opportunities with a reinvigorated sense of unity and common purpose. We are a strong and vibrant Nation, thanks to the creativity, fortitude, and resilience of people of every race and background. During National African American History Month, we celebrate the many achievements and contributions made by African Americans to our economic, cultural, spiritual, and political development.

In 1915, Dr. Carter Godwin Woodson founded The Association for the Study of Negro Life and History. Through that Association, he began pressing for the establishment of Negro History Week as a way to bring national attention to the accomplishments of African Americans. He hoped to neutralize the apparent distortions in Black history and to provide a more objective and scholarly balance to American and World history.

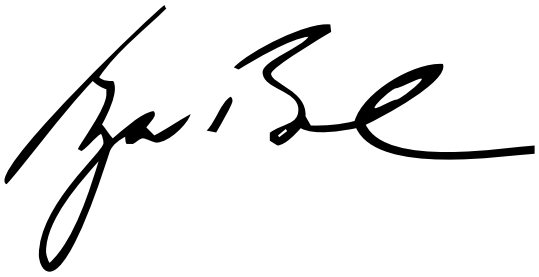
Dr. Woodson's dream became a reality in 1926. He chose the second week of February for the observance because of its proximity to the birthdays of Abraham Lincoln and Frederick Douglass, two individuals whom Dr. Woodson felt had dramatically affected the lives of African Americans. And in 1976, the Association succeeded in expanding the observance, which then became Black History Month.

The theme of National African American History Month for 2002 is ''The Color Line Revisited: Is Racism Dead?'' The observance calls our Nation's attention to the continued need to battle racism and to build a society that fully lives up to its democratic ideals. This commitment includes ensuring a high-quality education for all Americans, so that no child is left behind, and challenges us to continue to rebuild and restore our communities, to fight crime and violence, and to pursue equal opportunity and equal justice in every part of our society. At the same time, the United States must look beyond its borders and take an active role in helping to alleviate poverty, stimulate economic growth and trade, enhance democracy, and combat HIV/AIDS in Africa.

This annual event gives all Americans a chance to recognize and commemorate the global history of people of African descent. As we celebrate National African American History Month, I join with all Americans in celebrating our diverse heritage and culture and continuing our efforts to create a world that is more just, peaceful, and prosperous for all.

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 February 2002 as National African American History Month. I call upon public officials, educators, librarians, and all of the people of the United States to observe this month with appropriate programs and activities that highlight and honor the myriad contributions of African Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, 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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Rules and Regulations

Federal Register
Vol. 67, No. 25
Wednesday, February 6, 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

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV01–927–1 FR]

Winter Pears Grown in Oregon and Washington; The Establishment of a Supplemental Rate of Assessment for the Beurre d'Anjou Variety of Pears and of a Definition for Organically Produced Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a supplemental rate of assessment of $0.03 per standard box of the Beurre d'Anjou variety of pears (d'Anjou pears) handled, excluding organically produced pears, during the 2001–2002 and subsequent fiscal periods under the marketing order regulating the handling of winter pears grown in Oregon and Washington. The marketing order is administered locally by the Winter Pear Control Committee (Committee). To properly implement the supplemental rate of assessment, which will be used for the purpose of funding data collection for Ethoxyquin residue on stored d'Anjou pears, this rule also establishes a definition for organically produced pears. The fiscal period began July 1 and ends June 30. The supplemental rate of assessment will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 7, 2002.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Oregon and Washington winter pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the supplemental rate of assessment as issued herein will be applicable to all assessable d'Anjou pears, excluding organically produced pears, beginning on July 1, 2001, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes a supplemental rate of assessment of $0.03 per standard box of d'Anjou pears handled, excluding organically produced pears, for the 2001–2002 and subsequent fiscal periods. The $0.03 supplemental rate of assessment on conventionally produced and handled d'Anjou pears is in addition to the continuing rate of assessment of $0.49 per standard box established at 63 FR 39037 for the 1998–1999 and subsequent fiscal periods, which pertains to all pears handled under the order. This rule also establishes a definition for organically produced pears. The Committee unanimously recommended this rule at its meeting held on June 1, 2001.

Section 927.41 of the order provides authority for USDA, upon a recommendation of the Committee, to fix the rate of assessment that handlers shall pay on all pears handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 927.47. Section 927.47 provides authority for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears.

Authority for the Committee to recommend the establishment of a definition for organically produced pears is provided in § 927.4, which defines ''pears'' for purposes of this order, and in § 927.31(b), which provides the Committee with the power to recommend administrative rules and regulations to effectuate the terms and provisions of the order.

The winter pear order provides authority for the Committee, with USDA's approval, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Oregon and Washington winter pears. They are familiar with the Committee's

needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The rate of assessment, both basic and supplemental, is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on June 1, 2001, and unanimously recommended 2001–2002 expenditures of $8,127,777. The Committee also recommended continuation of the rate of assessment of $0.49 per standard box of winter pears established for the 1998–1999 and subsequent fiscal periods. In addition to this continuing, basic rate of assessment, the Committee unanimously recommended the establishment of a supplemental rate of assessment of $0.03 per standard box of d'Anjou pears handled, excluding organically produced pears. Both the basic rate of $0.49 per standard box of winter pears and the supplemental rate of $0.03 per standard box of conventionally produced and handled d'Anjou pears will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Under authority of this final rule, conventionally produced and handled d'Anjou pears (pears that are not organically produced) will be assessed at a total rate of $0.52 per standard box, while all other varieties of winter pears, including organically produced and handled d'Anjou pears, will be assessed at the currently established rate of $0.49 per standard box. The Committee estimates that of the 15.8 million boxes of winter pears projected for utilization during the 2001–2002 fiscal period, 12.4 million boxes will be conventionally produced pears of the d'Anjou variety. While the income derived from the basic rate of assessment will continue to fund the Committee's administrative and promotional activities, income derived from the supplemental rate of assessment will be used exclusively to fund the collection of data on Ethoxyquin residue on stored d'Anjou pears. Ethoxyquin is an antioxidant that is registered for use on pears in the control of superficial scald, a physiological disease affecting the appearance of certain varieties of stored pears. The supplemental rate will not be applicable to d'Anjou pears that are organically produced, as Ethoxyquin is not used in their handling and storage.

Since the d'Anjou variety of pear is of major importance to the Oregon and Washington winter pear industry, the Committee has embarked on a research project that will fund the collection of data pertaining to Ethoxyquin residue to satisfy requirements of the Environmental Protection Agency pertaining to U.S. pesticide tolerance and registration. In addition, the data collection will be used in conjunction with the Codex Alimentarius system that establishes maximum residue limits used as tolerances in many nations receiving shipments of Oregon and Washington d'Anjou pears.

The major expenditures recommended by the Committee for the 2001–2002 year include $6,952,000 for market development projects including paid advertising, $688,000 for research including $372,000 for Ethoxyquin data research (funded by the supplemental rate of assessment), and operational expenses of $474,000, including $241,401 for salaries and employee benefits. Budgeted expenses for these items in 2000–2001 were $7,342,500, $330,000, and $412,500 (including $269,658 for salaries and benefits), respectively. Collection of data on the use of Ethoxyquin was not a funded research project during the 2000–2001 fiscal period.

Assessment income for the 2001–2002 fiscal period is expected to total $8,114,000 based on estimated shipments of 15,800,000 standard boxes at the current rate of $0.49 per standard box. This includes 12,400,000 standard boxes of conventionally produced d'Anjou pears at the proposed supplemental rate of $0.03 per standard box. Income from the additional $0.03 rate of assessment is estimated at $372,000. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $304,181) will be kept within the maximum permitted by the order of approximately one fiscal period's expenses (§ 927.42).

Although both the basic rate of assessment and the supplemental rate of assessment will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of both. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA will evaluate Committee recommendations and other available information to determine whether modification of either rate of assessment is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–2002 budget has been reviewed and approved by USDA. Those for subsequent fiscal periods will also be reviewed, and as appropriate, approved.

This final rule includes the establishment of a definition for organically produced pears. The establishment of this definition facilitates the implementation of the organically produced pear exclusion from the supplemental rate of assessment. The Committee recommended that the definition be established as follows: ''*Organically produced pears* means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.'' Although the Committee recommended that this definition be established primarily so that it could properly administer the proposed supplemental rate of assessment, the definition could prove useful to both the Committee and the Department in a variety of ways in the administration of the order. With the increasing interest and emphasis being put on organic food production in the United States, this definition for organically produced pears provides the northwest pear industry with an important tool.

Final Regulatory Flexibility Analysis

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

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

There are approximately 70 handlers of winter pears who are subject to regulation under the marketing order and approximately 1,700 winter pear producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having

annual receipts less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

The Committee estimates, based upon handler shipment totals and an average F.O.B price of $14 per standard box, that about 93 percent of winter pear handlers could be considered small businesses under SBA's definition. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of winter pear producers, the average annual producer receipts are approximately $69,635. In view of the foregoing, it can be concluded that the majority of producers of winter pears may be classified as small entities.

This rule establishes a supplemental rate of assessment of $0.03 per standard box of d'Anjou pears handled, excluding organically produced pears, for the 2001–2002 and subsequent fiscal periods. The $0.03 supplemental rate of assessment on conventionally produced and handled d'Anjou pears is in addition to the continuing rate of assessment of $0.49 per standard box of pears handled established at 63 FR 39037 for the 1998–1999 and subsequent fiscal periods. This rule also establishes a definition for organically produced pears. The Committee unanimously recommended this action at its meeting held on June 1, 2001.

The major expenditures recommended by the Committee for the 2001–2002 year include $6,952,000 for market development including paid advertising, $688,000 for research including $372,000 for Ethoxyquin data collection, and operational expenses of $474,000, including $241,401 for salaries and employee benefits. Budgeted expenses for these items in 2000–2001 were $7,342,500, $330,000, and $412,500 ($269,658 for salaries and benefits), respectively. Ethoxyquin data research was not a budgeted item during the 2000–2001 fiscal period.

Assessment income for the 2001–2002 fiscal period may total $8,114,000 based on estimated winter pear shipments of 15,800,000 standard boxes at the current rate of $0.49 per standard box, and 12,400,000 standard boxes of conventionally produced d'Anjou pears at the supplemental rate of $0.03 per standard box. The supplemental assessment income, estimated at $372,000, will be used to fund Ethoxyquin data research. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The operating reserve is within the maximum permitted by the order of approximately one fiscal period's expenses.

The Committee reviewed and unanimously recommended 2001–2002 expenditures of $8,127,777. This compares to last year's approved budget of $8,199,694. Prior to arriving at this budget, alternative expenditure and assessment levels were discussed by the Committee. Based upon the relative value of the Ethoxyquin research to the industry, a supplemental rate of assessment was recommended on d'Anjou pears. Ethoxyquin is not used in the handling and storage of organically produced d'Anjou pears, thus they were excluded from the Committee's supplemental assessment recommendation. This fact, however, is the main reason the Committee recommended the establishment of a definition for organically produced pears in the order's rules and regulations.

A review of historical information, as well as preliminary information pertaining to the upcoming fiscal period, indicates that the producer price for the 2001–2002 season could range between $5.87 and $10.34 per standard box of winter pears. Therefore, the estimated assessment revenue for the 2001–2002 fiscal period, inclusive of revenue from both the basic $0.49 rate and the $0.03 supplemental rate of assessment, as a percentage of total grower revenue could range between 5 and 9 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are generally offset by the benefits derived by the operation of the order. The Committee's meeting was widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 1, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Furthermore, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on September 21, 2001 (66 FR 48623). A copy of the proposed ruled was provided to the Committee office which in turn made copies available to producers and handlers. Furthermore, the Office of the Federal Register and USDA made a copy available on the Internet. A 30-day comment period ending October 22, 2001, was provided for interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2001–2002 fiscal period pears from producers; (2) the 2001–2002 fiscal period began on July 1, 2001, and the supplemental rate of assessment should apply to all assessable, non-organic, d'Anjou pears handled during such fiscal period; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting. Furthermore, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Subpart—Control Committee Rules and Regulations, under the undesignated center heading ''Definitions'', a new § 927.103 is added as follows:

§ 927.103 Organically produced pears.

Organically produced pears means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.

3. Section 927.236 is revised to read as follows:

§ 927.236 Assessment rate.

On and after July 1, 2001, an assessment rate of $0.49 per standard box of conventionally and organically produced pears and, in addition, a supplemental assessment rate of $0.03 per standard box of Beurre d'Anjou variety pears, excluding organically produced pears, is established for the Winter Pear Control Committee.

Dated: January 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2849 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV02–932–1 IFR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (Committee) for the 2002 and subsequent fiscal years from $27.90 to $10.09 per ton of olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1, 2002, and ends December 31, 2002. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective: February 7, 2002. Comments received by April 8, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning January 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2002 and subsequent fiscal years from $27.90 per ton to $10.09 per ton of olives.

The California olive marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 11, 2001, and unanimously recommended fiscal year 2002 expenditures of $1,428,585 and an assessment rate of $10.09 per ton of olives. In comparison, last year's budgeted expenditures were $1,348,242 and the assessment rate was $27.90. The assessment rate of $10.09 is

$17.81 lower than the rate currently in effect.

Expenditures recommended by the Committee for the 2002 fiscal year include $811,935 for marketing development, $339,650 for administration, $250,000 for research, and $27,000 for capital expenditures. Budgeted expenses for these items in 2001 were $596,415, $343,490, $408,337, and $0, respectively.

Last year's assessable tonnage was 46,374 tons, and this year's assessable tonnage is 123,439 tons. Although the Committee increased 2002 marketing development and capital expenditures, the significant increase in assessable tonnage makes possible the lower assessment rate.

Funds budgeted for research activities are reduced due to completion of the mechanical harvester project. The reduced research expenditures will fund scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly higher as the Committee's website will be redesigned and outreach programs will be implemented for students and teachers. Capital expenditures are higher as the Committee will purchase a vehicle for Committee staff.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual tonnage, and additional pertinent factors. As mentioned earlier olive shipments for the year are estimated at 123,439 for fiscal year 2002. This compares to an assessable tonnage of 46,374 for fiscal year 2001. The significant tonnage increase in fiscal year 2002, due in part to the alternate-bearing nature of olives, has made it possible for the Committee to decrease the assessment rate from $27.90 to $10.09 per ton. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order—approximately one fiscal periods' expenses, or $1,428,585 (§ 932.40).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 1,200 producers of olives in the production area and approximately 3 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

The majority of olive producers may be classified as small entities. One of the handlers may be classified as a small entity. Thus, the majority of handlers may be classified as large entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2002 and subsequent fiscal years from $27.90 to $10.09 per ton of olives. The Committee unanimously recommended 2002 expenditures of $1,428,585 and an assessment rate of $10.09 per ton. The assessment rate of $10.09 is $17.81 lower than the 2001 rate. The quantity of assessable olives for the 2002 fiscal year is estimated at 123,439 tons. Thus, the $10.09 rate should provide $1,245,500 in assessment income and should be adequate, when combined with funds from the authorized reserve and interest income to meet this year's expenses.

The expenditures recommended by the Committee for the 2002 fiscal year include $811,935 for marketing development, $339,650 for administration, $250,000 for research, and $27,000 for capital expenditures. Budgeted expenses for these items in 2001 were $596,415, $343,490, $408,337, and $0, respectively.

Last year's assessable tonnage was 46,374 tons, and this year's assessable tonnage is 123,439 tons. Although the Committee increased 2002 marketing development and capital expenditures, the significant increase in tonnage makes the lower assessment rate possible.

Funds budgeted for research activities are reduced due to completion of the mechanical harvester project. The reduced research expenditures will fund scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly higher as the Committee's website will be redesigned and outreach programs will be implemented for students and teachers. Capital expenditures are higher as the Committee will purchase a vehicle for Committee staff.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, and Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry. The assessment rate of $10.09 per ton of assessable olives was derived by considering anticipated expenses, the Committee's estimate of assessable olives, and additional pertinent factors.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2002 season is estimated to be approximately $502.27 per ton of olives. Therefore, the estimated assessment revenue for the 2002 fiscal year as a percentage of total grower revenue will be approximately 2 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce

the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 11, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002 fiscal year began on January 1, 2002, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) the action decreases the assessment rate for assessable olives beginning with the 2002 fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January, 1, 2002, an assessment rate of $10.09 per ton is established for California olives.

Dated: January 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2847 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV01–948–2 FIR]

Irish Potatoes Grown in Colorado; Suspension of Continuing Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, without change, an interim final rule which continues to suspend the assessment rate established for the Colorado Potato Administrative Committee, Area III (Committee) for the 2001–02 and subsequent fiscal periods. The Committee, which locally administers the marketing order regulating the handling of potatoes grown in Northern Colorado, made this recommendation for the purpose of lowering the monetary reserve to a level consistent with program requirements. The fiscal period began July 1, 2001, and ends June 30, 2002. The assessment rate will remain suspended until an appropriate rate is reinstated.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. For the 1999–00 fiscal period, an assessment rate of $0.02 per hundredweight of potatoes handled was fixed by USDA to continue in effect indefinitely unless modified, suspended, or terminated. This action continues to suspend the assessment rate for the 2001–02 fiscal period, which began on July 1, 2001, and will continue in effect until reinstated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to suspend § 948.215 of the order's rules and regulations. Section 948.215 established an assessment rate of $0.02 per hundredweight of potatoes handled for 1999–00 and subsequent fiscal periods. Continuous assessment rates remain in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA. This rule continues to suspend the $0.02 assessment rate for 2001–02, and will continue to suspend such assessment rate during subsequent fiscal periods until reinstated by USDA upon recommendation of the Committee.

Sections 948.75 through 948.77 of the Colorado potato order provide authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and to collect assessments from handlers to administer the program. In addition, § 948.78 of the order authorizes the use of monetary reserve funds to cover program expenses. The members of the Committee are producers and handlers of Colorado Area III potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. Recommendations concerning the budget and assessment rate are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on May 10, 2001, to discuss the proposed 2001–02 budget and assessment rate and to take appropriate action. However, with only three out of nine voting members in attendance at the meeting, the quorum necessary for the Committee to take action was not present. To ensure that the Committee would have a recommendation for the 2001–02 fiscal period budget, the Committee's manager subsequently polled all Committee members by U.S. mail, as provided for in § 948.61 of the order. The resultant unanimous recommendation by all nine members favored the establishment of a budget with expenditures of $18,200 and an assessment rate of $0.005 (½ cent) per hundredweight of potatoes handled during the 2001–02 fiscal period.

However, § 948.78(a)(2) of the order specifies that the Committee, with USDA's approval, may carry over excess funds into subsequent fiscal periods as a reserve, provided that funds already in the reserve are less than approximately two fiscal periods' expenses. After reviewing the Committee's initial recommendation for a $0.005 rate of assessment, USDA requested that the Committee consider suspension of the assessment rate until the reserve is lowered to a level consistent with the order. Consequently, at its meeting of July 19, 2001, the Committee unanimously recommended suspension of the continuing assessment rate of $0.02 for the 2001–02 and subsequent fiscal periods. The Committee concluded that an assessment rate will not be necessary for operation during the 2001–02 fiscal period as funds in the reserve, combined with interest and rental income, are adequate to meet expenses.

As of July 1, 2001, the Committee had $59,579 in its reserve fund. With the 2001–02 budget set at $18,200, the current maximum reserve permitted by the order is approximately $36,400 (approximately two fiscal periods' expenses). To meet its 2001–02 expenses the Committee plans on drawing approximately $14,700 from its reserve, and may additionally earn approximately $3,500 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2001–02 fiscal period could be reduced to approximately $44,879. Projecting a similar level of expenses in 2002–03 and continuation of the assessment rate suspension, the Committee's reserve on July 1, 2003, could be about $30,179. This amount would be consistent with the order's requirements.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $7,000 for salary, $6,300 for office expense (which includes equipment, telephone, and utilities), and $3,000 for rent. Minor expenses total $1,900. Budgeted expenses for these items in the 2000–01 fiscal period were $4,250, $6,800, and $3,000, respectively. Minor expenses totaled $3,600 that year.

The Committee foresees a need for the assessment rate suspension to continue in effect for approximately two fiscal periods. The assessment rate will remain suspended, however, until reinstated by USDA upon recommendation and information submitted by the Committee or other available information.

Since the suspension of the assessment rate will continue for such subsequent fiscal periods as necessary to ensure that the monetary reserve is lowered to a level consistent with the order, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for reinstatement of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA will evaluate Committee recommendations and other available information such as the level of the budget and the monetary reserve to determine whether assessment rate reinstatement is needed, and at what level. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget has been reviewed and approved by USDA and budgets for subsequent fiscal periods will also be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 26 producers of Colorado Area III potatoes in the production area and approximately 11 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Information for the most recent season in which statistics are available, as reported by the National Agricultural Statistics Service, was considered in

determining the number of large and small producers by acreage, production, and producer prices. According to the information provided, the average yield per acre was 340 hundredweight, the average farm size was 53 acres, and the season average producer price was $5.95 per hundredweight. This equates to average gross receipts to producers of approximately $107,200. Furthermore, based upon information provided by the Committee, all handlers of Area III potatoes have shipped under $5,000,000 worth of potatoes during the most recent season for which numbers are available. Based on the foregoing, it can be concluded that a majority of producers and handlers of Area III potatoes may be classified as small entities.

This rule continues to suspend § 948.215 of the order's rules and regulations, which established an assessment rate of $0.02 per hundredweight of potatoes handled beginning with the 1999–00 fiscal period. This assessment rate suspension is effective for the 2001–02 fiscal period and subsequent fiscal periods until reinstated.

Without assessment income to offset its 2001–02 budget of $18,200, the Committee plans on drawing approximately $14,700 from its reserve, and may additionally earn approximately $3,500 from interest and other income.

The major expenditures recommended by the Committee in the 2001–02 fiscal period budget include $7,000 for salary, $6,300 for office expenses, and $3,000 for rent. Minor expenses total $1,900. In comparison, the Committee's 2000–01 fiscal period budget of $17,650 included major expenses of $4,250, $6,800, and $3,000, respectively. Minor expenses totaled $3,600.

The Committee recommended that assessment collection be suspended until such time as the monetary reserve reaches a level consistent with the order requirement of less than approximately two fiscal periods' expenses. The Committee believes that by suspending the assessment rate for at least the next two fiscal periods, the operating reserve should be lowered to an amount consistent with the program. Based on Committee projections, the current reserve of $59,579 will be reduced to about $44,879 by the end of the 2001–02 fiscal period, and to about $30,179 by the end of the 2002–03 fiscal period.

Prior to recommending the suspension of the continuing assessment rate, the Committee discussed alternatives, including its earlier recommended assessment rate of $0.005 per hundredweight. However, the Committee concurred with USD's position that a suspension of the assessment rate is viable since it could rely on its reserve and other income to meet budgeted expenses, and that such a suspension would expedite the reduction of the reserve. Another alternative considered by the Committee was to refund the portion of the reserve that is over that permitted by the order directly to handlers of record. However, because many of the handlers assessed in prior years are no longer in business, the Committee concluded this would not be equitable.

This action will reduce handler costs by almost $9,000 (448,750 hundredweight of assessable potatoes × the current rate of assessment of $0.02) during the 2001–02 fiscal period, as no assessment will be collected. Suspension of the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meetings were widely publicized throughout the Colorado Area III potato industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 10 and July 19, 2001, meetings were open to the public and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area III potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

An interim final rule regarding this action was published in the **Federal Register** on September 25, 2001 (66 FR 48951). A copy of that rule was sent to the Committee's manager, who in turn provided copies to Committee members, handlers, and other interested persons. The interim final rule was also made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on November 26, 2001. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (66 FR 48951, September 25, 2001) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule amending 7 CFR part 948 which was published at 66 FR 48951 on September 25, 2001, is adopted as a final rule without change.

Dated: January 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2846 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV01–982–3 FR]

Hazelnuts Grown in Oregon and Washington; Establishment of Reporting Requirements for Imported Hazelnuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes reporting requirements for hazelnuts imported by handlers of hazelnuts grown in Oregon and Washington. It requires handlers to report the receipt and disposition of hazelnuts grown outside of the United States. This rule was recommended by the Hazelnut Marketing Board (Board), the agency responsible for local administration of the marketing order regulating the handling of hazelnuts grown in Oregon and Washington. Requiring handlers to report the receipt and disposition of imported hazelnuts will provide the Board with more

accurate information on the total supply of hazelnuts being handled in Oregon and Washington. This information will facilitate the Board's preparation of its annual marketing policy and will help in its ability to track both domestic and foreign product.

EFFECTIVE DATE: February 7, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 115 and Order No. 982 both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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 USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes reporting requirements for hazelnuts imported by handlers of hazelnuts grown in Oregon and Washington. The rule requires handlers to report the receipt and disposition of hazelnuts grown outside of the United States. Requiring handlers to report the receipt and disposition of imported hazelnuts will provide the Board with more accurate information on the total supply of hazelnuts being handled in Oregon and Washington.

At its November 14, 2000, meeting, the Board passed a general recommendation to require handlers to report imported hazelnuts. After developing procedures and a form necessary for implementation, the Board submitted its recommendation to the Department in May 2001.

Sections 982.64 through 982.67 of the order authorize the Board to require certain specific reports from handlers, including creditable promotion and advertising reports, carryover reports, shipment reports, and reports on the disposition of restricted hazelnuts. Section 982.68 of the order provides additional authority for the Board, with the approval of USDA, to require such other reports as the Board may require to perform its duties under the order.

The Board believes that more accurate information on the total supply of hazelnuts moving in and out of Oregon and Washington—both foreign and domestic product—will facilitate the administration of the order. The Board will use this information to more efficiently track the receipt and disposition of hazelnuts by handlers in Oregon and Washington. Furthermore, the Board will use this information in its marketing policy deliberations each fall when it reviews the crop estimate, handler carryover, and other factors to determine whether volume regulation would be appropriate. In addition, the Board is concerned that imported hazelnuts might be included in handler inventory reports of Oregon and Washington hazelnuts.

In addition to the domestic crop, of which 100 percent is produced in Oregon and Washington, hazelnuts are imported into the United States from Canada and Turkey, and occasionally from Italy. Hazelnuts produced in Oregon and Washington generally represent from 3 to 5 percent of the world crop. According to USDA statistics, the majority of hazelnuts imported into the United States are in kernel form, of which about 96 percent are from Turkey. A small percentage of imports are inshell hazelnuts and generally are from British Columbia, Canada, and enter the U.S. through Washington State. Although information pertaining to the quantity of imported hazelnuts has long been available, information specific to the receipt and disposition by Oregon and Washington hazelnut handlers prior to this final rule was lacking.

A major concern of the Board has been the inshell hazelnuts imported from Canada by Oregon and Washington handlers. As production in Canada has increased, there has been an increase in Canadian hazelnuts imported into Oregon and Washington. These hazelnuts are generally the same variety (Barcelona) as are produced in Oregon and Washington. If these hazelnuts are placed in the domestic inshell market without its knowledge, the Board's marketing policy calculations could be inaccurate. This rule will enable the Board to collect import hazelnut data to see how much is being imported and disposed of by domestic handlers.

According to the National Agricultural Statistics Service, the 10-year average annual production of hazelnuts grown in Oregon and Washington is 29,800 inshell tons. Of that total, an average of 4,253 tons was sold in the domestic market. Furthermore, according to the Foreign Agricultural Service, imports during the same 10-year period averaged 316 tons. The five-year average for imports is 534 tons, however, indicating that the increase may well be significant enough to impact the inshell domestic market.

The report, *F/H Form 1f,* will be submitted to the Board monthly when imported hazelnuts are received and shipped by the handler to a buyer in the United States or exported inshell or shelled. The Board estimates that these reports will be submitted about five times per year by each importing handler. The report will include the quantity of such hazelnuts received, country of origin, inspection certificate number, whether such hazelnuts were inshell or kernels, the disposition outlet (domestic, export, inshell, or shelled, etc.), and the shipment date of such hazelnuts.

The Board also recommended that, with each report, the handler submit a copy of the inspection certificate issued by the Federal-State Inspection Service (FSIS) for compliance purposes. The inspection certificate will indicate the

name of the person from whom the hazelnuts were received, the date the hazelnuts were received by the handler, the number of tons and U.S. Custom Service entry number, whether the product is inshell or shelled, the quantity of hazelnuts, country of origin, the name of the FSIS inspector who issued the certificate, and the date such certificate was issued. The Board believes inspection certificates are necessary to verify handler receipt and disposition reports for imported hazelnuts.

Final Regulatory Flexibility Analysis and Paperwork Reduction Act

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

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

There are approximately 800 growers of hazelnuts in the production area and approximately 19 handlers subject to regulation under the order. Small agricultural growers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the SBA definition, the Board estimates that the majority of the handlers and all of the growers are small entities. Board records show that in the 1999–2000 marketing year approximately 9 percent of the handlers shipped over 7,692,308 pounds of hazelnuts, and 91 percent of the handlers shipped under 7,692,308 pounds of hazelnuts. Thus, based on an average price of $0.65 per pound at the point of first sale, it can be concluded that the majority of hazelnut handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

This rule adds a new § 982.467 to the order's administrative rules and regulations which requires handlers to report to the Board the receipt and disposition of hazelnuts grown outside of the United States. This report will provide the Board with more accurate information on the total available supply of hazelnuts—foreign and domestic product—and will help facilitate program administration. Authority for requiring handlers to submit this information to the Board is provided in § 982.68 of the order.

Regarding the impact of the action on affected entities, this rule should impose minimal additional costs. The Board estimates that about five handlers have imported hazelnuts over the past few years. Such handlers will be required to submit an additional monthly report to the Board when imported hazelnuts are received and shipped, along with inspection certificates or other information required by the Board for verification purposes. The Board estimates that each affected handler will submit about five of these reports annually.

An alternative to this action would have been to continue the practice of not collecting information from handlers on the receipt and disposition of imported hazelnuts. However, as previously mentioned, the Board believes it will be able to better administer the order by obtaining more accurate information on the total available supply of hazelnuts being received and disposed of by Oregon and Washington handlers, including foreign and domestic product. The only way this information can be obtained by the Board is to directly collect it from handlers. This information will facilitate program administration by improving the Board's base of information from which to make decisions.

Another alternative the Board considered was whether it would be useful to collect information on hazelnuts grown outside of Oregon and Washington, but within the United States. However, Board members agreed that the quantity of domestic hazelnuts grown outside the production area and handled by regulated handlers is insignificant commercially, and, therefore, not needed.

This action imposes some additional reporting and recordkeeping burden on handlers that receive hazelnuts from outside of the United States. As stated earlier, the Board has estimated that five handlers may import hazelnuts during the marketing year. Such handlers will be required to submit a receipt and disposition report (*F/H Form 1f*) to the Board monthly when imported hazelnuts are received and shipped. The Board estimates that these reports will be submitted about five times per year per handler, and will require that each handler spend about five minutes to complete each report. Thus, the annual burden associated with this information collection should total no more than two hours for the industry. The information will be collected on *F/H Form 1f.* The form has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

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 USDA has identified one relevant Federal rule regarding requirements for hazelnuts grown outside of the United States. Under section 608e of the Act, whenever certain specified commodities are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestic commodity. Hazelnuts are included under section 608e of the Act. Thus, importers of hazelnuts are required to have such hazelnuts inspected by the Federal-State inspection service. Importers whose hazelnuts meet section 608e requirements do not have to submit any paperwork to USDA. However, importers whose hazelnuts fail section 608e requirements, or whose hazelnuts are being sent to designated outlets (animal feed, processing, or charity) have to submit paperwork to USDA. Only a small amount of information required by USDA in these instances or by the Board through this rule will be duplicative.

In addition, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the November 14, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 22, 2001 (66 FR 44086). Copies of the rule were mailed to all Board members. The rule was also

made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period ending October 22, 2001, was provided to allow interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers are already shipping hazelnuts from the 2001–2002 crop; (2) the Board would like to begin receiving this report as soon as possible to have better information on the total supply of hazelnuts within Oregon and Washington; (3) handlers are aware of this rule which was recommended at a public meeting; and (4) a 60-day comment period was provided in the proposed rule; no comments were received.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 982.467 is added to read as follows:

§ 982.467 Report of receipts and dispositions of hazelnuts grown outside the United States.

Each handler who receives hazelnuts grown outside the United States shall report to the Board monthly on *F/H Form 1f* the receipt and disposition of such hazelnuts. All reports submitted shall include transactions through the end of each month, or other reporting periods established by the Board, and are due in the Board office on the tenth day following the end of the reporting period. The report shall include the quantity of such hazelnuts received, the country of origin for such hazelnuts, inspection certificate number, whether such hazelnuts are inshell or kernels, the disposition outlet, and shipment date of such hazelnuts. With each report, the handler shall submit copies of the applicable inspection certificates.

Dated: January 31, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2848 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 106

[Notice 2002–1]

Interpretation of Allocation of Candidate Travel Expenses

AGENCY: Federal Election Commission.

ACTION: Interpretation.

SUMMARY: This notice expresses the view of the Commission that the travel allocation and reporting requirements of 11 CFR 106.3(b) are not applicable to the extent that a candidate pays for certain travel expenses using funds authorized and appropriated by the Federal Government.

DATES: February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Tina H. VanBrakle, Director, Congressional Affairs 999 E Street, NW., Washington, DC 20463, (202) 694–1006 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Contributions and expenditures made for the purpose of influencing Federal elections are subject to various prohibitions and limitations under the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, as amended [''FECA'' or ''the Act'']. These prohibitions and limitations apply to a contribution or expenditure by a ''person,'' as defined by 2 U.S.C. 431(11) and 11 CFR 100.10.[1] The statutory definition of the term ''person'' expressly excludes the Federal Government and any authority thereof.[2]

Commission regulations at 11 CFR 106.3 require candidates for Federal office, other than Presidential and Vice-Presidential candidates who receive federal funds pursuant to 11 CFR part 9005 or 9036, to report expenditures for campaign-related travel. Specifically, section 106.3(b) states that ''(1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related. (2) Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign -related stop and ending at the point of origin. (3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.''

Questions have arisen as to whether the allocation and reporting requirements in 11 CFR 106.3(b) are applicable to travel expenses paid for with funds authorized and appropriated by the Federal Government. Thus, the Commission is announcing its interpretation of the scope of 11 CFR 106.3(b) in that circumstance.

Because 2 U.S.C. 431(11) specifically excludes the Federal Government from its definition of a ''person,'' the Commission acknowledges that a candidate's travel expenses that are paid for using funds authorized and appropriated by the Federal Government are not paid for by a ''person'' for the purposes of the Act. Therefore, the Commission believes that the allocation and reporting requirements of 11 CFR 106.3(b) are not applicable to the extent that a candidate pays for travel expenses using funds authorized and appropriated by the Federal Government. The Commission notes that this interpretation of 11 CFR 106.3(b) is in harmony with 11 CFR 106.3(d), which states that a candidate need not report ''travel between Washington, DC and the state or district in which he or she is a candidate * * * unless the costs are paid by a candidate's authorized committee(s), or by any other political committee(s).''

Please note that this announcement represents the Commission's interpretation of an existing regulation and is not intended to create or remove any rights or duties, nor is it intended to affect any other aspect of 11 CFR 106.3, the Act, or the Commission's

[1] The terms ''contribution'' and ''expenditure'' are likewise defined at 2 U.S.C. 431(8)(A) and 11 CFR 100.7, and 2 U.S.C. 431(9)(A) and 11 CFR 100.8, respectively.

[2] 2 U.S.C. 431(11) provides: ''The term 'person' includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.''

regulations. Furthermore, this interpretation does not apply to presidential or vice presidential campaigns that are covered by the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.* (general elections) or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.*[3] Finally, the Commission notes that the use of Federal funds is governed by general appropriations law and is subject to Congressional oversight.[4]

Dated: February 1, 2002.

David M. Mason,

Chairman, Federal Election Commission.

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[3] The Commission's regulations governing travel by presidential and vice presidential candidates who receive federal funds are found at 11 CFR 9034.7 and 9004.7, respectively. These regulations differ from 11 CFR 106.3 in several ways. See, for example, 11 CFR 9004.7(b)(5) and 11 CFR 9034.7(b)(5), which address reimbursement requirements for use of a government airplane to travel to or from a campaign-related stop.

[4] Both the Senate and the House of Representatives have provided specific guidance to their members regarding mixed-purpose travel. *See* page 118 of the *Senate Ethics Manual* (September 2000) and page 95 of the *Rules of the House of Representatives on Gifts and Travel* (April 2000).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 900

[Docket No. 99N–4578]

RIN 0910–AB98

State Certification of Mammography Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing mammography. The amendments implement the ''States as Certifiers'' (SAC) provisions of the Mammography Quality Standards Act of 1992 (MQSA). These amendments permit FDA to authorize individual States to certify mammography facilities, conduct facility inspections, enforce the MQSA quality standards, and administer other related functions. The amendments establish the standards to be met by States receiving this authority. They also establish procedures for application, approval, evaluation, and withdrawal of approval of States as certification agencies. FDA retains oversight responsibility for the activities of the States to which this authority is given. Mammography facilities certified by those States must continue to meet the quality standards established by FDA for mammography facilities nationwide.

DATES: This rule is effective May 7, 2002. Submit written comments on the information collection requirements by March 8, 2002.

ADDRESSES: Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy A. Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Kaye F. Chesemore, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, FAX 301–594–3306.

SUPPLEMENTARY INFORMATION:

I. Background

MQSA (Public Law 102–539) was enacted on October 27, 1992. The purpose of the legislation was to establish minimum national quality standards for mammography. To provide mammography services legally after October 1, 1994, MQSA requires all mammography facilities, except facilities of the Department of Veterans Affairs, to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated by the Secretary to FDA. MQSA replaced a patchwork of Federal, State, and private standards with uniform minimum Federal standards designed to ensure that all women nationwide receive adequate quality mammography services. On October 9, 1998, the Mammography Quality Standards Reauthorization Act (MQSRA) (Public Law 105–248) was enacted to extend MQSA through fiscal year (FY) 2002.

A. Provisions of MQSA

In order to receive and maintain FDA certification, facilities must meet key requirements of MQSA, which include:

1. Compliance with quality standards for personnel, equipment, quality assurance programs, and reporting and recordkeeping procedures.

2. Accreditation by private, nonprofit organizations or State agencies that have been approved by FDA as meeting MQSA standards for accreditation bodies and that continue to pass annual FDA performance evaluations of their activities. As part of the accreditation process, the accreditation body must evaluate actual clinical mammograms from each unit in the facility for quality. The accreditation body determines whether or not the facility quality standards have been met.

3. Demonstration of continued compliance with the facility quality standards through annual inspections performed by FDA-certified Federal or State inspectors.

B. Accomplishments to Date

Interim facility quality standards were published in the **Federal Register** of December 21, 1993 (58 FR 67558), and used as the basis for the initial certification of mammography facilities under MQSA beginning October 1, 1994. By that date, mammography facilities had to have a FDA certificate in order to continue to lawfully provide mammography services. In the **Federal Register** of October 28, 1997 (62 FR 55852), more comprehensive facility quality standards and accreditation body requirements were published and became effective on April 28, 1999. FDA has approved five accreditation bodies: American College of Radiology (ACR) and the States of Arkansas, California, Iowa, and Texas. The number of certified mammography facilities varies with time but typically is about 10,000. FDA has trained and certified Federal and State inspectors to conduct MQSA inspections, and the sixth year of inspections is underway.

C. Standards for Certification Agencies

State agencies have played a very important role in the development and implementation of the MQSA program. As already noted, four of the five accreditation bodies are States, thus providing an alternative to the ACR for accreditation of facilities within those four States. Most of the FDA-certified inspectors are State personnel who, under contract with FDA, have conducted the great majority of MQSA inspections. FDA currently has contracts for the performance of inspections with 47 States, the District of Columbia, Puerto Rico, and New York City. Mammography facilities in States without inspection contracts and all Federal facilities are generally inspected by FDA.

MQSA also provides for an even more significant State role in the MQSA program. Section 354(q) of the Public Health Service Act (the PHS Act) (42 U.S.C. 263b(q)) permits FDA to authorize qualified States to: (1) Issue, renew, suspend, and revoke certificates;

(2) conduct annual facility inspections and followup inspections; and (3) implement and enforce the MQSA quality standards for mammography facilities operating within the qualified State. This rule puts into effect 42 U.S.C. 263b(q) by establishing the requirements that must be met by the States acting as certification agencies (commonly known as SACs) and the procedures for the application, approval, evaluation, and withdrawal of approval of SACs.

To be approved as a certification agency, a State must: (1) Have enacted laws and issued regulations at least as stringent as the MQSA standards and regulations, (2) have the legal authority and qualified personnel to enforce those laws and regulations, (3) devote adequate funds to the administration and enforcement of those laws and regulations, and (4) provide FDA with information and reports, as required.

By statute, FDA and SAC States each have authority in the areas of compliance and the suspension or revocation of certificates. Should there ever be a need, FDA is able to take administrative, judicial, or other actions against facilities within an approved State, regardless of whether a State takes such action. FDA retains exclusive responsibility for: (1) Establishing quality standards, (2) approving and withdrawing approval of accreditation bodies, (3) approving and withdrawing approval of State certification agencies, and (4) maintaining oversight of State certification programs.

D. Development of the SAC Proposed Rule

In the **Federal Register** of March 30, 2000 (65 FR 16847), FDA published a proposed rule for the implementation of the SAC provisions of MQSA and sought public comment. FDA's National Mammography Quality Assurance Advisory Committee (NMQAAC) and a SAC working group aided in the development of the proposed rule.

NMQAAC is a committee of health professionals and representatives of consumer groups and State agencies with responsibility for advising FDA on regulatory requirements implemented under MQSA. NMQAAC provided advice about the direction of the SAC program and the content of the proposed rule at meetings held in September 1994 and July 1996.

FDA's partnership with the States will be an essential key to the future success of the SAC program. To begin building that partnership, FDA formed a working group in accordance with 21 CFR 20.88(e). Working group participants have included regional and headquarters FDA staff, representatives of the States of Arkansas, California, Florida, Illinois, Iowa, Massachusetts, Nevada, New Hampshire, New Jersey, and Texas, and the American College of Radiology. FDA chose the State participants with the goal of obtaining input from all regions of the country and from States that are MQSA accreditation bodies. Since its first meeting in June 1996, the working group has contributed greatly to the development of the proposed rules.

The agency has also utilized knowledge gained from its experience in working with the accreditation bodies over the past several years and from a SAC Demonstration Project. Experience with the accreditation bodies has greatly influenced the proposed rule because of the similarity to the: (1) Objectives targeted, (2) problems to be solved, and (3) agency oversight needed.

The SAC Demonstration Project, established by FDA in August 1998, gave certification authority to approved States for a 1-year trial period that was later extended for a second and third year. The States of Illinois and Iowa applied for and received approval from FDA to participate in the SAC Demonstration Project. The experience proved valuable in the development of the national regulatory SAC program.

The proposed rule's 90-day comment period ended on June 28, 2000. FDA analyzed the comments received and responds to them in sections III, V, and VI of this document. As noted, FDA made some changes to the proposed rule in response to those comments.

II. Provisions of the Final Rule

FDA is adding subpart C, entitled ''States as Certifiers,'' to part 900 (21 CFR part 900—Mammography). This subpart contains sections defining: (1) The requirements for a State to apply to become a certification agency, (2) the requirements to be met by and the responsibilities of the States that receive certification authority, (3) the processes to be used by FDA in evaluating the performance of each certification agency, (4) the criteria for and the process to be followed to withdraw approval of a certification agency, and (5) the opportunities for hearings and appeals related to adverse actions taken by FDA with respect to certification agencies. FDA is also amending § 16.1(b)(2) (21 CFR 16.1(b)(2)), which addresses hearing procedures, and § 900.2 (Definitions) to bring the regulations into conformance with subpart C.

The intent of MQSA, which is to assure high quality mammography services for all women in the United States, led FDA to add subpart C. FDA believes that these amendments will provide women, in States with certification authority, with the same assurance of high quality mammography as women in States for which FDA retains that authority. There are also potential cost savings to the facilities and the public through a reduction in the facility inspection fees in SAC States. This will occur in SAC States whose inspection costs are lower than the national average that is used to calculate the present national inspection fee.

A. Scope

Section 900.20 describes the scope of subpart C. The new subpart establishes procedures for a State to apply to become a FDA-approved certification agency for mammography facilities. It further defines the responsibilities to be met by certification agencies and the oversight procedures that FDA will use to ensure that these responsibilities are met.

B. Application for Approval as a Certification Agency

Section 900.21 summarizes the information to be provided by the State to enable FDA to make an informed decision about the State's ability to adequately carry out certification responsibilities. The application must include a detailed description of the mammography quality standards the applicant will require facilities to meet. If these standards are different from FDA's quality standards, the application must include information to show that they are at least as stringent as FDA standards. The application also must include information about the applicant's decisionmaking process for issuing, suspending, and revoking a facility's certificate as well as its procedures for notifying facilities of inspection deficiencies and the monitoring of the correction of those deficiencies. Finally, the State must provide information about the resources it can devote to the program, including the: (1) Qualifications of the State's professional staff; (2) adequacy of the State's staffing, finances, and other resources; (3) ability of the State to provide data and reports in an electronic format compatible with FDA data systems; and (4) adequacy of the State's enforcement authority and compliance mechanisms.

Section 900.21(c) provides a general description of the process that FDA will follow to decide whether or not to accept a State as a certification agency. Section 900.21(d) notes that FDA may limit the types of facilities for which

FDA is granting certification authority; for example, FDA does not expect to grant certification authority to States for Federal facilities. It should be noted also that 42 U.S.C. 263b(q) does not permit FDA to grant a State authority to certify facilities outside of the State's borders.

C. Standards for Certification Agencies

Section 900.22 establishes the requirements and responsibilities to be met by States that have been approved as certification agencies.

Section 900.22(a) requires the certification agency to have FDA-approved measures to reduce the possibility of conflict of interest or facility bias on the part of individuals acting on the agency's behalf.

Section 900.22(b) requires that the statutory and regulatory requirements used by the certification agencies for the certification and inspection of mammography facilities be those established by FDA in part 900 or other appropriate, but at least as stringent, requirements.

Section 900.22(c) requires that the scope, timeliness, disposition, and technical accuracy of completed inspections and related enforcement activities conducted by the certification agencies be adequate to ensure compliance with the MQSA quality standards.

Section 900.22(d) requires that the certification agencies have appropriate criteria and processes for the suspension and revocation of certificates and that the certification agencies promptly investigate and take regulatory action against facilities that operate without a certificate.

Section 900.22(e) requires that there be means by which facilities can appeal adverse certification decisions made by a certification agency.

Section 900.22(f) requires that approved certification agencies have processes for requesting additional mammography review from accreditation bodies for issues related to mammography image quality and clinical practice.

Section 900.22(g) requires that the certification agencies have procedures for patient and physician notification in situations where the certification agency has determined that mammography quality has been compromised to the extent that there may be a serious risk to human health.

Section 900.22(h) requires that certification agencies have processes to ensure the timeliness and accuracy of electronic transmission of inspection data and facility certification information in a format and timeframe determined by FDA.

Section 900.22(i) requires FDA authorization for any changes a certification agency proposes to make in any standards that FDA previously accepted under § 900.21 or § 900.22. FDA believes that this process is necessary to assure that standards for certification agencies remain at least as stringent as the FDA standards.

D. Evaluation

Section 900.23 establishes standards for the annual performance evaluation of each certification agency. The evaluation will be based on indicators related to the adequacy of the certification agency's performance in the areas of certification, inspection, and compliance.

During the evaluation, FDA will consider the timeliness and effectiveness with which the certification agencies meet their various responsibilities. The evaluation also will include a review of any changes in the standards or procedures that the certification agency has made in the areas listed in §§ 900.21(b) and 900.22. The evaluation will include a determination of whether there are major deficiencies in the certification agency's performance that, if not corrected, would warrant FDA withdrawal of the State agency's approval. The evaluation will also include identification of any minor deficiencies that require corrective action.

E. Withdrawal of Approval

Section 900.24 provides for the actions to be taken if evaluations carried out under § 900.23, or other information, leads FDA to determine that a State certification agency is not adequately carrying out its responsibilities. If FDA determines that there are major deficiencies in the certification agency's performance, FDA may withdraw its approval. Examples of major deficiencies include: (1) Commission of fraud, (2) willful disregard for the public health, (3) failure to provide adequate resources for the program, (4) performing or failing to perform a delegated function in a manner that may cause serious risk to the public health, or (5) the submission of material false statements to FDA.

For minor or less serious deficiencies, FDA will establish a definite time period for the certification agency to take corrective measures as directed by FDA or to submit the State's own plan of corrective action for FDA approval. FDA may place the certification agency on probationary status while the agency is addressing the minor deficiencies. The agency would utilize probationary status in situations where the certification agency is not implementing the corrective action satisfactorily or within the established schedule. FDA also may withdraw approval from the certification agency if: (1) Corrective action is not taken or (2) the identified minor deficiencies have not been eliminated within the established timeframe.

While a certification agency is developing and carrying out its corrective action plan, even if on probationary status, it will retain its certification authority. If a certification agency loses its approval, it must notify all facilities certified or seeking certification by it. In addition, the certification agency must notify the appropriate accreditation bodies with jurisdiction in the State of its change in status. These requirements, however, would not preclude FDA notification. A certification agency that has lost its approval must also transfer facility records and other information required by FDA to a location and according to a schedule approved by FDA.

F. Hearings/Appeals

Under § 900.25, FDA provides an opportunity for a certification agency to challenge in an informal hearing an adverse action taken by FDA with respect to approval or withdrawal of approval. The agency provides the opportunity for a hearing in accordance with part 16 (21 CFR part 16). Certification agencies also are required to provide facilities that have been denied certification with the opportunity to appeal that decision. Each certification agency shall specify in writing its appeals process for approval by FDA in accordance with § 900.21.

G. Conforming Amendments

A conforming amendment to § 16.1 adds § 900.25 to the list of provisions under which regulatory hearings are available.

Conforming amendments to § 900.2 state that the definitions in that section apply to subpart C, as well as to subparts A and B of part 900. Three definitions, ''§ 900.2 (zz) Certification agency,'' ''(aaa) Performance indicator,'' and ''(bbb) Authorization'' are added to the definition list. In adding these definitions, FDA departs from its earlier practice of placing the definitions in alphabetical order to add the new definitions to the end of the list. This placement was done to avoid the necessity of making numerous changes in the citations of the definitions in subparts A and B and to avoid the potential for confusion and error. A

change has also been made in the definition of ''Certification'' to recognize the role of States as certification agencies. A similar conforming amendment was made to § 900.11(a).

III. Public Comments on Provisions of the Final Rule

FDA received eight responses to the request for comments on the proposed regulations for State certification of mammography facilities. They were from representatives of a mammography facility, the ACR, the Conference of Radiation Control Program Directors, Inc. (CRCPD), and five representatives of individual State radiation control programs. Each response contained a number of individual comments. A large number of these comments were related to the cost analysis and will be addressed in section V of this document (Analysis of Impacts). A few of the comments dealt with paperwork issues and will be discussed in section VIII of this document (Paperwork Reduction Act of 1995). The remaining comments addressed: (1) The general concept of SAC, (2) individual provisions of the proposed regulations, and (3) possible additions to the regulations. FDA responds to these comments as follows.

A. General Comments

General comments were those that raised issues or concerns that were broader in scope than any specific provisions.

(Comment 1) One comment reminded FDA that ''MQSA was established to create and maintain a minimum national quality standard in mammography.'' The authors went on to laud the ''strict requirements'' and the procedures of the agency for their effectiveness in achieving this goal. However, they expressed concerns about continuing to meet the intent of MQSA in a consistent fashion without undue burdens on facilities if certification authority was given to a number of agencies (States). Although the authors did not appear to be opposed in principle to the concept of certification authority being given to the States, they made it clear that their support was contingent on the resolution of these concerns. Another comment expressed confidence that States could manage certification responsibilities efficiently and effectively.

The agency agrees that the basic intent of MQSA is to ensure that the performance of mammography meets uniform minimum national standards of quality. FDA believes that the proposed regulations and the associated agency oversight actions provide adequate assurance that this intent will continue to be met after certification authority is given to individual States. In response to the first comment, however, the agency has made changes in the regulations to further strengthen this assurance.

FDA made five changes in §§ 900.21 and 900.22 to make it easier for FDA to determine if an applicant's standards of quality meet or exceed the uniform minimum national standards. The first, in § 900.21(a), replaced the words ''substantially equivalent to'' with ''at least as stringent as.'' The second, in § 900.21(b)(3)(ii), replaced the words ''their equivalence to'' with ''that they are at least as stringent as.'' The third, in § 900.21(c), replaced the words ''substantially equivalent'' with ''at least as stringent as.'' A similar change in § 900.22(b) replaced the words ''equivalent to'' with ''at least as stringent as.'' These four changes were intended to clarify the nature of the information that the agency is seeking. The fifth change adds a new § 900.21(b)(3)(iii)(O) to ensure that the SAC State will make it clear to FDA and to the affected facility when an action taken against a facility is based upon more stringent State standards. This addition was made to clarify that a State may only impose the more stringent requirements under State law.

In addition, two changes were made to emphasize that after approval as a certification agency, a State must continue to ensure that the intent of MQSA is met. The words ''regulations or'' have been inserted in § 900.23 to emphasize that the annual evaluation of certification agencies will include a review of the certification agency's regulations to ensure that they remain adequate for MQSA purposes. Also, the words ''has failed to achieve the MQSA goals of quality mammography and access'' were added to § 900.24(a) to make it clear that FDA can withdraw approval of a certification agency should a SAC State fail to achieve the MQSA goals.

FDA will cover the oversight actions, which FDA believes help ensure that uniform national minimum standards of quality will be met, in more detail with the discussion of the comments on specific provisions of the regulations. In addition, comment 14 of this document discusses a change made in § 900.24(b) in order to minimize a potential burden on facilities.

(Comment 2) One person noted that his present understanding of FDA's intent regarding data transmission between accreditation bodies and State certifying agencies is that the accreditation bodies would provide data to FDA and FDA would then pass it on to the State certifying agencies. The comment approved of this planned flow and urged that it be specified in the regulations.

The comment does correctly describe FDA's intent with respect to electronic transmission of data. The agency believes that this pathway is much more efficient and cost effective than if multiple pathways had to be developed between accreditation bodies and certifying States. It is also the most effective way of maintaining the national database required for MQSA activities. However, FDA does not believe that it is necessary to specify this intent in the regulations and so rejects this comment.

(Comment 3) One comment noted that there are very minimal differences between the content of the proposed regulations for State certification of mammography facilities and the existing requirements met by accreditation bodies.

This similarity was intentional on the agency's part. FDA recognized that the information needed to determine if FDA could approve a State as a certification agency was similar in many respects to that required to determine if FDA could approve an accreditation body. Furthermore, the responsibilities of, the procedures to be followed by, and the resources needed by SAC States and accreditation bodies show many similarities. It seems most efficient for both FDA and the States, especially States that might wish to be both an accreditation body and a certification agency, to pattern the requirements for certification agencies on those for accreditation bodies. In addition, patterning the proposed SAC requirements on those for accreditation bodies permitted the SAC effort to benefit from the experience gained from the agency's work with the accreditation bodies. The accreditation body requirements have been able to ensure uniform accreditation standards, even though five accreditation bodies are presently involved. Similar certification requirements will help achieve continued assurance that all mammography facilities will meet a uniform minimum national standard of quality with multiple certification agencies.

(Comment 4) One comment noted that State radiation control agencies have requested implementation of MQSA (42 U.S.C. 263b(q)) which provides for certification authority to be given to the States, almost since the implementation of MQSA in 1994. It went on to say, ''We feel it is important to note the fact that the proposed regulations are neither

complex nor sufficiently voluminous to require more than five years to achieve publication in the **Federal Register**.''

FDA has been aware since the early days of the program that some States have been very interested in seeing 42 U.S.C. 263b(q) implemented. At a Dallas, TX meeting convened by FDA and the CRCPD in January 1994 to obtain comments from the State radiation control programs on the agency's plans to implement MQSA, representatives of some States urged FDA to make the implementation of 42 U.S.C. 263b(q) its highest priority.

In establishing its priorities for the implementation of MQSA, the agency had to first focus on those actions required by law. These actions included: (1) Developing quality standards, (2) approving accreditation bodies, (3) certifying facilities, and (4) establishing an inspection program. Other permitted actions, including the transfer of certification authority to interested States, had to be given a lower priority in order to accomplish these mandates. Had FDA focused its attention on implementing 42 U.S.C. 263b(q) rather than on its mandates, access to mammography could have been seriously compromised.

After October 1, 1994, FDA had other legislative mandates to meet that would have a more immediate impact in ensuring quality mammography and were viewed by Congress to be of greater urgency than implementing 42 U.S.C. 263b(q). One of the mandates included the establishment of the annual inspection program, which involved developing criteria and training and equipping a corps of 250 inspectors. Also, in granting FDA special authority for interim regulations, Congress sent a clear message as to the importance it attached to quickly replacing the interim regulations with more comprehensive final regulations. Again, FDA focused its resources toward meeting these mandated requirements. In August 1998, with the final regulations published, FDA increased its efforts to implement 42 U.S.C. 263b(q) by establishing a SAC Demonstration Project based upon valuable information provided by a SAC working group of State, Federal, and professional personnel assembled in June 1996.

The agency believes that its order of priorities was also advantageous for future SAC certification agencies. If the agency had first implemented 42 U.S.C. 263b(q) and then developed its inspection program and the final regulations, State certification agencies would have had to constantly adjust their programs as the FDA efforts unfolded. The agency also believes that the information gained from preliminary activities in the Demonstration Project will, in the long run, save both time and effort for the SAC States and the facilities under the regulatory program. In addition, FDA believes that its implementation priorities will help ensure that the SAC program will be immediately effective in maintaining uniform minimum national standards of quality for mammography.

B. Comments on Application for Approval as a Certification Agency (§ 900.21)

Section 900.21 defines State eligibility for becoming a certification agency, outlines the required content of the application, and provides details on the general framework for the processing of the application. Some of the comments received on this section were related to the paperwork burden and FDA will discuss them under section VIII of this document. FDA's response to the other comments follows.

(Comment 5) One respondent suggested that § 900.21(a) be reworded to indicate that States must have the authority to enter into an agreement with FDA, as this implied more than simply saying that the State is capable of entering into an agreement. A second comment stated that FDA should clarify this section.

FDA agrees that clarification is needed. However, the agency believes that the rewording suggested by the first respondent is too limited in that it focuses only on the State having the authority to enter into a legal agreement. The phrase ''capable of meeting the requirements'' was also intended to mean that the State must have the resources needed to carry out the agreement. Therefore, FDA has revised this provision to read: ''(a) *Eligibility*. State agencies may apply for approval as a certification agency if they have standards at least as stringent as those of § 900.12 of subpart B of this part, qualified personnel, adequate resources to carry out the States as Certifiers' responsibilities, and the authority to enter into a legal agreement with FDA to accept these responsibilities.''

(Comment 6) One comment noted that § 900.21(b)(3)(iii)(F) requires an applicant to submit to FDA information on the qualifications of the applicant's professional and supervisory staff but does not specify the minimum criteria for these qualifications. The author asked how applicants would know if members of their staff were qualified.

FDA agrees that an interested State might need more information on qualification criteria. However, the agency believes it would be preferable to provide this information through guidance and direct consultation instead of codifying a set of minimum criteria in the regulations. Position categories differ greatly from State to State in their requirements and descriptions. Also, individuals with a variety of backgrounds can perform some of the tasks required of a certification agency. In light of these differences, FDA believes that it needs flexibility in handling the issue of personnel qualifications that would not be available if minimum criteria were established by regulation.

To improve clarity, FDA also made minor editorial changes in some of the provisions of § 900.21.

C. Comments on Standards for Certification Agencies (§ 900.22)

Section 900.22 outlines the responsibilities of the SAC States and requires them to implement FDA-approved measures to ensure that there will be no conflict of interest or facility bias in carrying out these responsibilities.

(Comment 7) Two comments urged FDA to delete or modify § 900.22(c) so that the certifying agency would not have the responsibility of ensuring that facilities are in compliance with the quality standards. One author went further and made the conflicting statement that ''Given that Section 900.23 will ensure that a certifying State meets its responsibilities, subsection (c) is unnecessary.'' It was not explained how § 900.23 would ensure that the SAC State would carry out its compliance responsibilities if the author's previous suggestion were followed that such responsibilities should not be given.

FDA was surprised to receive these comments from representatives of State radiation control programs. Compliance with the quality standards by the facilities is the key factor in achieving the MQSA goal of quality mammography nationwide. Ensuring that the facilities they certify are in compliance with the quality standards is by far the most significant of the activities that the agency is proposing to give to the SAC States. If FDA does not give this authority, it would have to remove not only § 900.22(c) but also § 900.22(d), (e), (f), and (g), which are activities to ensure compliance with the quality standards. This would limit the new responsibilities given to the SAC States to the point that there would be little incentive for States to join the program. From the information supplied by the working group and informal contacts with State personnel, FDA

believes that most of the States interested in becoming certification agencies want the responsibility for ensuring that the facilities they certify are in compliance with the quality standards. The agency also notes that 42 U.S.C. 263b(q) specifically references the compliance activities as one of the responsibilities that may be given to States. FDA believes that compliance activities by SAC States are appropriate and therefore did not accept these comments.

(Comment 8) One comment expressed concern about how appeals of any adverse accreditation decisions based on failure of clinical images would be handled by certifying States. The authors recommended that § 900.22(e) should in some way ensure that such appeals do not result in less qualified personnel in a SAC State overruling the ''highly qualified'' ACR personnel who made the original decision.

FDA agrees that interpreting physicians participating in the appeals process or in decisions about additional mammography review or patient notification should be adequately qualified for those duties. However, FDA believes that it is more appropriate for the agency to ensure that the SAC State has adequately qualified review interpreting physicians through FDA's application review and oversight functions rather than through regulations.

(Comment 9) One comment expressed concern about the criteria being used to initiate additional mammography review (AMR). The authors stated that they believed that requests for AMR were increasing. They recommend that, as stated in the current MQSA regulations, such reviews should be limited to cases where ''mammography quality at a facility has been compromised and may present a serious risk to human health * * *.''

FDA agrees that the above statement is the criterion in § 900.12(j) for the initiation of an AMR. The agency believes that, in accordance with the goal of ensuring uniform minimum standards for quality mammography nationwide, this criterion should continue to apply within the SAC States as well as in the non-SAC States. To ensure that there is no misunderstanding on this point, FDA is modifying § 900.22(f) to the following:

There shall be a process for the certification agency to request additional mammography review from accreditation bodies for issues related to mammography image quality and clinical practice. The certification agency should request additional mammography review only when it believes that mammography quality at a facility has been compromised and may present a serious risk to human health.

(Comment 10) One comment stated that § 900.22(g) should require patient notification to take place whenever an uncertified facility is found to be operating, regardless of the clinical image review determination of pass or fail. A second comment went further in arguing that if a facility has performed mammography without certification, ''additional clinical image review is irrelevant.'' The author of that comment urged that the ''underlying assumption should be that if a facility has not complied with the fundamental legal requirement of obtaining a certificate prior to performing mammography, there is no assurance that the facility has met any of the applicable standards for certification.'' The author went on to say ''if standards were not met in obtaining images, additional image review is not going to rectify the problem. Delaying notification of affected patients until additional clinical image review is conducted unnecessarily puts those patients at risk.''

FDA believes that the ''underlying assumption'' of the author of the second comment is not necessarily correct, especially when a facility has been previously certified, passed its inspections, and the time of operation without a certificate was short. On the other hand, the agency understands the concern about possible risk to patient health if notification is delayed in cases where the facility not only operated without a certificate, but also failed to meet other quality standards, thus resulting in poor quality mammography. This concern, however, must be balanced against the unnecessary stress and alarm that could be caused if patients are notified of the lack of certification when an AMR would have shown that the quality of mammography was acceptable. Furthermore, if this alarm caused patients to undergo unnecessary repeat examinations, additional radiation exposure and expense would result.

Because of the need to balance these two concerns, FDA and the State certification agencies need to have the flexibility to deal with such situations on a case-by-case basis. For this reason, the agency has rejected the suggestion for mandatory patient notification in every case where a facility has operated without a certificate.

(Comment 11) One comment suggested a change in § 900.22(i), which requires certification agencies to obtain FDA authorization ''for any changes it proposes to make in any standards that FDA has previously accepted under § 900.21 of this section.'' The comment urged that the words ''obtain FDA authorization'' be changed to ''coordinate with FDA to ensure comparability with MQSA requirements.'' The reason given was that they did not feel that FDA could ''authorize'' a State to make changes in its regulations. A second comment expressed a similar concern. The author noted that it would be prudent for a certification agency to discuss contemplated changes in State standards with FDA. FDA then had the right to make it known to the certification agency if it found the changes inconsistent with MQSA. The author also acknowledged that if the certification agency did not cooperate in removing the inconsistency, ''FDA can take appropriate action.'' The comment concluded with the statement that it would be ''inappropriate and unacceptable'' for FDA to require formal authorization for changes a State agency may want to make in its standards.

FDA notes that 42 U.S.C. 263b(q) gives the agency the authority to ''authorize'' a State to ''implement the standards'' established by FDA. The agency believes that to ensure that these minimum standards are implemented uniformly nationwide, in both SAC States and non-SAC States, the SAC States must have standards in their regulations that are at least as stringent as the MQSA quality standards. This stringency level must exist at the time the State receives certification authority. Therefore, as part of its application, prospective certification agencies must submit their facility mammography standards for review. The State standards must also remain as stringent as the MQSA quality standards for as long as the State is a certification agency. However, this cannot be guaranteed if the State is free to change its standards after only ''discussion'' or ''consultation'' with FDA. Therefore, the agency believes that it is not only appropriate, but also required under 42 U.S.C.263b(q), that FDA authorize changes in State standards before they are put into use by the State in its activities as a certification agency.

At the same time, the agency recognizes that the term ''authorize,'' used in the statute and repeated in the regulations, may be contributing to the concerns of those making the comments because they may be interpreting it as meaning more than is intended. FDA does not intend to say that a State needs ''authorization'' from the agency to make changes in its regulations. The agency does intend to say, for the reason just discussed, that a SAC State needs FDA approval of its changed regulations

before it can use them in the exercise of its SAC authority. To clarify this point, FDA has added a definition of ''authorization'' as a new § 900.2(bbb).

As further clarification of what was intended with this requirement, the words ''before requiring facilities to comply with the changes'' have been added at the end of § 900.22(i). This further clarification was prompted by the second comment, which seems to suggest that FDA take action to correct inappropriate State regulation changes, which would affect a State's SAC role, after they are put into effect, instead of requiring agency authorization before they are put into effect. FDA does recognize that, as suggested by the comment, there are actions available to it, including withdraw the certification agency's authority to certify, if ''discussion'' and ''coordination'' are not effective in maintaining consistency between the State's standards and the MQSA standards. However, to take such action after the State standards are put into use would be very disruptive to the facilities certified within the State. In most States, it would require some time for the State regulations to be amended to remove the inconsistencies so that the State could become a SAC State again. FDA believes it would be preferable to prevent such problems from occurring rather than to correct them afterward. The most effective way of doing this is to require States to obtain FDA ''authorization,'' to use the terminology in MQSA, for changes in State standards before using them in their certification activities.

(Comment 12) Two comments urged that inspector training be delegated to the SAC States as a cost saving measure. Although these comments are outside the scope of the regulations, FDA has provided the following answer. As previously stated, the goal of the MQSA program is to ensure that all mammography facilities nationwide meet uniform minimum quality standards. A key factor in achieving this assurance is the uniform application of the MQSA quality standards during inspections. To achieve this uniform application, it is crucial that all inspectors have a uniform training experience. FDA doubts that uniformity of training can be achieved if multiple independent training centers are used in the place of a single center.

The agency also questions whether States can provide training of the same quality and quantity as the FDA training at less cost. FDA provides 6 weeks of specialized training for prospective inspectors. By the completion of their training, the inspectors have benefitted from contact with over a dozen instructors and received about the same number of hours of instruction as given in a typical year of graduate school. In addition, they are required to complete mentored inspections in the field before FDA certifies them as MQSA inspectors. Because the States are already providing the field training, there would be no increase or decrease in cost for that component if the SAC States were given full responsibility for training their inspectors. Any possibility of cost savings by the States would have to come in providing the basic classroom training.

Now that FDA has completed the initial buildup of approximately 250 inspectors, a single series of classes per year, graduating approximately 20 inspectors, is generally sufficient for replacement purposes. Individual States rarely find it necessary to have more than one inspector trained a year. It is unlikely that State training programs would be able to provide comparable training to that described above at a per inspector cost less than that of FDA, because such programs would lose the benefit of economy of scale.

Neither of the comments advocating training of inspectors by States provided any details on the nature of the training they envisioned. Only one provided a cost figure but it contained no details on how it was estimated. The two comments failed to provide a basis for concluding either that State training of inspectors would be less costly than the FDA training or that training at multiple independent centers can be conducted in such a way as to ensure uniform training of inspectors. Therefore, FDA concludes that, for the present, the agency should retain responsibility for training as well as certifying inspectors. However, FDA will re-evaluate this position after the SAC program expands and additional experience is gained.

(Comment 13) One comment noted that in the list of the authorities to be delegated to the States in the preamble to the proposed regulations, the authority for certification is included but a short while later it is stated that ''FDA retains authority to suspend or revoke the certificate of facilities within an approved State.'' The authors believed that this was in conflict with the law and noted that no reason was given for this decision. The comment asked ''What if a State has been given that authority by State law?''

The MQSA statute has provisions for both States and the agency to suspend or revoke certificates in SAC States. States may be approved to carry out the certification program requirements under 42 U.S.C. 263b(q)(1)(A), which includes the suspension and revocation of certificates. As a condition for becoming a State certification agency, an agency must have authority under State statute to accept and carry out the SAC responsibilities. However, 42 U.S.C. 263b(q)(3)(B) specifically states that, in a State given certification authority, FDA may take action under 42 U.S.C. 263b(i), which is the part of 42 U.S.C. 263b giving authority to suspend and revoke certificates. Consequently, there is no conflict with the law.

FDA has written and spoken about dual authority in many public forums. The agency has always asserted that it does not intend to exercise its certification authority in SAC States except in rare circumstances. Thus far, the agency has not used this authority during the SAC Demonstration Project. FDA would also like to make it clear that should it suspend or revoke a certificate in a SAC State on its own authority, the implications of that action are limited to the facility losing its certificate. FDA's action should not be construed as meaning that it is ''taking back'' the general authority of the SAC State to suspend or revoke certificates of facilities within its borders. Such a general resumption of authority would occur only if the agency withdraws its approval of the SAC State as a certification agency.

To improve clarity, FDA also made minor editorial changes in some of the provisions of § 900.22.

D. Comments on Evaluation (§ 900.23)

Section 900.23 of the proposed regulations provides for annual evaluation of the certification agencies by FDA and describes some of the details of the evaluation.

(Comment 14) One comment warned that, to ensure consistency, continuity, and the quality of mammography, FDA would have to impose an extensive and active review of the State certification authorities. The authors believed that the extent of this evaluation was not made clear in the regulations and asked questions about: (1) Whether FDA would conduct followup inspections to validate the certification agency inspections, (2) how frequent the followup inspections would be, and (3) how discrepancies between the State inspections and followup inspections would be handled. The comment also included an expression of concern about the possibility that the cost of an adequate evaluation program might be unreasonable.

FDA notes that FDA auditors accompany State inspectors on selected inspections to observe and, if necessary, correct their performance. In this way,

the agency increases the probability that the quality standards are enforced correctly and uniformly throughout the country. Currently one audit inspection is conducted for each State inspector annually. FDA may do additional reviews of specific inspections if there are questions about an inspector's performance. These audit inspections have been conducted in the SAC States as well as the non-SAC States. Because such inspections are already being performed, there will be no new costs for their performance in SAC States.

The agency also expects to evaluate the performance of the certification agencies through mechanisms similar to those currently used for accreditation bodies. These include reviews of annual reports and other documents provided by the certification agencies. An FDA evaluation team will conduct periodic site visits to the certification agency. At present, quarterly performance reports are required from the SAC States participating in the Demonstration Project. If FDA determines that performance of the certification agency is unsatisfactory, § 900.24 provides the agency with the authority to take appropriate action.

(Comment 15) One comment urged that ''The mentioned performance indicators should be delineated in the rule or developed as guidance and available for review and comment and not developed at a further date. Guidance on complying with these indicators could be developed at a later date, but the indicators themselves should be contained within the rule.''

FDA notes that performance indicators were developed for use in the SAC Demonstration Project with the aid of review and comments from the SAC working group. As FDA gained experience from that project, the indicators were modified to make them more appropriate. Further modification may be necessary as the program grows. Consequently, FDA believes that it is premature to codify the performance indicators in regulation. Greater flexibility is available through the guidance process to make adjustments to the indicators more rapidly, should that be necessary.

To improve clarity, FDA also made minor editorial changes in some of the provisions of § 900.23.

E. Comments on Withdrawal of Approval (§ 900.24)

Section 900.24 makes a range of actions available to FDA for use when a certification agency is not in substantial compliance with the regulations.

The words ''after providing notice and opportunity for corrective action'' have been added in the first sentence of § 900.24(a) in order to incorporate a requirement from the statute itself. This requirement was mistakenly left out of the proposed regulation.

(Comment 16) One comment supported implementation of the SAC program providing that it can be carried out ''without incurring an undue financial, compliance, or legal burden on the mammography facilities or public.'' Under § 900.24(a), FDA may withdraw approval of a certification agency if it fails to correct major deficiencies. Under § 900.24(b), FDA may place a certification agency on probation while it corrects minor deficiencies in the performance of its responsibilities. If a certification agency fails to correct these deficiencies while under probation, FDA may withdraw its approval of the agency. If FDA withdraws approval of a certification agency under either of these circumstances, the facilities certified by the agency would again have to become certified by FDA. There would be some burden on the facilities in making such transfers. FDA will develop administrative procedures for the transfer to minimize the burden to the extent possible. In addition, FDA believes that giving the facilities advanced notice that such a transfer may be necessary, so that the facility may be prepared for the possibility will further minimize the burden. Therefore, a sentence has been added to § 900.24(a) requiring a certification agency that has been ordered to carry out corrective actions for major deficiencies to notify all facilities certified or seeking certification by it of this order. Similarly, a new paragraph (b)(1) has been added to § 900.24 requiring a certification agency to notify all facilities certified or seeking certification by it during the probation period if the agency is placed on probation.

(Comment 17) The introduction to this section states that if ''a certification agency is not in substantial compliance with this subpart, FDA may initiate the following action * * *.'' One comment urged that the agency define ''substantial compliance'' or delete the word ''substantial.''

FDA believes that to make either of these changes would remove the flexibility that it needs to respond appropriately to a wide variety of conditions. Deleting the word ''substantial'' would mean that any deviation from the requirements, no matter how minor, would require action against the certification agency. On the other hand, because it would be impossible to foresee all possible situations in which action might have to be considered, any definition of ''substantial compliance'' would inevitably be incomplete. In order to retain the flexibility to evaluate each individual situation and to arrive at the course of action most appropriate for it, FDA rejects this comment.

F. Suggestions for Additions to the Regulations

(Comment 18) One comment urged FDA to address the use of ''interim notices'' in the regulations instead of in guidance, as it is at present. The authors noted that their State planned on promulgating regulations to include criteria and processes for issuing interim notices and stated the opinion that most State administrative procedure statutes would require similar regulations for their certification agencies. They urged FDA to include the interim notice process in its own rules to serve as a model for the State rules. A second comment suggested clarifying the term ''interim notice'' by terming it ''interim notice of certification.'' A third comment urged FDA to differentiate between the issuance of interim notices to new facilities under a provisional status and existing facilities that receive interim notices due to delays or failure in the accreditation process.

Interim notices are issued by FDA or a certification agency to a facility in a variety of situations, including accreditation delays, nonreceipt of a certificate, and to bridge the gap of time between certificate issuance and facility receipt of a certificate. The notice permits a facility to perform mammography while waiting for the certificate to arrive by mail. FDA devised this process as a way to handle the immense task of completing the accreditation and certification of thousands of facilities in a relatively short period of time during the early days of the MQSA program. FDA retained the process after those early years as the accreditation bodies continued to make adjustments to their fluctuating workload. Situations sometimes arose where without such a mechanism, a facility would have to cease operating for a period of time, even though its staff had carried out their responsibilities properly and promptly.

FDA notes that it is reconsidering the future use of interim notices separately from the development of the SAC regulations. Therefore, it is premature to respond to this issue. However, in its examination of the interim notice issue,

FDA will consider the specific comments made.

The agency also notes that interim notices are not presently mentioned in the SAC regulations. The interim notice process could not be added to the regulations without giving the public the opportunity to comment. If such regulations were incorporated into the SAC regulations, they would have to be reproposed. Thus, the publication of the final SAC regulations would be delayed for at least 6 months to 1 year, which many States would find unacceptable. If FDA determines that there is a need to add regulations on interim notices, the agency will publish a proposal and give the public an opportunity to comment. With respect to the plans of one State to issue regulations of its own with respect to interim notices, the agency notes that the mammography regulations of a State acting as a certification agency must continue to be at least as stringent than those of FDA. If a State proceeds with its own interim notice regulations, it may have to amend those regulations after FDA makes its decision on the future of interim notices or may find that its regulations do not satisfy MQSA's SAC requirements because they are less stringent than the MQSA regulations. With these considerations in mind, States interested in such regulations may wish to wait until FDA makes a final decision on this issue.

IV. Environmental Impact

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

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612 (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). FDA published an impact analysis in association with the proposed regulations. After a thorough analysis of the comments received on the impact analysis as described below, FDA concluded that none of the comments made a convincing case for changing either the methods used in the cost analysis or the conclusions drawn from it. Therefore, FDA has concluded that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. A full discussion of the comments FDA received on the analysis follows.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The final rule will have no significant economic impact on a substantial number of small entities because it applies only to States wishing to become certification agencies. However, as part of its Regulatory Impact Study, FDA did analyze the potential for changes in costs to facilities. As will be discussed later in the worst case revealed by the analysis, some mammography facilities may experience a small increase in cost. However, because States are not likely to enter the program unless their entry will be of benefit to the facilities within their borders, a cost savings to the public as a whole and to mammography facilities is more likely to occur. Therefore, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

A. Scenarios Used

FDA realized that the cost impact of these regulations would be heavily dependent upon the number and characteristics of the States that choose to participate in the SAC program. However, because participation is entirely voluntary on the part of the States, FDA could not determine in advance which States would decide to become SAC States. The first assumptions made, therefore, were related to which States might become SAC States. FDA used three scenarios to establish the possible range of the impact of these regulations.

Scenario 1—FDA assumed only the States of Iowa and Illinois, the current participants in the SAC Demonstration Project, would choose to participate in the program.

Scenario 2—FDA assumed that six additional States, which have in the past indicated significant interest in becoming SAC States, would join Iowa and Illinois in the SAC program.

Scenario 3—FDA assumed that seven additional States would join the eight States included in the scenario 2 analysis. These additional States have indicated some interest in becoming SAC States when the program is fully implemented.

The selection of the States for these scenarios does not indicate either a commitment by the States to participate or a commitment by FDA to accept their participation in a future SAC program. Both the six States added in scenario 2 and the seven added in scenario 3 have a wide geographic distribution and the number of mammography facilities within their borders ranges from relatively large to relatively small. Although the basis of selection was FDA's perception of States' interest, the resulting groups are representative of the country as a whole.

B. Pre-SAC and Post-SAC Funding of MQSA Activities

Funding to support the MQSA activities pre-SAC comes from two sources: Inspection fees and federally appropriated funds. By statute, FDA must pay for all inspection costs by collecting fees from the mammography facilities. The present inspection fee is $1,549 per facility plus an additional $204 per mammography unit for each unit beyond the first at the facility. Appropriated funds support all activities other than those that are covered by this fee. In addition, an amount equal to the inspection fee for each governmental entity is allotted from appropriated funds to support the inspection program for those facilities. These sources of funding will continue to be relied upon for support of MQSA activities in States that choose notto enter the SAC program.

If a State becomes a SAC State, the nongovernmental facilities within that State will pay an inspection support fee to FDA to reimburse the agency, as required by statute, for the inspection support services that the agency will continue to provide. This inspection support fee has been initially set at $509 per facility, regardless of the number of mammography units in the facility. As with the inspection fees in non-SAC States, this fee will be collected in a given year only from those facilities in SAC States that were actually inspected during that year. The same amount will also be provided from appropriated funds for each governmental entity inspection within the SAC States.

The SAC State will determine how the responsibilities that it has assumed will be funded. For example, the

funding could come from State appropriations, a certification fee charged by a SAC State, registration fees, or a combination of sources.

C. Phases of the Analysis

FDA carried out the cost impact analysis in several phases. In phase 1, the costs or savings from the SAC program to the public as a whole were estimated by comparing FDA's pre-SAC costs (for performing various functions that would be given to the States) with the post-SAC costs for FDA and SAC States in each of the three scenarios. In this initial analysis, the agency assumed that the inspection fee would remain unchanged from the present value. The results of this phase are shown in tables 1 through 3 of this document.

The second phase of the analysis looked at the impact that would result on the costs or savings to the public as a whole if inspection fees had to be changed. As States enter the SAC program, their facilities will be paying FDA the lower inspection support fee instead of the inspection fee. The funds available for the FDA inspection program thus will decrease as more States become SAC States. On the other hand, the cost of the FDA inspection program will also decrease because it will no longer include the cost of contracting with the States for inspecting facilities in the SAC States. The relative amounts of the decreases in funds available and inspection costs will be highly dependent upon which States enter the SAC program. If a State with a low inspection cost per facility becomes a SAC State, the decrease of funds available to FDA will be more than the decrease in program costs. As a result, the inspection fee in the non-SAC States will have to increase in order to provide sufficient funds to FDA to fulfill its MQSA inspection responsibilities. If a State with a high inspection cost per facility enters the SAC program, the reverse will be true. Table 4 of this document shows the estimated change in the funds needed from inspection fees in each of the three scenarios, and the impact this would have on the savings or cost to the public as a whole.

In the third phase of the analysis, attention turned from the economic impact of the SAC regulations on the public as a whole to the impact on that portion of the public represented by small entities, as required by the Regulatory Flexibility Act. The agency considered all of the approximately 10,000 mammography facilities in the country to be small entities for the purposes of the analysis. In the case of facilities in the non-SAC States, this impact would manifest itself as an increase or decrease in the inspection fee, depending upon whether the second phase of the analysis showed that more or less money was needed to support the FDA inspection program.

In the case of facilities in the SAC States, the analysis first involved determining the difference between the savings to facilities from no longer having to pay the FDA MQSA inspection fee to the costs to the facilities for the inspection support fee and the State costs. The difference was then divided by the number of SAC State facilities. Table 5 of this document shows the savings or costs to the small facilities in the non-SAC and SAC States under each of the three scenarios.

The third phase of the analysis estimated the average impact on the SAC State facilities. The fourth phase showed that depending upon the State in which it was located, the actual impact upon an individual facility could vary widely. The amount of this impact was again highly dependent upon the cost of inspections within each State. The range of the impact was determined by comparing the situations for the lowest and highest inspection cost States among the 15 States included in scenario 3.

The fifth phase of the analysis recognized the fact that although all mammography facilities are assumed to be small entities, they actually vary greatly in size. To further evaluate the impact on the smallest of the mammography facilities, the increase or decrease in per facility costs under the SAC program were compared to the facility revenues derived from mammography for a low volume mammography facility. For this comparison, a model developed by the Eastern Research Group was used. This model estimated that the lowest volume mammography facility (performing less than 300 mammograms annually) would have approximately $24,000 in annual revenues from mammography.

The projected reporting and recordkeeping for SAC States is discussed in detail in the Paperwork Reduction Act (the PRA) of 1995 section. The rule imposes no new reporting and recordkeeping requirements on mammography facilities, and, thus, no additional professional skills are necessary.

D. Discussion of Results

Tables 1 through 3 of this document give the results from the first phase of the analysis. These results support the initial statement that the potential net savings or cost to the public from the SAC program is heavily dependent upon the number and characteristics of the States that choose to become SAC States. All three of the scenarios show that there is the potential for savings to the public from the SAC program. However, the estimated amount of the savings is not proportional to either the number of States in the program or the number of facilities.

TABLE 1.—COST TO THE PUBLIC OF MQSA FUNCTIONS IN NON-SAC[1] STATES

Scenario	Non-SAC States Facilities (Percent of National Total)	Non-SAC States Cost
Baseline	100	$16,067,499
1	94.1	$15,140,562
2	73.8	$11,841,663
3	46.0	$7,394,421

[1] SAC means States as Certifiers.

TABLE 2.—COST TO THE PUBLIC OF MQSA FUNCTIONS IN SAC[1] STATES

Scenario	Facilities (Percent of National Total)	SAC States Cost
Baseline	0	$0
1	5.9	$709,870
2	26.2	$3,650,563

TABLE 2.—COST TO THE PUBLIC OF MQSA FUNCTIONS IN SAC[1] STATES—Continued

Scenario	Facilities (Percent of National Total)	SAC States Cost
3	54.0	$8,180,723

[1] SAC means States as Certifiers.

TABLE 3.—SAVINGS TO THE PUBLIC—FIRST PHASE ANALYSIS

Scenario	Non-SAC[1] State Cost	SAC State Cost	Total Costs	Savings to Public
Baseline	$16,067,499	$0	$16,067,499	$0
1	$15,140,562	$709,870	$15,850,432	$217,067
2	$11,481,663	$3,650,563	$15,492,226	$575,273
3	$7,394,421	$8,180,723	$15,575,444	$492,055

[1] SAC means States as Certifiers.

Whether the SAC program will save (or cost) the public more money than the pre-SAC program depends upon whether SAC States can carry out their SAC functions more or less economically than these functions were carried out within their borders pre-SAC. The biggest component of the cost to the public pre-SAC is the inspection fee. This fee is a national average fee that is the same for all facilities no matter where they are located. On the other hand, the actual cost of performing the inspection varies widely from State to State. If a State whose inspection cost is significantly lower than the national average becomes a SAC State, there is an increased probability that the total cost per facility for inspections, the other State functions, and the inspection support fee will be less than the inspection fee that the facility paid pre-SAC. If so, there will be net savings to the public from that State becoming a SAC State. On the other hand, in States with high inspection costs, the combined cost per facility of the inspections, the other functions, and the inspection support fee may exceed the inspection fee, in which case there will be a net cost to the public arising from that State being in the SAC program.

The bulk of the SAC facilities in scenario 1 are in a State with an inspection cost below the national average. It is not surprising then to find net savings in scenario 1. The inspection costs in the States added in scenario 2 range from slightly lower than to a little higher than the average. Again, it is not surprising to find that there is a net savings and, because the number of facilities in SAC States is greatly increased, it is also not surprising to find that the total net savings is significantly increased over scenario 1. On the other hand, in scenario 3, three of the States added have per facility inspection costs that are well above the national average. Thus, there is an increase in cost to the public arising from these States being in the program. The impact of their participation is magnified because these three States include over two thirds of the facilities added in scenario 3. As a result, there are lower net savings in scenario 3 than in scenario 2.

The agency based the savings estimated in the first phase of the analysis upon the assumption that the inspection fee would not increase with the implementation of the SAC program. In the second phase of the analysis, however, FDA estimated additional amounts of $127,593, $563,710, and $605,208, in scenarios 1, 2, and 3, respectively, would have to be raised by increasing fees in order to provide sufficient funds for the FDA inspection program. Table 4 of this document shows the effect of applying these corrections to the previously estimated savings to the public as a whole. The savings to the public in scenario 1 are reduced but still significant, those in scenario 2 virtually disappear, and in scenario 3 there would be an increase in cost.

TABLE 4.—IMPACT OF INSPECTION FEE INCREASE ON THE PUBLIC AS A WHOLE[1]

Scenario	Savings Before Fee Change	Savings/(Cost) After Fee Change
1	$217,067	$89,474
2	$575,273	$11,563
3	$492,055	($113,173)

[1] SAC means States as Certifiers.

Beginning with phase 3 of this analysis, the agency turned its attention from the economic impact on the public as a whole to the impact on that portion of the public represented by the mammography facilities. Table 5 of this document shows the estimated per facility savings or increased costs for facilities in both SAC and non-SAC States under the three scenarios.

TABLE 5.—ESTIMATED PER FACILITY SAVINGS OR (COSTS) RESULTING FROM THE SAC[1] PROGRAM

Scenario	Non-SAC State Facility Savings (Cost)	SAC State Facility Savings (Cost)
1	($16.52)	$150.45
2	($93.16)	$.03
3	($160.23)	($128.67)

[1] SAC means States as Certifiers.

In all three scenarios, estimated costs increased for the non-SAC State facilities due to the need to increase the inspection fee to raise the necessary funds to support the FDA inspection program. However, even the largest of estimated increases was only about 10 percent of the present fee.

In the case of the facilities in the SAC States, there is an estimated per facility savings in scenario 1 but an estimated increased cost in scenario 3. The average cost per facility in scenario 2 is essentially unchanged. Again, this variation in impact from scenario to scenario is primarily due to the difference in inspection costs among the included States.

As previously noted, however, the actual impact on an individual facility varies widely with the State. Phase 4 of the analysis illustrates the extremes of this variation among the States by comparing the situation in the State with the highest inspection contract cost per facility from among the 15 States to the situation in the State with the lowest inspection contract cost per facility. The facilities in the State with the lowest inspection cost would save, on the average, an estimated $200 per facility per year, which is a decrease of over 10 percent of the FDA inspection fee, if that State became a SAC State. Facilities in the State with the highest inspection cost, however, would have to pay an average of over $507 additional per year, an increase of one-third over the FDA inspection fee, if their State became a SAC State. Interestingly, both of the States joined the SAC program in scenario 3, where the second and third phases of the analysis showed that there was an overall increase in the cost to both the public as a whole and to the part of the public represented by the mammography facilities. Thus, even under scenarios where there is an overall cost increase, there may be savings in individual States.

This great variation is a major reason why the nearly $700,000 cost to facilities in scenario 3 is a ''worst case'' situation that will probably never be reached. The States included in this analysis were States that had shown some level of interest in becoming a SAC State. The primary basis of this interest was a belief that by becoming a SAC State they could provide a service to the facilities and mammography patients within their borders. They expected to be able to provide an assurance of quality mammography at least equal to that under the national program but at a lower cost. If such a belief proves to be too optimistic in a particular State, due to high inspection costs or any other reason, it is unlikely that they will apply to become SAC States.The fifth and final phase of the analysis considers the potential impact of the SAC program on the smallest of the small entity mammography facilities (those with approximately $24,000 in annual revenues from mammography). Tables 6 and 7 of this document present the average facility costs in both non-SAC and SAC States as a percentage of low volume facility revenues in situations where there is an increased cost (all 3 scenarios for facilities in non-SAC States and scenario 3 for facilities in SAC States).

TABLE 6.—COST/SAVINGS PER FACILITY IN NON-SAC[1] STATES

Scenario	Per Facility Increase in Inspection Fee	Inspection Fee Increase as Percentage of Facility Revenue
1	$16.52	0.1%<
2	$93.16	0.5%<
3	$160.23	1.0%<

[1] SAC means States as Certifiers.

TABLE 7.—COST/SAVINGS PER FACILITY IN SAC STATES

Scenario	Net (Cost)/Savings to SAC[1] Small Entities	Average per Facility Net (Cost)/ Savings	Cost as a Percentage of Facility Revenues[2]
1	$87,710	$150.45	NA
2	$838	$0.33	NA
3	($691,595)	($128.69)	1.0%<

[1] SAC means States as Certifiers.
[2] Revenues for a facility performing less than 300 mammograms annually with revenues of approximately $24,000.

Even the largest of the estimated increased costs represented less than 1 percent of the facility's revenue from mammography.

E. Unfunded Mandates

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure of $100 million or more in any one year by State, local, and tribal governments in the aggregate or by the private sector. Because participation in the SAC program is entirely voluntary on the part of the State and not mandated, and because the costs of those who choose to participate will be far less than $100 million, FDA concluded that the proposed SAC regulation is consistent with the principles of the Unfunded Mandates Reform Act without the need for further analysis.

F. Alternative Regulatory Approaches

In addition to the impact analyses discussed above, Executive Order 12866 requires agencies to select regulatory approaches that maximize net benefits. To fulfill these obligations, FDA considered and rejected the following three alternatives:

1. Not Implementing Section 354(q) of the PHS Act

Section 354(q) of the PHS Act states that FDA (with authority delegated from the Secretary of the Department of Health and Human Services) ''may'' authorize a State to carry out the certification and other functions listed above. FDA thus had the option of not implementing section 354(q) of the PHS Act and instead retaining the present centralized certification program. However, many States have indicated a strong interest in increasing their participation in the MQSA program to improve the quality of mammography. The analysis discussed above illustrates that such increased State participation

has the potential for economic savings to the public as a whole. In some States, there are also the potential economic savings for that portion of the public represented by the mammography facilities. In view of these factors, not implementing section 354(q) of the PHS Act could be justified only if its implementation would impede the basic objective of MQSA, the improvement of the quality of mammography. FDA has no evidence to indicate that this would be the case. On the contrary, increased State participation appears to have the potential of accelerating the improvement in the quality of mammography. Because of these considerations, FDA rejected this alternative.

2. Recognizing Existing State Certification Programs

Several States already have programs in place for the certification of mammography facilities. FDA considered recognizing such existing and possible future programs in lieu of the approach taken in the proposed regulations, which is to require a State to establish a program as stringent as the national program in order to be authorized as a SAC. This alternative would have the advantage of lessening the effort the State would have to invest in meeting the requirements to be a SAC and would eliminate the need for facilities to have both MQSA and State certification. However, the existing State certifications vary in nature and extent and it would be expected that such a variation would increase if future State programs are created without the establishment of a consistent set of national standards for such programs. MQSA was designed to replace the existing patchwork of private and government efforts to improve the quality of mammography with a nationwide program that would ensure patients that the mammography they receive meets the same standards of quality, no matter where in the country they receive it. FDA concluded that this could not be guaranteed if existing and future State certification programs were simply recognized without the need to meet national standards.

3. Implementing Section 354(q) of the PHS Act Through the Issuance of More Detailed Regulations

The approach taken in the proposed regulations is to seek to ensure that State certification programs that receive the delegated authority provide guarantees of quality mammography that are as stringent as those provided by FDA's national program but to allow the State programs some flexibility in the means used to achieve this goal. An alternative to this approach would be to impose more detailed requirements that would have to be met for a State to receive certification authority. FDA rejected this approach because it was believed that this would sacrifice the advantages to be gained by giving the State programs the flexibility to tailor their program to best fit the local conditions in the State.

G. Comments Received on the Impact Analysis

FDA published a preliminary impact analysis in association with the proposed SAC regulations on March 30, 2000 (65 FR 16847). The following public comments were received on the methodology and projections included in that analysis.

General Comments

(Comment 19) One comment asked, ''Will FDA proceed with SAC if a cost savings cannot be achieved?'' The authors added, ''The cost passed on to the public may be beneficial if the FDA approved mammography sites had distinct advantage and endorsement from the FDA. This would serve to enhance and improve quality.''

Although 42 U.S.C. 263b(q) only states that FDA ''may'' authorize States to carry out certification functions and not that it is required to do so, the agency has decided to make this option available to interested States. This will not change even if it turns out that the costs savings estimated under some scenarios in the cost analysis are actually cost increases or if the minor cost increases estimated in other scenarios are more than expected.

The agency would like to point out again, however, that participation in the SAC program is voluntary on the part of the States. The States that have expressed interest in becoming certification agencies have in general done so because they believe that they can affect cost savings for their facilities while continuing to ensure that national standards for mammography are met. If they find that they are unable to achieve these cost savings, FDA believes that they will not apply to become SAC States or, if they are already SAC States under the Demonstration Program, they will withdraw from the program.

Use of Nationwide Average Inspection Fees

(Comment 20) One comment noted that the use of the nationwide average per facility cost as the basis for the inspection fee has resulted in States with lower costs supporting States with higher costs and facilities in the lower cost States shouldering an unfair proportion of the fees. A second comment expressed the author's fear that this disproportionate financial burden would become greater for small States who did not become certifiers as the pool of non-certifying States becomes smaller.

FDA agrees that the use of the nationwide inspection fee has resulted in the consequences noted in the first comment. The inspection support component of the inspection fee (for activities such as training and equipping inspectors) is the same for each facility no matter where it is located. The direct cost of the inspections, however, which is by far the single biggest component of the national inspection fee, does vary greatly from State to State. The use of the nationwide average fee has resulted in facilities in low inspection cost States bearing a disproportionate part of the costs. FDA was aware from the beginning of the MQSA program that this situation would be the case. However, uncertainties and variables associated with the cost of inspection make it difficult to establish a single national fee that would, as required by the law, cover the inspection costs without overcharging the facilities in the aggregate. To establish a separate fee for each State would have vastly magnified the difficulty of this task.

FDA disagrees with the comment that initiation of the SAC program, along with the resultant decrease in the pool of non-certifying States, will increase the disproportionate financial burden of facilities in small States. The agency does recognize that the facilities in the remaining non-certifying States, large or small, may have to pay a higher inspection fee. As part of the cost analysis, FDA estimated increases in the facility inspection fee of approximately $16.52, $93.16, and $160.23 would be needed under the conditions of scenarios 1, 2, and 3, respectively. However, any such increase would actually reduce the ''disproportionate'' burden that facilities in some States pay as a result of the use of a nationwide inspection fee.

The reason for this is that, as noted in the cost analysis and in the previous answer, the States that are most likely to become SAC States are those who by doing so will be able to save their facilities money. Thus the States, large or small, with the lower inspection fees will most likely be the ones to become SAC States while those with the higher inspection fees will likely not. This means that while the burden may increase in non-SAC States, its disproportionality will decrease.

Perceived Errors in the Cost Analysis

(Comment 21) One comment stated that the inspection-related functions that FDA provides are the same, regardless of whether the facility is located in a SAC or non-SAC State. Therefore, the cost associated with these functions and the fee charged should be the same regardless of SAC status.

FDA notes that this is indeed the case. In the SAC States, facilities reimburse FDA only for inspection support services through the $509 inspection support fee. In the non-SAC States, facilities pay an inspection fee of $1,549 per facility plus $204 for each additional unit. The inspection fee includes the $509 for the services covered by the inspection support fee plus an additional amount to cover the average national direct cost of the inspections. Thus, the amount charged for inspection support functions is the same whether the facility is in a SAC or non-SAC State.

(Comment 22) One comment stated that FDA did not account for the reduction of some of its costs for activities such as issuing certificates and performing enforcement activities and, similarly, did not account for increased State costs for taking on these functions.

FDA disagrees. As explained in the preamble to the proposed SAC regulations and in more detail in the Regulatory Impact Study, FDA estimates in each scenario the reduced costs to FDA of conducting functions transferred to the SAC States on a proportional basis. Pre-SAC, the FDA cost for certification, enforcement, and public information was $2,192,000. In scenario 1, for example, FDA would be responsible for only 94.1 percent of the pre-SAC facilities, a 5.9 percent reduction. FDA assumed that its post-SAC costs of these activities would be 94.1 percent of the pre-SAC cost or $2,063,143. Scenarios 2 and 3 made similar proportional reductions, based upon the number of facilities that would be in SAC States. FDA used these reduced costs in estimating the savings or increased costs from the SAC program. Thus, the statement that FDA did not account for reduced costs due to a reduction in its activities is incorrect.

FDA also took the increased State costs into account. In scenario 1, where the SAC States were those in the Demonstration Project, the agency assumed that the fees charged by the two States involved equaled their exact costs for performing the inspections and for handling the SAC activities and, therefore, covered their increased costs. FDA queried the States that were added in scenarios 2 and 3 to determine if they had estimates of what it would cost them to perform SAC activities. Unfortunately, although those States were selected on the basis of having indicated some interest in becoming certification agencies, their planning had not reached the point where they felt comfortable providing a cost estimate. Therefore, it was again necessary to fall back on proportional costs. If a possible SAC State contained 3.6 percent of the nation's mammography facilities, FDA assumed as a first estimate that the State could perform its new activities, such as issuing certificates, for 3.6 percent of FDA's pre-SAC baseline costs. FDA further refined this first estimate in each State by adjusting the personnel component of the costs to account for the difference between the cost of a full time equivalent (FTE) in that State and the cost of a FDA FTE.

The agency acknowledged in its Regulatory Impact Study, that this estimation process did not take into account the loss of economy of scale that would result from spreading these functions from one large entity to several smaller ones. However, there was no valid basis available for estimating the impact of the loss of economy of scale.

(Comment 23) One comment stated that the cost analysis did not consider that a State might have costs associated with the performance of the MQSA inspections that are not currently being recovered from the contract with FDA; if the State became a SAC State, it might want to recover these added costs from the facilities. Therefore the potential savings to the facilities were overestimated in the cost analysis.

FDA agrees that this point is a potential source of error but again would mention that the agency queried the States for cost information and did not get any, except that available for the two States in the Demonstration Project from their fee structure. Even in this comment, the author gave no indication of how much more reimbursement the States might seek from facilities. Without such information, FDA had no basis for including a value for the costs mentioned in the comment.

Suggestions for Reducing Costs

Besides the comment suggesting that training of the inspectors be turned over to the SAC States, which we addressed earlier, respondents made the following cost saving suggestions.

(Comment 24) One comment suggested that FDA should review its nationwide database and software systems to determine whether such elaborate and costly systems are really necessary.

FDA notes that such reviews have been carried out and will be repeated periodically in the future. However, the agency also points out that the requirements of MQSA put limitations upon possible reductions in its software system. For example, the Senate report accompanying the original act indicates that the intent of 42 U.S.C. 263b(d)(1)(B) is that the agency should avoid, where possible, requiring facilities to provide duplicate information to their accreditation body and to FDA. This means that the agency's information management system must permit electronic transfer of information between the accreditation bodies and FDA, because the mechanical transfer and organization of such information for 10,000 facilities would be extremely cumbersome and expensive. With the accreditation bodies, SAC States, and FDA directly connecting to the centralized database, interoperability among data systems is increased considerably.

Another advantage to the centralized database is the ability of the software system to interface with the Centers for Medicare and Medicaid Services' (CMS') data system, which allows facilities to be reimbursed under Medicare. FDA also interacts with the National Cancer Institute's Cancer Hotline to help women find facilities located near them. The agency believes that a centralized database is more effective and efficient in carrying out these important functions.

(Comment 25) One comment noted that FDA should reduce the cost, scope, and time of the inspection, recognizing the role of the accreditation bodies and medical physicists, and the number and types of inspection deficiencies currently being cited.

FDA believes that there is a misunderstanding on the part of the author of this comment as to the intent of Congress in establishing both accreditation and inspection functions. The two systems are not duplicative but rather complementary. Accreditation bodies are responsible for the initial review of mammography facilities, and they repeat these evaluations every 3 years for compliance with the quality standards established by FDA. They also have unique responsibility for conducting reviews of clinical images from the facilities to determine if the images meet the image quality standards established by the accreditation body.

Accreditation agencies base their evaluations on material sent to them by the facilities. Inspectors, on the other hand, visit the facilities and are able to

check more closely for compliance with these standards. In addition, while the accreditation bodies evaluate the facilities every 3 years, the inspections are conducted on an annual basis.

FDA believes that there is great value in having the inspection act as an independent check upon the work of the physicist. It is not necessary for the inspector to completely duplicate the work of the physicist. In fact, the inspection only involves measuring the more general indicators of quality, such as phantom image quality and dose. These general measurements are sufficient to give an indication if there are problems with the equipment performance that had been overlooked during the physicist survey or had developed since that survey. This permits a more prompt correction of the problems than would occur if they were not detected until the next physicist survey.

FDA does not believe shifting additional responsibilities to the accreditation body or physicist will provide the same assurance that facilities are meeting uniform minimum national quality standards for mammography as does the present division of responsibilities. Moreover, the cost reductions from such shifts would be limited since some of the larger components of the inspection costs, such as travel to and from the facility, will not change even if the inspection is shortened.

The agency does note, however, that in accordance with MQSA, planning is under way for a Demonstration Project to examine the question of whether the frequency of the inspections can be reduced without compromising mammography quality. Should the study show that it is possible to reduce inspection frequency, the cost of inspections would be reduced proportionally.

Comments Related to the Inspection Support Fee

(Comment 26) One comment stated the belief that FDA did not have the statutory authority to charge an inspection support fee. The author added further that he knew of no other case where a Federal program has been delegated to the States where the Federal program still assesses the fee to the facilities in the State.

FDA notes that 42 U.S.C. 263b(r) requires that the agency ''assess and collect'' fees to cover the ''costs of inspections * * *'' FDA reviewed the question of what costs could be included in the costs of inspections at the time the initial inspection fees were established in 1995 and, most recently, when FDA revised them in 1998 (63 FR 2245, January 14, 1998). FDA may seek reimbursement through fees for the costs of the actual performance of the inspection (travel costs, personnel time, etc.), as well as other inspection costs. These other costs include: (1) Overhead costs (on both the State and Federal levels); (2) costs of equipping inspectors with measuring instruments; (3) calibration and maintenance of those instruments; (4) design, programming, and maintenance of data systems for inspection tracking and data collection during inspections; (5) training and certification of inspectors; and (6) costs of billing facilities for the fees. Inspection fees include all of these costs.

The largest component of the ''costs of inspection,'' the actual performance of the inspections and the State overhead related to them, will not be FDA expenses in the SAC States. Therefore, it would not be lawful for the agency to bill the facilities for them. However, the remaining activities included in the ''costs of inspections'' remain FDA's responsibility and, by law, facilities must reimburse the agency for them. To fulfill this legal requirement, FDA has established the inspection support fee.

FDA conducted research on three major Federal-State programs that were similar in scope to the SAC program: Nuclear Regulatory Commission, Occupational Safety and Health Administration, and Environmental Protection Agency. FDA did not conduct an exhaustive study of other Federal agencies that have delegated functions to the States. Therefore, FDA is unable to confirm or reject the statement that no other Federal agency charges such a fee. The agency notes, however, that the activities of each Federal agency are governed by its own legislation. Federal agencies that delegate authority must do so in accordance with the legislation governing that delegation and FDA is no exception. Because MQSA (42 U.S.C. 263b(q)) requires FDA to seek reimbursement for all costs of inspections from the facilities, it has done so for facilities in SAC States by establishing the inspection support fee.

(Comment 27) Two comments asked for a justification/explanation of how the figure of $509 was arrived at for the inspection support fee.

In October of 1999, FDA sent a letter to all of the State Program Directors explaining how FDA determined this fee, including the State program that submitted these comments. The starting point for the determination was the inspection fee, which had been increased to $1,549 per facility (plus $204 for each mammography unit beyond the first) in January 1998. FDA explained the basis of that fee in a notice published in the **Federal Register** of January 14, 1998 (63 FR 2245). FDA then determined the aggregate costs attributable to the State inspection contracts and to the FDA field inspection costs and found them to account for $1,040 of the basic fee. The remainder of the $1,549, or $509 was thus attributable to FDA's inspection-related activities described above (training and equipping of inspectors, etc.). Just as FDA periodically re-evaluates its inspection fee in light of changing circumstances and costs, it will periodically re-evaluate its inspection support fee with the result that it may go up or down in the future.

(Comment 28) One comment stated that ''the $509 assessment by FDA will result in no cost reduction and as stated could and probably will result in higher costs. This is contrary to the statement in the Analysis of Impact section that their proposal complies with Executive Order 12866 and the Regulatory Flexibility Act.'' A second comment likewise stated that the inspection support fee would result in higher facility costs. The author pointed out that the cost per inspection in his State was $1,421.25; thus, if facilities in his State had to pay a $509 inspection support fee, their total costs would have to go up from the present inspection fee of $1,549 per facility plus $204 for each unit beyond the first.

FDA disagrees with the first comment's contention that the agency's analysis was not in accordance with Executive Order 12866 and the Regulatory Flexibility Act. The author of the comment did not provide an explanation of why he believed this to be so. The agency thus is unable to address any specific concerns on his part but will review its analysis process in general.

Executive Order 12866 directs agencies to prepare an assessment of all anticipated costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. The Regulatory Flexibility Act requires determination of whether a proposed regulation may have a significant effect on small entities. As summarized in the preamble to the proposed SAC regulations, FDA did carry out the required analysis. The agency first looked at the cost impact on the public as a whole and then at the impact on that portion of the public represented by the mammography facilities, all of which the agency deemed to be small entities.

The Regulatory Impact Study contains this detailed analysis, which was summarized in the preamble to the proposed regulations and within this present preamble. Its principal findings were that on a nationwide basis there was a potential for reduced costs for mammography facilities and the public as a whole from the SAC program. However, the agency warned that the potential for savings varies greatly from State to State. The reason for the variation was not due to the inspection support fee. That fee is the same for all facilities, whether located in a SAC State or a non-SAC State where it is a component of the inspection fee. The reason for the variation is that the costs of doing the inspections themselves vary greatly from State to State.

In particular, the agency found that while facilities in States with low inspection costs would see savings, States with high inspection costs would probably see a cost increase for their facilities. This conclusion is borne out by the second comment, whose author is correct in saying that if his State were to become a SAC State, the costs to the facilities in that State would most likely go up. But again, the reason for this increase is not the inspection support fee but instead is the above average cost of inspections in his State. Presently, the facilities in his State benefit from the fact that a nationwide inspection fee is charged to facilities in non-SAC States. As other comments previously noted, this benefit means that facilities in States with lower than average inspections costs pay more than their share of the inspections costs while facilities in States with higher than average inspection costs pay less than their share. If the State referred to in the second comment entered the SAC program, the facilities in that State would have to pay the actual inspection costs in their State, not the reduced figure made possible by the use of an average national fee. Unless that State could find a way to trim its inspection costs, the cost to the facility would likely increase.

In its analysis, FDA also noted that States are not required to become certification agencies either by law or the proposed regulations. The agency further noted that it is unlikely that a State will become a certification agency unless such an action would lead to cost savings to its facilities. The author of the second comment also supported this belief by stating that if there were an increase in cost to their facilities, his State would be unlikely to become a SAC State. Again, participation in the SAC program is voluntary.

In addition, as required by Executive Order 12866, FDA examined possible alternatives to the approach laid out in the proposed regulations. For reasons given in detail in the Regulatory Impact Study, the agency rejected these alternatives. The author of the comment did not indicate disagreement with the rejection of the alternatives.

FDA believes that the above information, provided in more detail in both the Regulatory Impact Analysis and the preamble to the proposed regulations, illustrates that the agency did fulfill its obligations under Executive Order 12866 and the Regulatory Flexibility Act.

(Comment 29) One comment urged that training of the inspectors be delegated to the States as a way of reducing the inspection support fee. A second comment stated that information transfer was not related to inspections but to the maintenance of a national database, therefore its costs should not be included in the inspection support fee. A third comment disagreed with a FDA statement that a lack of rapid transfer of data to FDA from the certification agencies could put the public at risk. A fourth comment charged that the costs included in the inspection support fee are overestimates, because they were based on the start-up costs of training and equipping the initial corps of inspectors and initial software development. The comment added that the maintenance costs will be much less.

The agency has previously addressed the first comment in detail. A summary of that previous response is that the agency does not believe that, given the loss of economies of scale, an individual State can provide training of equal quality and breadth but at less cost than the FDA program. If more information had been provided on the proposed State training program, FDA might have come to a different conclusion, but the comment provided no details to support the author's belief that money could be saved in this way. In addition, inspector training was one of the major topics discussed at a 1998 SAC working group meeting in Louisville, KY. The majority of States expressed their desire for continued FDA training. FDA remains open to training alternatives after the SAC program has been implemented.

Regarding the second comment, FDA notes that the information transfer includes such important components as notifying the State inspection programs that a particular facility is certified and thus should be inspected. In addition, the uploading of the inspector report to the database is the indicator that the facility has been inspected. FDA again notes that MQSA seeks to minimize facilities' obligation to submit duplicate information; that is, facilities should not be required to provide the same information to both the accreditation body and the certification agency that is responsible for the inspection program. For this reason, the inspection program's only source for information on the location, contact person, and other characteristics that were provided by the facility to the accreditation body and by that body to FDA is from FDA. Therefore, the transfer of that information to the certifying State for use in its inspection program is another way in which information transfer and inspections are related. A third, and perhaps the most important, connection between information transfer and the inspection program is the transfer of inspection results from an inspector to FDA and the transfer of those results back to the inspectors who inspect the facility in following years. This last transfer avoids the need to repeat components of the inspection, such as review of initial qualifications of personnel that would not have changed in the intervening year, and thus permits a more streamlined inspection. The information transferred back to the inspectors also alerts them to problems that the facility has had in the past so that they may determine if the problems have been adequately corrected. These examples show that information transfer is closely related to the inspections; it, therefore, is appropriate to include it in the inspection support fee. SAC States could develop their own data systems also, but that would mean increased costs as well as problems of interoperability with MQSA's largest accreditation body.

In answer to the third comment, FDA would first mention one important example to show that the speed of data transmission is important to the public health. Mammography facilities can not be reimbursed for examinations under Medicare unless FDA has informed CMS that the facility has been given a certificate as an indication that it meets the standards. Similarly, if a facility's certificate is suspended or revoked or is not renewed, FDA must inform CMS of this before reimbursement of the facility under Medicare can be stopped. If information from the certification agency concerning the facility's certification is delayed in transmission to FDA, unsatisfactory facilities may continue to be reimbursed and thus continue to provide unsatisfactory examinations. Conversely, facilities that meet the standards may be delayed in being cleared for reimbursement, thus

reducing the availability of adequate mammography.

Delayed transfer of inspection data also would inhibit FDA's effort to ensure that uniform minimum national quality standards are met. It would make the national inspection database less effective as a tool for speedy identification of undesirable trends related to compliance with the quality standards. If an inspection in one State finds a problem with personnel or mobile facilities that operate in more than one State, delays in transmitting that data to FDA will delay notifying the other States of the problem. Finally, it should be mentioned again that FDA has an obligation to protect the public health by ensuring through its oversight activities that the same uniform minimum national quality standards are met in the SAC States as in the non-SAC States. Delay in the transmission of inspection data from the SAC States would hamper these oversight efforts.

FDA disagrees with the fourth comment as it applies to training costs. The initial task of training approximately 250 inspectors was completed in FY 97. As noted in the analysis, the inspection support fee was based on FY 98 costs, by which time the training program was in the maintenance stage. FDA does agree that the information transfer software is still under development and that the costs of the information transfer system will decrease when this task is completed. There are likely to be other changes as well with the passage of time and so FDA does and will continue to periodically reassess the inspection support fee, as it does the inspection fee, to see if the amount should be adjusted.

(Comment 30) One comment asked whether certain specific costs related to training were included in the training component of the inspection support fee. These were: (1) Initial training, (2) continuing education and travel for continuing education, (3) travel that is currently included under the contract, and (4) annual evaluation of the certifying body.

FDA notes that those initial training costs for new inspectors that are related to the actual instruction process are included in the inspection support fee. These costs included the expense of the contract with a university to provide the first segment of the training. These costs also include the cost of providing a training facility, mammography units for practice surveys, equipment, and other supplies for the last two segments of the training as well as the instructor's salaries for those segments.

The inspection support fee does not include student travel and per diem expenses for the training. In addition, it does not include the continuing education costs for all inspectors, which is currently limited to $1,300 per 3-year period per inspector. The agency is not certain what the authors of the comment meant by item 3. If they are referring to the costs of the inspector traveling to and from inspection sites, the inspection support fee does not cover these expenses. All of these costs are, and will continue to be, covered under the inspection contracts in the non-SAC States; thus, they are not part of the inspection support services. Since State certification agencies will not have inspection contracts, they would need to cover these costs from fees to facilities or from State appropriations.

The fourth item asks about FDA's exercise of its oversight function through annual evaluations. To date, the cost of oversight functions has been covered by Federal appropriations. In order to assure the quality and consistency of inspections nationwide, FDA currently conducts oversight of all MQSA-certified inspectors and their inspections whether they are in an inspection contract State or a SAC State. While FDA recovers its inspection oversight costs by fees in inspection contract States, FDA presently does not recover them in SAC States. In the future, FDA may consider the possibility of transferring inspection oversight costs from the inspection fee to the inspection support fee.

H. Summary

The analysis described above shows that the SAC program's economic impact on the public and the small entities will vary with how many and which States become SAC States. However, even in the scenario with the greatest adverse impact, the increased cost to the public was estimated to be less than 1 percent of the present cost of the MQSA activities that would be transferred to SAC States. The situation with respect to the cost to individual mammography facilities was more complicated. For facilities in non-SAC States, it appears that the SAC program might lead to an increase in their inspection fee. The estimated amount of the increase ranges from about 1 percent of the present fee (scenario 1) up to approximately 10 percent of the present fee (scenario 3). For facilities in the SAC States, the estimated impact ranged from the total of their inspection support fee and any fee paid to the State being about 10 percent less than the present inspection fee (scenario 1) to being about 8 percent greater (scenario 3). When the average cost increase for either SAC or non-SAC facilities in the various scenarios was compared to the revenues of a very small mammography facility, it never exceeded 1 percent of the facility revenues.

Although the estimated average savings or increases for facilities in both the non-SAC and SAC States vary with the scenario, they all represent small changes in the pre-SAC costs to the facilities from the inspection fee. However, these averages mask much greater State by State variations in savings or added costs. As discussed above, FDA believes that a State is unlikely to apply to become a SAC State if the costs to its facilities will be significantly increased by that action. The facilities in the States that do become SAC States are likely to experience a more favorable economic impact than that estimated in this analysis. FDA also believes that both quality mammography and the reduction of breast cancer mortality will be no less after these proposed regulations are implemented than before. Facilities in SAC States will have to meet at least the same quality standards as facilities in non-SAC States. They will be accredited by the same FDA-approved accreditation bodies and they will be inspected by the same MQSA-certified inspectors whether in the SAC program or not. Implementing these regulations will bring the administration of the delegated MQSA functions closer to the facilities and the public. With their closer proximity, State agencies may be able to respond more rapidly to help mammography facilities to improve the quality of their services or take enforcement actions against the few facilities that present serious public health threats.

After thorough analysis of the comments received on the impact estimates, as described above in comments 19 through 30, FDA concluded that none of the comments made a convincing case for changing either the methods used in the cost analysis or the conclusions drawn from it.

Therefore, FDA determines that this rule is consistent with the principles set forth in Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Act. The economic impact on the public represented by the mammography facilities will depend upon which States choose to enter the program. In the worst case revealed by the analysis, a small increase in costs may be experienced. However, because States are not likely to enter the program unless such entry will be of benefit to

the facilities within their borders, a cost savings to the public as a whole and to mammography facilities is more likely to occur. Finally, because participation in this program is voluntary on the part of the States and costs incurred by the SAC States can be recouped through user fees, there are no unfunded mandates.

VII. Executive Order 13132—Federalism

Executive Order 13132, dated August 4, 1999, establishes the procedures that Federal agencies must follow when formulating and implementing policies that have federalism implications. Federalism is described as the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people. Regulations have federalism implications whenever they 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. Whenever a regulation has this result, the agency must prepare a federalism assessment.

The Executive order directs Federal agencies to:

1. Encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States;
2. Where possible, defer to the States to establish standards;
3. In determining whether to establish uniform national standards, consult with the appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and
4. Where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.

As noted above, the purpose of the legislation was to establish minimum national quality standards for mammography. The MQSA replaced a patchwork of Federal, State, and private standards with uniform Federal standards designed to ensure that all women nationwide receive adequate quality mammography services. FDA has worked very closely with State officials in developing the national standards for the MQSA program, and has sought and obtained input from States at every step of the process.

As noted above, section 354(q) of the PHS Act permits FDA to authorize qualified States to: (1) Issue, renew, suspend, and revoke certificates; (2) conduct annual facility inspections; and (3) enforce the MQSA quality standards for mammography facilities within the jurisdiction of the qualified State. FDA retains responsibility for: (1) Establishing quality standards, (2) approving accreditation bodies, (3) approving and withdrawing approval of State certification agencies, and (4) maintaining oversight of State certification programs.

FDA believes that this division of responsibilities provides for necessary uniformity of minimum national standards and, at the same time, provides States with maximum flexibility in administering the SAC program within their State.

Also, as previously noted, interested States have had several opportunities to participate in the development of this program through NMQAAC, the SAC working group, the SAC Demonstration Project and as accreditation bodies. States had an additional opportunity to participate by submitting comments on the proposed rule. FDA directed a mailing of the proposed rule to State health officials to encourage their comments on the proposed rule. Comments from the States were generally supportive of the rule. As discussed above, where appropriate, FDA has revised the final rule to accommodate State concerns.

Participation in the SAC program is voluntary on the part of each State but subject to approval by FDA. The Federal Government will perform all the necessary functions for implementation of MQSA in States that choose not to serve as certification agencies. If a State becomes a SAC State, the facilities within its borders will pay only the inspection support fee. Further, federally appropriated funds will not be used by the SAC State to support the inspection of governmental facilities within that State. Facilities will pay an inspection support fee to FDA to reimburse the agency, as required by statute, for the inspection-related functions that FDA has retained. A State that becomes a certification agency will determine how to fund the SAC responsibilities. The funding could come from State appropriations, a certification fee charged by a SAC State, registration fees or from some combination of those sources.

For the reasons discussed above, FDA believes that this final rule is consistent with the federalism principles expressed in Executive Order 13132.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Requirements for States As Certification Agencies.

Description: These information collection requirements apply to State certification agencies. In order to be an approved certification agency, State agencies must submit an application to FDA and must establish procedures that give adequate assurance that the mammography facilities they certify will meet minimum national standards for mammography quality. The certifying agency also must provide information about its electronic data management system as well as any other information needed by FDA to carry out its ongoing responsibility to ensure that the certification agency is complying with the requirements. These actions are being taken to ensure the continued availability of safe, accurate, and reliable mammography on a nationwide basis.

Respondent Description: State Governments.

In the proposed rule of March 30, 2000 (65 FR 16847), FDA invited comments on the proposed collection of information provisions of the SAC regulations. FDA received two public comments addressing these provisions. In addition, on May 3, 2000, OMB filed comment.

One comment recommended that the information collection burden be lessened by reducing the amount of information required by § 900.21(b)(iii) in the application of a State applying to be a certification agency. OMB likewise stated that FDA should consider ways to reduce burdens to the States when submitting information for this collection. The authors of the public comment suggested that the requirements be reduced to:

(A) Requiring rules and regulations equivalent to subpart B of FDA's part 900;

(B) Information on the education, experience, and training requirements of the applicant's professional staff;

(C) Statement of policies to avoid conflict of interest;

(D) Description of the applicant's mechanism for handling facility inquiries and complaints; and

(E) Any other information FDA identifies as necessary to make a

determination on the approval of a State as a certifying agency.

The authors added that such a change would help correct what they perceived to be an undue emphasis on paperwork in the proposed regulations at the expense of adequate concern for the health and safety of the public.

A second comment noted that additional mammography review and patient notification are two processes for which FDA should not require written policies and procedures. The comment also suggested that FDA allow State agencies to attest to having adequate staffing, finances, and other resources to implement and maintain a mammography certification program.

FDA again notes that the purpose of MQSA is to ensure that uniform minimum national standards of quality are met for mammography. Comments discussed earlier in the preamble of this final rule expressed concerns about whether this goal would continue to be achieved if multiple agencies were allowed to carry out the SAC activities. If the goal is no longer achieved when a State is authorized as a SAC, then the public health and safety would suffer.

In responding to these comments earlier in this final rule, FDA emphasized the importance of its oversight activities in assuring that uniform minimum national standards of quality continue to be met for mammography. The agency further stressed that this oversight began with the review of the original application for approval as a certification agency. FDA believes that if there are problems that could hamper the State agency from functioning effectively as a certification agency, to the extent possible, those problems should be detected and corrected before, not after, a State is authorized to be a SAC.

FDA has been conscious of the paperwork burden from the start and has worked to reduce it for States applying to become certification agencies under MQSA. At the present time, FDA allows attestation for several areas of the SAC application including: (1) Availability of sufficient funding and resources to carry out certification activities, (2) maintenance of sufficient staffing levels, and (3) several inspection and compliance-related provisions. Experience with the MQSA accreditation bodies has shown that initial attestation to adequate staffing can be problematic. There have been occasions when the accreditation body's attestation that it had sufficient staffing later proved to be incorrect, perhaps due to insufficient prior analysis of its needs. As a result, the accreditation body's efforts to effectively carry out its functions were hampered for a period of time until it could obtain adequate resources. Learning from its experience with accreditation bodies, FDA is seeking assurance that a certification agency has adequate staff in place at the time of approval, not several months or 1 year later.

FDA also disagrees with the comment suggesting that FDA reduce the information it required to the few categories listed. Under such an approach, FDA would have to base a decision on whether to approve the State agency as a certification agency without any information about the agency's application review and decisionmaking process for facility certification. FDA would have no information on whether the State agency had policies and procedures governing the notification of facilities of certificate denials and expirations or for suspending or revoking a facility certificate. The agency would have no information on how the State agency planned to ensure that certificates are processed within a reasonable timeframe or whether the State had any timeframe at all for such actions. FDA would have no information on what process, if any, was available for a facility to utilize in appealing adverse accreditation decisions.

Furthermore, the agency would have to make its decision without any information about the State agency's plans to inspect facilities according to the statutory requirements. There would be no information available on how the State agency planned to ensure that deficiencies discovered during inspections were corrected. There would be no information available on the State agency plans, if any, to apply such enforcement actions as additional mammography review or patient notification; issues that, as earlier comments showed, are of increasing concern. On the support side, there would be no information available to FDA to determine if the State's electronic data management and analysis system is adequate. FDA's experience with accreditation bodies shows that this is an area where there can be major problems that can hamper the entire program. In short, if the application were reduced to the extent recommended by the comments, FDA would have to make its decision on the acceptability of the State agency as a certification agency based upon inadequate information. Even the most basic information about how the State proposes to conduct its major activities (certification, inspection, and compliance) would be missing completely.

FDA further notes that the estimated amount of time to provide the information requested was minimal, a one time investment of 50 hours per State. Even if the comments were accepted, the potential time saving is small and certainly not sufficient to justify the potential risk to the public should inadequate information lead the agency to approve an applicant that could not carry out its responsibilities. The agency concludes, after consideration of the possible options, that it has achieved the best possible compromise between the desire to minimize the information collection burden and the need to have adequate information to carry out its public health responsibilities. After considering ways to reduce the burden to the States, FDA has concluded that, without the information included in the proposal, the agency will be unable to make a valid assessment of the State agency's capability to adequately perform the functions outlined above. If the agency approves a certification agency that is unable to effectively perform these functions, the public health and safety will be adversely impacted within that State, perhaps significantly.

TABLE 8.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING INITIAL YEAR

(Estimated Annual Reporting Burden)[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
900.21(b)	13	1.0	13	50	650	$130.00
900.21(c)(2)	13	1.0	13	25	325	$65.00
900.22(i)	2.0	0.1	0.2	5	1.0	$2.00
900.23	2.0	1.0	2.0	20	40.0	$20.00
900.24(a)	2.0	0.05	0.1	62	6.2	$22.00

TABLE 8.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING INITIAL YEAR—Continued

(Estimated Annual Reporting Burden)[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
900.24(a)(2)	2.0	0.025	0.05	52	2.6	$10.00
900.24(b)	2.0	0.2	0.4	20	8.0	$4.00
900.24(b)(1)	2.0	0.05	0.1	52	5.2	$22.00
900.24(b)(3)	2.0	0.05	0.1	52	5.2	$20.00
900.25(a)	2.0	0.25	0.5	5	2.5	$5.00
Total					1,045.7	$300.00

[1] There are no capital costs associated with this collection of information.

TABLE 9.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING INITIAL YEAR

(Estimated Annual Recordkeeping Burden)[1]

21 CFR Section	No. of Recordkeepers	Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating & Maintenance Costs
900.22(a)	2.0	1.0	2.0	1.0	2.0	$5.00
900.22(d) through (h)	2.0	1.0	2.0	1.0	2.0	$5.00
900.25(b)	2.0	1.0	2.0	1.0	2.0	$5.00
Total					6.0	$15.00

[1] There are no capital costs associated with this collection of information.

TABLE 10.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING SECOND AND LATER YEARS

(Estimated Annual Reporting Burden)[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
900.21(i)	15.0	1.0	1.5	5	7.5	$15.00
900.23	15.0	1.0	15.0	20	300.0	$150.00
900.24(a)	15.0	0.05	0.75	62	46.5	$157.50
900.24(a)(2)	15.0	0.025	0.375	52	19.5	$75.00
900.24(b)	15.0	0.2	3.0	20	60.0	$30.00
900.24(b)(1)	15.0	0.05	0.75	52	39.0	$150.00
900.24(b)(3)	15.0	0.05	0.75	52	39.0	$150.00
900.25(a)	15.0	0.25	3.75	5	18.75	$60.00
Total					530.25	$787.50

[1] There are no capital costs associated with this collection of information.

TABLE 11.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING SECOND AND LATER YEARS

(Estimated Annual Recordkeeping Burden)[1]

21 CFR Section	No. of Recordkeepers	Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating & Maintenance Costs
900.22(a)	15	1.0	15.0	1.0	15.0	$37.50
900.22(d) through (h)	15	1.0	15.0	1.0	15.0	$37.50
900.25(b)	15	1.0	15.0	1.0	15.0	$37.50
Total					45	$112.50

[1] There are no capital costs associated with this collection of information.

In contrast to the situation with the economic impact analysis, the additional reporting and recordkeeping burden will fall to the State Governments that choose to become certification agencies and not the approximately 10,000 mammography facilities in the country (all of whom are considered to be small entities). The mammography facilities will continue to provide the same reports that they are presently providing. The bulk of these reports will continue to go to the accreditation bodies that are currently receiving them. The occasional report (for example, if a facility appeals an adverse decision) that presently goes to FDA will, in SAC States, go to the State. The facility recordkeeping requirements also are unchanged.

The total additional reporting and recordkeeping burden on State Governments from these regulations depends on the States that choose to become certification agencies. Since this choice is voluntary on the part of the States, it is impossible to say with certainty how many will seek these responsibilities. However, to estimate the possible maximum impact, FDA

assumes that the 15 States used in scenario 3 of the economic impact analysis will become certification agencies. This number included the 2 States currently participating in the SAC Demonstration Project (Iowa and Illinois) and 13 additional States.

Because of the different nature and time, two sets of tables are provided. Tables 8 and 9 of this document provide estimates of the burden during the first year of the program. During this year, the agency assumed that the 13 new States will apply for and obtain approval as certification agencies. During that year they will bear the initial one time burden associated with application and approval process under § 900.21. FDA assumed that the 13 new States will not be approved in time to be subject to the ongoing burden associated with the evaluation process of § 900.23 during the first year of the program. In contrast, Iowa and Illinois, having already received approval during the Demonstration Project, will not have to provide materials previously submitted, so will not have to bear the initial burden associated with § 900.21. However, during the first year, they will have the ongoing burdens of the evaluation process (§ 900.23).

Tables 10 and 11 of this document provide estimates of the recordkeeping and reporting burden in succeeding years. As it was assumed that all 15 States will have completed the application and approval process by the end of the first year, no State will have the initial burden associated with § 900.21 in the succeeding years. All will experience the burden associated with the evaluation process (§ 900.23) and some are expected to have additional burdens associated with actions under §§ 900.22, 900.24, and 900.25.

With respect to the ongoing burden, based upon FDA's experience with accreditation bodies, which must meet a similar requirement, the agency estimated that a SAC State would seek approval for a change in previously approved standards once every 10 years. The frequency per response for reporting under § 900.22(i) thus would be 0.1. Each SAC State will be evaluated annually so the frequency per response under § 900.23 will be 1.0.

The agency estimated that each State will have to respond to major deficiencies under § 900.24(a) only once every 20 years and minor deficiencies under § 900.24(b) only once every 5 years. The frequency per response under those requirements are 0.05 and 0.2, respectively.

The hourly reporting burden per response for the State certification agency in responding to major deficiencies was estimated in the proposed regulations to be 10 hours. This burden is increased because of the addition of the requirement that the State certification agency inform the facilities that it certifies of the need for it to take corrective action. It was assumed that this would be carried out by mail and would entail an hourly reporting burden per response of 2 hours to produce the letter plus a burden of 15 minutes per facility to mail it out. The total burden would depend upon the number of facilities in the State, which cannot be predicted in advance, so for estimation purposes, 200 facilities (approximately the average number of facilities per State in the United States) was used. This added requirement was thus estimated to increase the hourly reporting burden per response by 52 hours, bringing the total hourly reporting burden per response under § 900.24(a) to 62 hours.

In addition, if the State certification agency is unable to correct its major deficiencies to FDA's satisfaction and its approval is withdrawn, under § 900.24(a)(2), it would have to notify the facilities that it has certified. It was assumed that in 50 percent of the situations where major deficiencies occurred, the State would be unable to correct them, thus the frequency per response of having to notify facilities of withdrawal of approval would be 0.05 x 0.50 = 0.025. The associated hourly reporting burden per response would be the same as sending out the original notification to the facilities of the State certification agency's need for corrective action, that is, 52 hours.

In the cases where there are minor deficiencies, the hourly reporting burden per response associated with responding to minor deficiencies was estimated in the proposed regulations as 20 hours. FDA assumed that the State will, in most cases, make the necessary corrections but that once every 20 years (or once out of every four times the State has minor deficiencies), the State would face possible withdrawal of approval under § 900.24(b)(3). Therefore the frequency per response would be 0.05. It was assumed that in all such cases, the State certification agency would first be placed on probation, to give it the opportunity to correct the deficiencies, before withdrawal of approval would be considered. If placed on probation, under § 900.24(b)(1), it must notify the facilities that it has certified or that seek certification from it, of its probationary status. As with previous facility notification letters, it was assumed that the hourly reporting burden per response would be 2 hours to produce the letter plus 15 minutes per facility to mail it to 200 facilities or 52 hours total. In addition, if the State certification agency failed to correct its deficiencies and FDA had to withdraw its approval, under § 900.24(b)(3), the State certification agency would have to notify its facilities of this. The hourly reporting burden per response of this notification was again estimated to be 52 hours total, using the same assumptions as with the other notification letters.

Finally, the agency assumed that once every 4 years (a frequency per response of 0.25) each SAC State would seek an informal hearing under § 900.25(a) in responding to some adverse action against it.

The estimated recordkeeping burden was related to the maintenance of standard operating procedures (SOPs) in several areas. It was assumed that each State would spend 1 hour per year maintaining each SOP. All of these SOPs would be related to ongoing tasks under §§ 900.22 through 900.25. During the first year (see table 9 of this document) the recordkeeping burden would be borne by Iowa and Illinois only, in the second and succeeding years (see table 11 of this document), by all 15 States. FDA also has corrected an error in the proposed rule where it inadvertently omitted § 900.22(h) from the recordkeeping tables (see tables 9 and 11 of this document). There is no change in burden due to this correction.

The total estimated annual burden for the final MQSA regulations that went into effect on April 28, 1999, was 184,510 hours. Adding a subpart C to part 900 (Mammography) to incorporate these proposed regulations would lead to an estimated additional annual burden of 1,051.7 hours during the first year after the regulations were effective and an estimated additional burden of 575.25 hours in each succeeding year. Again, the actual total annual burden is dependent upon how many States voluntarily choose to enter the SAC program. These estimates are based upon 15 States becoming SAC States. The estimates would be reduced or increased if less than or more than 15 States join the program.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of the final rule to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 900

Electronic products, Health facilities, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 16 and 900 are amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

2. Section 16.1 is amended in paragraph (b)(2) by numerically adding an entry for § 900.25 to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) * * *

§ 900.25, relating to approval or withdrawal of approval of certification agencies.

* * * * *

PART 900—MAMMOGRAPHY

3. The authority citation for 21 CFR part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

4. Section 900.2 is amended by revising the introductory paragraph and paragraph (i), and by adding paragraphs (zz), (aaa), and (bbb) to read as follows:

§ 900.2 Definitions.

The following definitions apply to subparts A, B, and C of this part:

* * * * *

(i) *Certification* means the process of approval of a facility by FDA or a certification agency to provide mammography services.

* * * * *

(zz) *Certification agency* means a State that has been approved by FDA under § 900.21 to certify mammography facilities.

(aaa) *Performance indicators* mean the measures used to evaluate the certification agency's ability to conduct certification, inspection, and compliance activities.

(bbb) *Authorization* means obtaining approval from FDA to utilize new or changed State regulations or procedures during the issuance, maintenance, and withdrawal of certificates by the certification agency.

5. Subpart C, consisting of §§ 900.20 through 900.25, is added to read as follows:

Subpart C—States as Certifiers

Sec.
900.20 Scope.
900.21 Application for approval as a certification agency.
900.22 Standards for certification agencies.
900.23 Evaluation.
900.24 Withdrawal of approval.
900.25 Hearings and appeals.

Subpart C—States as Certifiers

§ 900.20 Scope.

The regulations set forth in this part implement the Mammography Quality Standards Act (MQSA) (42 U.S.C. 263b). Subpart C of this part establishes procedures whereby a State can apply to become a FDA-approved certification agency to certify facilities within the State to perform mammography services. Subpart C of this part further establishes requirements and standards for State certification agencies to ensure that all mammography facilities under their jurisdiction are adequately and consistently evaluated for compliance with quality standards at least as stringent as the national quality standards established by FDA.

§ 900.21 Application for approval as a certification agency.

(a) *Eligibility*. State agencies may apply for approval as a certification agency if they have standards at least as stringent as those of § 900.12, qualified personnel, adequate resources to carry out the States as Certifiers' responsibilities, and the authority to enter into a legal agreement with FDA to accept these responsibilities.

(b) *Application for approval*. (1) An applicant seeking FDA approval as a certification agency shall inform the Division of Mammography Quality and Radiation Programs (DMQRP), Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, Rockville, MD 20850, marked Attn: SAC[1] Coordinator, in writing, of its desire to be approved as a certification agency.

(2) Following receipt of the written request, FDA will provide the applicant with additional information to aid in the submission of an application for approval as a certification agency.

(3) The applicant shall furnish to FDA, at the address in paragraph (b)(1) of this section, three copies of an application containing the following information, materials, and supporting documentation:

(i) Name, address, and phone number of the applicant;

(ii) Detailed description of the mammography quality standards the applicant will require facilities to meet and, for those standards different from FDA's quality standards, information substantiating that they are at least as stringent as FDA standards under § 900.12;

(iii) Detailed description of the applicant's review and decisionmaking process for facility certification, including:

(A) Policies and procedures for notifying facilities of certificate denials and expirations;

(B) Procedures for monitoring and enforcement of the correction of deficiencies by facilities;

(C) Policies and procedures for suspending or revoking a facility's certification;

(D) Policies and procedures that will ensure processing certificates within a timeframe approved by FDA;

(E) A description of the appeals process for facilities contesting adverse certification status decisions;

(F) Education, experience, and training requirements of the applicant's professional and supervisory staff;

(G) Description of the applicant's electronic data management and analysis system;

(H) Fee schedules;

(I) Statement of policies and procedures established to avoid conflict of interest;

(J) Description of the applicant's mechanism for handling facility inquiries and complaints;

(K) Description of a plan to ensure that certified mammography facilities will be inspected according to MQSA (42 U.S.C. 263b) and procedures and policies for notifying facilities of inspection deficiencies;

(L) Policies and procedures for monitoring and enforcing the correction of facility deficiencies discovered during inspections or by other means;

(M) Policies and procedures for additional mammography review and for requesting such reviews from accreditation bodies;

(N) Policies and procedures for patient notification;

(O) If a State has regulations that are more stringent than those of § 900.12, an

[1]SAC means States as Certifiers.

explanation of how adverse actions taken against a facility under the more stringent regulations will be distinguished from those taken under the requirements of § 900.12; and

(P) Any other information that FDA identifies as necessary to make a determination on the approval of the State as a certification agency.

(c) *Rulings on applications for approval*. (1) FDA will conduct a review and evaluation to determine whether the applicant substantially meets the applicable requirements of this subpart and whether the certification standards the applicant will require facilities to meet are the quality standards published under subpart B of this part or at least as stringent as those of subpart B.

(2) FDA will notify the applicant of any deficiencies in the application and request that those deficiencies be corrected within a specified time period. If the deficiencies are not corrected to FDA's satisfaction within the specified time period, FDA may deny the application for approval as a certification agency.

(3) FDA shall notify the applicant whether the application has been approved or denied. The notification shall list any conditions associated with approval or state the bases for any denial.

(4) The review of any application may include a meeting between FDA and representatives of the applicant at a time and location mutually acceptable to FDA and the applicant.

(5) FDA will advise the applicant of the circumstances under which a denied application may be resubmitted.

(d) *Scope of authority*. FDA may limit the scope of certification authority delegated to the State in accordance with MQSA.

§ 900.22 Standards for certification agencies.

The certification agency shall accept the following responsibilities in order to ensure quality mammography at the facilities it certifies and shall perform these responsibilities in a manner that ensures the integrity and impartiality of the certification agency's actions:

(a) *Conflict of interest*. The certification agency shall establish and implement measures that FDA has approved in accordance with § 900.21(b) to reduce the possibility of conflict of interest or facility bias on the part of individuals acting on the certification agency's behalf.

(b) *Certification and inspection responsibilities*. Mammography facilities shall be certified and inspected in accordance with statutory and regulatory requirements that are at least as stringent as those of MQSA and this part.

(c) *Compliance with quality standards*. The scope, timeliness, disposition, and technical accuracy of completed inspections and related enforcement activities shall ensure compliance with facility quality standards required under § 900.12.

(d) *Enforcement actions*. (1) There shall be appropriate criteria and processes for the suspension and revocation of certificates.

(2) There shall be prompt investigation of and appropriate enforcement action for facilities performing mammography without certificates.

(e) *Appeals*. There shall be processes for facilities to appeal inspection findings, enforcement actions, and adverse certification decision or adverse accreditation decisions after exhausting appeals to the accreditation body.

(f) *Additional mammography review*. There shall be a process for the certification agency to request additional mammography review from accreditation bodies for issues related to mammography image quality and clinical practice. The certification agency should request additional mammography review only when it believes that mammography quality at a facility has been compromised and may present a serious risk to human health.

(g) *Patient notification*. There shall be processes for the certification agency to conduct, or cause to be conducted, patient notifications should the certification agency determine that mammography quality has been compromised to such an extent that it may present a serious risk to human health.

(h) *Electronic data transmission*. There shall be processes to ensure the timeliness and accuracy of electronic transmission of inspection data and facility certification status information in a format and timeframe determined by FDA.

(i) *Changes to standards*. A certification agency shall obtain FDA authorization for any changes it proposes to make in any standard that FDA has previously accepted under § 900.21 before requiring facilities to comply with the changes as a condition of obtaining or maintaining certification.

§ 900.23 Evaluation.

FDA shall evaluate annually the performance of each certification agency. The evaluation shall include the use of performance indicators that address the adequacy of program performance in certification, inspection, and enforcement activities. FDA will also consider any additional information deemed relevant by FDA that has been provided by the certification body or other sources or has been required by FDA as part of its oversight mandate. The evaluation also shall include a review of any changes in the standards or procedures in the areas listed in §§ 900.21(b) and 900.22 that have taken place since the original application or the last evaluation, whichever is most recent. The evaluation shall include a determination of whether there are major deficiencies in the certification agency's regulations or performance that, if not corrected, would warrant withdrawal of the approval of the certification agency under the provisions of § 900.24, or minor deficiencies that would require corrective action.

§ 900.24 Withdrawal of approval.

If FDA determines, through the evaluation activities of § 900.23, or through other means, that a certification agency is not in substantial compliance with this subpart, FDA may initiate the following actions:

(a) *Major deficiencies*. If, after providing notice and opportunity for corrective action, FDA determines that a certification agency has demonstrated willful disregard for public health, has committed fraud, has failed to provide adequate resources for the program, has submitted material false statements to the agency, has failed to achieve the MQSA goals of quality mammography and access, or has performed or failed to perform a delegated function in a manner that may cause serious risk to human health, FDA may withdraw its approval of that certification agency. The certification agency shall notify, within a time period and in a manner approved by FDA, all facilities certified or seeking certification by it that it has been required to correct major deficiencies.

(1) FDA shall notify the certification agency of FDA's action and the grounds on which the approval was withdrawn.

(2) A certification agency that has lost its approval shall notify facilities certified or seeking certification by it, as well as the appropriate accreditation bodies with jurisdiction in the State, that its approval has been withdrawn. Such notification shall be made within a timeframe and in a manner approved by FDA.

(b) *Minor deficiencies*. If FDA determines that a certification agency has demonstrated deficiencies in performing certification functions and responsibilities that are less serious or more limited than the deficiencies in

paragraph (a) of this section, including failure to follow the certification agency's own procedures and policies as approved by FDA, FDA shall notify the certification agency that it has a specified period of time to take particular corrective measures as directed by FDA or to submit to FDA for approval the certification agency's own plan of corrective action addressing the minor deficiencies. If the approved corrective actions are not being implemented satisfactorily or within the established schedule, FDA may place the agency on probationary status for a period of time determined by FDA, or may withdraw approval of the certification agency.

(1) If FDA places a certification agency on probationary status, the certification agency shall notify all facilities certified or seeking certification by it of its probationary status within a time period and in a manner approved by FDA.

(2) Probationary status shall remain in effect until such time as the certification agency can demonstrate to the satisfaction of FDA that it has successfully implemented or is implementing the corrective action plan within the established schedule, and that the corrective actions have substantially eliminated all identified problems, or

(3) If FDA determines that a certification agency that has been placed on probationary status is not implementing corrective actions satisfactorily or within the established schedule, FDA may withdraw approval of the certification agency. The certification agency shall notify all facilities certified or seeking certification by it, as well as the appropriate accreditation bodies with jurisdiction in the State, of its loss of FDA approval, within a timeframe and in a manner approved by FDA.

(c) *Transfer of records.* A certification agency that has its approval withdrawn shall transfer facility records and other related information as required by FDA to a location and according to a schedule approved by FDA.

§ 900.25 Hearings and appeals.

(a) Opportunities to challenge final adverse actions taken by FDA regarding approval of certification agencies or withdrawal of approval of certification agencies shall be communicated through notices of opportunity for informal hearings in accordance with part 16 of this chapter.

(b) A facility that has been denied certification is entitled to an appeals process from the certification agency. The appeals process shall be specified in writing by the certification agency and shall have been approved by FDA in accordance with §§ 900.21 and 900.22.

Dated: October 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2750 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The ANADA provides for a revised withdrawal time for use of oxytetracycline (OTC) hydrochloride (HCl) soluble powder in the drinking water of turkeys and swine.

DATES: This rule is effective February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, filed a supplement to ANADA 200–066 that provides for use of AGRIMYCIN 343 (oxytetracycline HCl) Soluble Powder for making medicated drinking water for the treatment of various bacterial diseases of livestock. The supplemental ANADA provides for a zero-day withdrawal time after the use of the product in the drinking water of turkeys and swine. The supplemental application is approved as of October 4, 2001, and the regulations are amended in 21 CFR 520.1660d to reflect the approval.

Section 520.1660d is also being amended to reflect approval of a 5-pound pail size, which was approved under ANADA 200–066 on June 15, 1994.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1660d is amended in paragraph (a)(6) by adding ''; pail: 5 lb'' after ''oz.''; in paragraphs (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*3*), and (d)(1)(ii)(C)(*3*) in the sixth sentence by removing '', 057561,'' and in the eighth sentence by numerically adding ''057561,''; and in paragraph (d)(1)(iii)(C) by revising the last sentence to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(C) * * * Administer up to 5 days; do not use for more than 5 consecutive days; withdraw zero days prior to slaughter those products sponsored by Nos. 046573, 057561, and 061133.

* * * * *

Dated: January 11, 2002.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–2589 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. 01N–0499]

Topical Nitrofurans; Extralabel Animal Drug Use; Order of Prohibition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (we) is issuing an order prohibiting the extralabel use of topical nitrofuran animal and human drugs in food-producing animals. We are issuing this order based on evidence that extralabel use of topical nitrofuran drugs in food-producing animals may result in the presence of residues that we have determined to be carcinogenic and to not have been shown to be safe. We find that such extralabel use ''presents a risk to the public health'' for the purposes of the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA).

DATES: This rule is effective May 7, 2002. We invite your written or electronic comments. We will consider all comments that we receive by April 8, 2002.

ADDRESSES: Submit your written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Gloria J. Dunnavan, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1726, e-mail: gdunnava@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. AMDUCA

AMDUCA (Public Law 103–396) was signed into law on October 22, 1994. It amended the Federal Food, Drug, and Cosmetic Act (the act) to permit licensed veterinarians to prescribe extralabel uses of approved animal and human drugs in animals. However, section 512(a)(4)(D) of the act (21 U.S.C. 360b(a)(4)(D)) gives us authority to prohibit an extralabel drug use in animals if, after affording an opportunity for public comment, we find that such use presents a risk to the public health.

We published the implementing regulations (codified at part 530 (21 CFR part 530)) for AMDUCA in the **Federal Register** of November 7, 1996 (61 FR 57732). The sections regarding prohibition of extralabel use of drugs in food-producing animals are found at §§ 530.21 and 530.25. These sections describe the basis for issuing an order prohibiting an extralabel drug use in food-producing animals and the procedure to be followed in issuing an order of prohibition. We may issue a prohibition order if we find that extralabel use in animals presents a risk to the public health. Under § 530.3(e), this means that we have evidence that demonstrates that the use of the drug has caused or likely will cause an adverse event.

Section 530.25 provides for a public comment period of not less than 60 days. It also provides that the order of prohibition will become effective 90 days after the date of publication, unless we revoke the order, modify it, or extend the period of public comment. The list of drugs prohibited from extralabel use is found in § 530.41. The current list of drugs prohibited from extralabel use in food-producing animals includes furazolidone and nitrofurazone, but it contains the parenthetical statement ''(except for approved topical use)''.

II. Nitrofurans

In 1991, and after a full evidentiary hearing, we withdrew the approvals for furazolidone and nitrofuranzone labeled for antiprotozoal use in a wide variety of conditions in poultry and swine. (See the **Federal Register** of August 23, 1991 (56 FR 41902).) These withdrawals were based on our determination that use of the drugs resulted in residues in edible tissues for human food and that residues of these drugs were not shown to be safe, in part because both drugs are carcinogenic. We did not, however, withdraw the approvals of these products for use in nonfood animals or for topical use in food-producing animals. Moreover, while our current regulations in § 530.41 prohibit extralabel use of approved furazolidone and nitrofurazone products in food-producing animals, this prohibition does not extend to topical use in food-producing animals. These topical uses in food-producing animals were allowed because there was no evidence that such use of furazolidone and nitrofuranzone resulted in residues in edible tissues.

However, a recent carbon-14 (C–14) radio-label residue depletion study that we conducted showed that detectable levels of nitrofuran derivatives are present in edible tissues (milk, meat, kidney, liver) of cattle treated by the ocular (eye) route (Ref. 1). This study, coupled with our findings in our prior withdrawal action, means that residues, which are carcinogenic and have not been shown to be safe, will likely be present at slaughter as a result of topical uses of nitrofurans, including furazolidone and nitrofurazone, in food-producing animals.

We advised all manufacturers of nitrofuran drugs that were approved for ocular use in food-producing animals of the evidence and the manufacturers revised their labels to remove those indications. (See, for example, 65 FR 41587 (July 6, 2000).) Some lot numbers of these drugs may remain in commercial distribution channels with the former labels that contain indications for food-producing animals. These products, however, are not approved for use in food-producing animals and, therefore, are adulterated and misbranded. Some topical and ophthalmic nitrofuran products are still approved for certain uses in nonfood animals. Under the current regulations governing extralabel use, these remaining approved topical and ophthalmic products are not prohibited from extralabel topical use in food-producing animals. However, as stated previously, there is evidence that these uses will result in residues in edible tissues. Because of the likelihood of this adverse event, by this order of prohibition, we are prohibiting all extralabel uses, including extralabel topical use, in food-producing animals of nitrofuran products that are approved for use in nonfood animals or humans. Therefore, no nitrofuran product may be legally used in food-producing animals.

III. Request for Comments

We are providing 60 days from the date of this publication for you to comment. The order will become effective May 7, 2002, unless we revoke or modify the order or extend the comment period. You may submit written or electronic comments to the Dockets Management Branch (address above) by April 8, 2002. Please identify your comments with the docket number found in brackets in the heading of this document. You may read any comments that we receive at our Dockets Management Branch reading room (address above). The reading room is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

IV. Order of Prohibition

Therefore, I hereby issue the following order under section 512(a)(4)(D) of the act and 21 CFR 530.21 and 530.25. We find that extralabel use of nitrofurans in food-

producing animals likely will cause an adverse event, which constitutes a finding under section 512(a)(4)(D) of the act that extralabel use of these drugs in food-producing animals presents a risk to the public health. Therefore, we are prohibiting all extralabel uses of these drugs in food-producing animals.

V. Reference

The following information has been placed on display in the Dockets Management Branch (address above). You may view it between 9 a.m. and 4 p.m., Monday through Friday.

1. Smith, D. J., G. D. Paulson, and G. L. Larsen, ''Distribution of Radiocarbon After Intermammary, Intrauterine or Ocular Treatment of Lactating Cows With Carbon-14 Nitrofurazone,'' *Journal of Dairy Science*, vol. 81, pp. 979–988, 1998.

List of Subjects in 21 CFR Part 530

Administrative practice and procedure, Advertising, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Accordingly, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, 21 CFR part 530 is amended as follows:

PART 530—EXTRALABEL DRUG USE IN ANIMALS

1. The authority citation for 21 CFR part 530 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e.

§ 530.41 [Amended]

2. Section 530.41 *Drugs prohibited for extralabel use in animals* is amended in paragraphs (a)(7) and (a)(8) by removing the parenthetical phrase ''(except for approved topical use)''.

Dated: November 9, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–2751 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8983]

RIN 1545–BA42

Time for Eligible Air Carriers To File The Third Calendar Quarter 2001 Form 720

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the time for eligible air carriers reporting air transportation excise taxes to file Form 720, ''Quarterly Federal Excise Tax Return,'' for the third calendar quarter of 2001. These regulations affect certain air carriers.

DATES: *Effective Date*: These regulations are effective February 6, 2002.

Applicability Date: For date of applicability of these regulations, see § 40.6071(a)–3(c).

FOR FURTHER INFORMATION CONTACT: Susan Athy (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Subchapter C of chapter 33 of the Internal Revenue Code (Code) imposes tax on the amount paid for: taxable transportation by air of any person (section 4261(a)); each domestic segment of taxable transportation (section 4261(b)); use of international air travel facilities (section 4261(c)); and taxable transportation of property by air (section 4271(a)) (air transportation excise taxes). Section 6071 generally provides that return filing dates are prescribed by regulation. Under § 40.6071(a)–2, a return of air transportation taxes was due by the last day of the second month following the quarter for which it was made. On August 8, 2001, the regulations were amended to remove this provision but the provision remained in effect for the third calendar quarter of 2001. Thus, the return of air transportation taxes for that quarter was due on November 30, 2001.

Under section 6151, generally, tax must be paid at the time the return is required to be filed. In general, under section 6601, interest must be paid on any amount of tax not paid by the last day for payment. Accordingly, if the return due date prescribed in § 40.6071(a)–2 remains in effect for the third calendar quarter of 2001, interest would be imposed on third-quarter air transportation excise taxes not paid by November 30, 2001.

Section 301(a) of the Air Transportation Safety and System Stabilization Act (the Act), Public Law 107–42 (115 Stat. 236) provides relief to eligible air carriers with respect to the semimonthly deposits required for air transportation excise taxes. The relief contained in the Act applies to deposits only and does not extend the return filing and associated payment date. By extending the filing date for eligible air carriers, these final regulations will provide return filing, payment, and interest relief consistent with the deposit relief provided for air transportation excise taxes by section 301(a) of the Act. Notice 2001–77 (2001–50 I.R.B. 576) provided that regulations would change the third calendar quarter 2001 filing date.

Explanation of Provisions

These final regulations change the date by which eligible air carriers reporting tax that includes the air transportation excise taxes imposed by subchapter C of chapter 33 must file excise tax returns for the third quarter of 2001. The due date for these returns is postponed from November 30, 2001, to January 15, 2002. For these taxpayers, payment of their third-quarter excise tax liability may also be delayed until January 15, 2002.

Special Analyses

This Treasury decision is necessary to provide immediate relief to the eligible air carriers affected by the events of September 11, 2001. This Treasury decision provides additional time for eligible air carriers to file the third calendar quarter 2001 Form 720 and to pay certain taxes due with the return. Therefore, it has been determined that notice and public comment are unnecessary and contrary to the public interest and a delayed effective date under section 553(d) of the Administrative Procedure Act (5 U.S.C. chapter 5) is not required. Also, it has been determined that section 553(b) of the Administrative Procedure Act does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. It also has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for

comment on their impact on small business.

Drafting Information

The principal author of these regulations is Susan Athy, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 40 is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by adding an entry in numerical order to read in part as follows:

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

Section 40.6071(a)-3 also issued under 26 U.S.C. 6071(a).* * *

Par. 2. Section 40.6071(a)-3 is added to read as follows:

§ 40.6071(a)-3 Time for an eligible air carrier to file a return for the third calendar quarter of 2001.

(a) *In general.* If, in the case of an eligible air carrier, the quarterly return required under § 40.6011(a)-1(a) for the third calendar quarter of 2001 includes tax imposed by subchapter C of chapter 33—

(1) The requirements of § 40.6071(a)-2 as in effect on August 7, 2001, do not apply to the return; and

(2) The return must be filed by January 15, 2002.

(b) *Definition of eligible air carrier. Eligible air carrier* has the same meaning as provided in section 301(a)(2) of the Air Transportation Safety and System Stabilization Act; that is, any domestic corporation engaged in the trade or business of transporting (for hire) persons by air if such transportation is available to the general public.

(c) *Effective date.* This section is applicable with respect to returns that relate to the third calendar quarter of 2001.

Approved: January 23, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–2624 Filed 2–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim rule.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is issuing regulations to implement Executive Order 13194 of January 18, 2001, as expanded in scope in Executive Order 13213 of May 22, 2001, prohibiting, with limited exceptions, the importation into the United States of rough diamonds from Sierra Leone or Liberia.

DATES: *Effective date:* February 6, 2002.

Comments: Written comments must be received no later than April 8, 2002.

ADDRESSES: Comments may be submitted either via regular mail to the attention of Chief, Policy Planning and Program Management Division, rm. 2176 Main Treasury Annex, 1500 Pennsylvania Ave. NW., Washington, DC 20220 or via OFAC's Web site (*http://www.treas.gov/ofac*).

FOR FURTHER INFORMATION CONTACT: Chief of Licensing, tel.: 202/622–2480, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat7 readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac,* or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On January 18, 2001, the President issued Executive Order 13194 (66 FR 7389, Jan. 23, 2001), taking into account United Nations Security Council Resolution 1306 of July 5, 2000. This order declared a national emergency in response to the actions of the insurgent Revolutionary United Front in Sierra Leone (''RUF'') and prohibits the importation into the United States of rough diamonds from Sierra Leone that have not been controlled by the Government of Sierra Leone through its Certificate of Origin regime. The stated purpose of the order is to ensure that the direct or indirect importation into the United States of rough diamonds from Sierra Leone will not contribute financial support to the RUF, whose illicit trade in rough diamonds fuels the civil war in Sierra Leone by funding the rebels' aggressive actions and procurement of weapons, while at the same time seeking to avoid undermining the legitimate diamond trade or diminishing confidence in the integrity of the legitimate diamond industry.

On May 22, 2001, the President issued Executive Order 13213 (66 FR 28829, May 24, 2001), taking into account United Nations Security Council Resolution 1343 of March 7, 2001. This order expanded the scope of the national emergency declared in Executive Order 13194 to respond to, among other things, the Government of Liberia's complicity in the RUF's illicit trade in rough diamonds through Liberia. Executive Order 13213 prohibits the direct or indirect importation into the United States of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia.

Both Executive orders authorize the Secretary of the Treasury, in consultation with the Secretary of State, to promulgate rules and regulations as may be necessary to carry out the purposes of the orders. To implement the orders, the Treasury Department's Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury, is promulgating the Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations (the ''Regulations'').

Section 591.201 of subpart B of the Regulations implements section 1 of Executive Order 13194 and section 1 of Executive Order 13213 by prohibiting (1) subject to limited exceptions, the direct or indirect importation into the United States of all rough diamonds from Sierra Leone on or after January 19, 2001, and (2) the direct or indirect importation into the United States of all

rough diamonds from Liberia on or after May 23, 2001. Section 591.202 implements section 2 of Executive Order 13194 by excepting from the import prohibition those importations of rough diamonds from Sierra Leone that are controlled through the Certificate of Origin regime of the Government of Sierra Leone, provided that the diamonds have not physically entered the territory of Liberia.

Section 591.203 implements section 3 of Executive Order 13194 and section 2 of Executive Order 13213 by prohibiting any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the order. The regulation also prohibits any conspiracy formed to violate any of the prohibitions of the Executive orders.

Subpart C of part 591 provides definitions of terms used in the Regulations. Subpart D sets forth interpretive guidance for the Regulations. For example, § 591.403 makes clear that any transaction that is ordinarily incident to a licensed transaction and necessary to give effect to the licensed transaction is also authorized.

Subpart E relates to licenses, authorizations, and statements of licensing policy. Section 591.501 refers the reader to subpart D of part 501 of 31 CFR chapter V for procedures relating to general licenses and the issuance of specific licenses to authorize transactions otherwise prohibited under part 591 but found to be consistent with U.S. policy. Subpart F refers the reader to subpart C of part 501 of 31 CFR chapter V for provisions relating to required records and reports. Penalties for violations of the Regulations are described in subpart G of the Regulations.

Request for Comments

Because the promulgation of the Regulations pursuant to Executive Orders 13194 and 13213 involves a foreign affairs function, the provisions of Executive Order 12866, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. However, because of the importance of the issues raised by the Regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the Regulations on the submitter's activities, whether of a commercial, non-commercial, or humanitarian nature, as well as changes that would improve the clarity and organization of the Regulations.

The period for submission of comments will close April 8, 2002. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials when submitted by regular mail to the person submitting the comments and will not consider them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of public record concerning these regulations will be made available not sooner than May 7, 2002, and will be obtainable from OFAC's website (*http://www.treas.gov/ofac*). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220, Attn: Chief, Records Division.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting and Procedures Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in CFR Part 591

Administrative practice and procedure, Certificate of origin, Diamonds, Foreign trade, Imports, Liberia, Penalties, Reporting and recordkeeping requirements, and Sierra Leone.

For the reasons set forth in the preamble, 31 CFR chapter V is amended by adding part 591 to read as follows:

PART 591—ROUGH DIAMONDS (SIERRA LEONE & LIBERIA) SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

591.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

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591.701 Penalties.
591.702 Prepenalty notice.
591.703 Response to prepenalty notice; informal settlement.
591.704 Penalty imposition or withdrawal.
591.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

591.801 Procedures.
591.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

591.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13194, 66 FR 7389 (Jan. 23, 2001); E.O. 13213, 66 FR 28829 (May 24, 2001).

Subpart A—Relation of This Part to Other Laws and Regulations

§ 591.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 591.201 Prohibited importation of rough diamonds.

Except to the extent provided in § 591.202 or authorized by other regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date, the direct or indirect importation into the United States of all rough diamonds from Sierra Leone or Liberia is prohibited.

§ 591.202 Permitted importation of rough diamonds.

The prohibition in § 591.201 of the importation into the United States of rough diamonds from Sierra Leone does not apply if the importation is controlled through the Certificate of Origin regime of the Government of Sierra Leone and the rough diamonds have not physically entered the territory of Liberia.

§ 591.203 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date, any transaction by any United States person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

Subpart C—General Definitions

§ 591.301 Controlled through the Certificate of Origin regime of the Government of Sierra Leone.

The term *controlled through the Certificate of Origin regime of the Government of Sierra Leone* means accompanied by a Certificate of Origin or other documentation that demonstrates to the satisfaction of the United States Customs Service (or analogous officials of a United States territory or possession with its own customs administration) that the rough diamonds were legally exported from Sierra Leone with the approval of the Government of Sierra Leone.

§ 591.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, which is 12:01 a.m., eastern standard time, January 19, 2001, with respect to importations of rough diamonds from Sierra Leone and which is 12:01 a.m., eastern daylight time, May 23, 2001, with respect to importations of rough diamonds from Liberia.

§ 591.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 591.304 Importation into the United States.

The term *importation into the United States* means the bringing of goods into the United States.

§ 591.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 591.305. See § 501.801 of this chapter on licensing procedures.

§ 591.306 Person.

The term *person* means an individual or entity.

§ 591.307 Rough diamond.

The term *rough diamond* means all unworked diamonds classifiable in heading 7102 of the Harmonized Tariff Schedule of the United States.

§ 591.308 Rough diamonds from Sierra Leone or Liberia.

The term *rough diamonds from Sierra Leone or Liberia* means rough diamonds extracted in Sierra Leone or Liberia and rough diamonds that have physically entered the territories of Sierra Leone or Liberia, regardless of where they have been extracted.

§ 591.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 591.310 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 591.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 591.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 591.403 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized.

§ 591.404 Transshipment or transit through the United States prohibited.

The prohibitions in § 591.201 apply to the importation into the United States, for transshipment or transit, of rough diamonds from Sierra Leone or Liberia that are intended or destined for any country other than the United States.

§ 591.405 Direct or indirect importation of rough diamonds from Sierra Leone or Liberia.

The prohibitions in § 591.201 apply to the importation of rough diamonds from Sierra Leone or Liberia whether those rough diamonds are being imported directly into the United States from Sierra Leone or Liberia, or indirectly through any other country.

§ 591.406 Importation into and release from a bonded warehouse or foreign trade zone.

The prohibitions in § 591.201 apply to the importation into and release from a bonded warehouse or foreign trade zone of the United States. However, § 591.201 does not prohibit the release from a bonded warehouse or a foreign trade zone of rough diamonds from Sierra Leone or Liberia that were imported into that bonded warehouse or foreign trade zone prior to the effective date.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 591.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart D, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 591.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 591.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

Subpart F—Reports

§ 591.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 591.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty not to exceed $11,000 per violation may be imposed on any person who violates or attempts to violate any license, order, or regulation issued under the Act;

(2) Whoever willfully violates or willfully attempts to violate any license, order, or regulation issued under the Act, upon conviction, shall be fined not more than $50,000 and, if a natural person, may also be imprisoned for not more than 10 years; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. The criminal penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

(d) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and

willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(e) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 591.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within the applicable 30-day period set forth in § 591.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 591.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original must also be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time

is granted by the Office of Foreign Assets Control.

(f) *Representation*. A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 591.704 Penalty imposition or withdrawal.

(a) *No violation*. If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation*. (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

§ 591.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in federal district court.

Subpart H—Procedures

§ 591.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart D, of this chapter.

§ 591.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13194 of January 18, 2001 (66 FR 7389, January 23, 2001), Executive Order 13213 of May 22, 2001 (66 FR 28829, May 24, 2001), and any further Executive orders relating to the national emergency declared in Executive Order 13194 may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 591.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: December 14, 2001.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 30, 2002.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–2763 Filed 2–1–02; 10:26 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[RIN 0720–AA68]

TRICARE Prime Remote for Active Duty Family Members

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This rule implements 10 U.S.C. 1079(p), as added by section 722(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The rule provides coverage for medical care for active duty family members who reside with an active duty member of the Uniformed Services assigned to remote areas and eligible for the program known as TRICARE Prime Remote. Active duty family members who enroll in TRICARE Prime Remote for Active Duty Family Members (TPRADFM) will enjoy benefits generally comparable to TRICARE Prime enrollees including access standards, benefit coverage, and cost-shares.

DATES: This interim final rule is effective April 8, 2002. Written comments will be accepted until April 8, 2002.

ADDRESSES: Forward comments to Optimization and Integration Division TRICARE Management Activity, Skyline 5, Suite 801, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Styron, Optimization and Integration, TRICARE Management Activity, Office of the Secretary of Defense (Health Affairs), telephone (703) 681–0064. Questions regarding payment of specific TRICARE claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

On October 30, 2000, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 20012 (NDAA) (Public Law 106–398) was signed into law. This interim final rule implements section 722(b) of this Act, which amended section 1079 of Title 10, United States Code, by adding subsection (p). It requires a TRICARE Prime-like benefit for active duty family members residing with their active duty Uniformed Services sponsor eligible for TRICARE Prime Remote, as defined by section 1074(c)(3) of Title 10, United States Code.

II. TRICARE Prime Remote for Active Duty Members

A member of the uniformed services who is on active duty is entitled to medical and dental care in any facility of any Uniformed Service u8nder 10 U.S.C. 1074(a). Although members on active duty have this entitlement, members of the Uniformed Services who qualify for TRICARE Prime Remote may not be required to receive routine primary medical care at a military treatment facility. TRICARE Prime Remote (TPR) was established under 10 U.S.C. 1074(c) to provide a TRICARE Prime-like benefit. As defined by 10 U.S.C. 1074(c)(3), the benefit is for active duty service members (ADSM) assigned to remote locations, who pursuant to that assignment, work and reside at a location more than 50 miles, or approximately one hour of driving time, from the nearest military treatment facility. ADSM who are TPR-eligible are required to enroll in TPR unless another enrollment site designated by the services is available.

The TPR ADSM is required to use the network providers, including network Veteran's Affairs facilities, provided the network providers have capacity and meet the TRICARE drive time standards of 30 minutes for primary care and one hour for specialty care.

III. TRICARE Prime Remote for Active Duty Family Members

In order to be eligible for TRICARE Prime Remote for Active Duty Family Members (TPRADFM), active duty family members (ADFM) must reside with a TPR-eligible and enrolled ADSM. For purposes of TPRADFM, ADFM include the spouse and children of an active duty member and certain unmarried dependents placed in the legal custody of the active duty member as a result of a court order for a period of at least 12 months. ADFM must enroll in TPRADFM to receive the TPRADFM benefit. ADFM who elect not to enroll, or whose sponsor has not enrolled in TPR, may use the TRICARE Standard benefit, or enroll in TRICARE Prime where available. Under section 722(c) of the Floyd D. Spense National Defense Authorization Act for Fiscal Year 2001 (NDAA), the waiver of TRICARE Standard cost-shares and deductibles that apply during the interim period between the enactment of the NDAA and implementation of TPRADFM will expire upon implementation of this rule. TPRADFM eligible beneficiaries may elect not to enroll in TPRADFM, and instead receive benefits under the Standard program, but will be required to pay the associated TRICARE Standard cost-shares and deductibles.

Section 1079(p) of Title 10, subject to such exceptions as the Secretary considers necessary, requires coverage for medical care under this section for dependents and standards with respect to timely access to such care to be comparable to coverage and standards under the managed care option of the TRICARE program known as TRICARE Prime. Therefore, the requirements and benefits of TPRADFM shall be similar to TRICARE Prime under Section 199.17 to the maximum extent practicable.

For primary care, family members enrolled in TPRADFM will be assigned or be allowed to select a primary care manager when available through the TRICARE civilian provider network. The primary care manager may be an individual physician, a group practice, a clinic, a treatment site or other designation. If a network provider is not available to serve as their primary care provider, the TPRADFM enrollee will be able to utilize any local TRICARE authorized provider for primary care services.

Family members enrolled in TPRADFM will have the same cost-shares and deductibles as those enrolled in TRICARE Prime. If a TRICARE network primary care provider is available to serve as their primary care manager (PCM); TPRADFM enrollees must select or be assigned to the PCM. Enrollment with the network PCM and compliance with the program requirements will result in the TPRADFM enrollee having no cost-shares or deductibles for the care provided. A TPRADFM enrollee who does not enroll with a network provider when one is available to serve as their primary care manager is subject to higher point-of-service deductible and cost sharing requirements under Section 199.17. Similarly, when a TPRADFM is enrolled with a TRICARE network PCM and receives health care services for a provider other than their PCM, he/she will be responsible for the point-of-service cost-shares and deductibles under Section 199.17. If a network provider is not available to serve as their primary care manager, a TPRADFM enrollee may use any local TRICARE authorized provider for their primary care, and will have no cost-shares or deductibles for the care provided.

TPRADFM enrolled members will be able to access their primary care provider without pre-authorization. Referrals to specialists will require a pre-authorization by the regional managed care support contractor for medical appropriateness and necessity. To the greatest extent possible, contractors will assist in finding a TRICARE network or authorized provider within the TRICARE Prime drive time access standards of one hour for specialty care. Contractors will not be required to establish new network relationships for TPRADFM enrollees, except where contractually required or deemed economically feasible. TPRADFM members are required to use TRICARE network providers for specialty-care where available within TRICARE access standards or pay the point-of-service deductible and cost-shares under Section 199.17. They may use any TRICARE authorized provider to obtain specialty-care where a network provider is not available with access standards, once they have received authorization and assistance in finding a provider by the contractor.

IV. Rulemaking Procedures

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. This rule is not an economically significant regulatory action and it will not significantly affect a substantial number of small entities. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of entities.

This rule imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

This rule is being implemented as an interim final rule, with comment period, as an exception to our normal practice of soliciting public comment prior to issuance. The Acting Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This rule implements statutory requirements that became effective October 30, 2000, for a program Congress intended to become operational one year later. This rule implements the new statutory program without significant embellishment of the legislative requirements. Public comments are welcome and will be considered for possible revisions in the rule.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as

required under the provisions of Executive Order 12866.

List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel, TRICARE Prime.

For the reasons set forth in the preamble, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.16 is amended by revising paragraphs (d) introductory text and (d)(2), redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively, and adding a new paragraph (e) to read as follows:

§ 199.16 Supplemental Health Care Program for active duty members.

* * * * *

(d) *Special rules and procedures.* As exceptions to the general rule in paragraph (c) of this section, the special rules and procedures in this section shall govern payment and administration of claims under the supplemental care program. These special rules and procedures are subject to the TRICARE Prime Remote program for active duty service members set forth in paragraph (e) of this section and the waiver authority of paragraph (f) of this section.

* * * * *

(2) Preauthorization by the Uniformed Services of each service is required for the supplemental care program *except* for services in cases of medical emergency (for which the definition in § 199.2 shall apply) or in cases governed by the TRICARE Prime Remote program for active duty service members set forth in paragraph (e) of this section. It is the responsibility of the active duty members to obtain preauthorization for each service. With respect to each emergency inpatient admission, after such time as the emergency condition is addressed, authorization for any proposed continued stay must be obtained within two working days of admission.

* * * * *

(e) *TRICARE Prime Remote for Active Duty Members.* (1) *General.* The TRICARE Prime Remote (TPR) program is available for certain active duty members of the Uniformed Services assigned to remote locations in the United States and the District of Columbia who are entitled to coverage of medical care, and the standards for timely access to such care, outside a military treatment facility that are comparable to coverage for medical care and standards for timely access to such care as exist under TRICARE Prime under § 199.17. Those active duty members who are eligible under the provisions of 10 U.S.C. 1074(c)(3) and who enroll in the TRICARE Prime Remote program, may not be required to receive routine primary medical care at a military medical treatment facility.

(2) *Eligibility.* To receive health care services under the TRICARE Prime Remote program, an individual must be an active duty member of the Uniformed Services on orders for more than thirty consecutive days who meet the following requirements:

(i) Has a permanent duty assignment that is greater than fifty miles or approximately one hour drive from a military treatment facility or military clinic designated as adequate to provide the needed primary care services to the active duty service member; and

(ii) Pursuant to the assignment of such duty, resides at a location that is greater than fifty miles or approximately one hour from a military medical treatment facility or military clinic designated as adequate to provide the needed primary care services to the active duty service member.

(3) *Enrollment.* An active duty service member eligible for the TRICARE Prime Remote program must enroll in the program. If an eligible active duty member does not enroll in the TRICARE Prime Remote program, the member shall receive health care services provide under the supplemental health program subject to all requirements of this section without application of the provisions of paragraph (e) of this section.

(4) *Preauthorization.* If a TRICARE Prime network under § 199.17 exists in the remote location, the TRICARE Prime Remote enrolled active duty member will select or be assigned a primary care manager. In the absence of a TRICARE primary care manager in the remote location and if the active duty member is not assigned to a military primary care manager based on fitness for duty requirements, the TRICARE Prime Remote enrolled active duty member may use a local TRICARE authorized provider for primary health care services without preauthorization. Any referral for specialty care will require the TRICARE Prime Remote enrolled active duty member to obtain preauthorization for such services.

* * * * *

3. Section 199.17 is amended by revising paragraph (g) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(g) *TRICARE Prime Remote for Active Duty Family Members.* (1) *In general.* In geographic areas in which TRICARE Prime is not offered and in which eligible family members reside, there is offered under 10 U.S.C. 1079(p) TRICARE Prime Remote for Active Duty Family Members as an enrollment option. TRICARE Prime Remote for Active Duty Family Members (TPRADFM) will generally follow the rules and procedures of TRICARE Prime, except as provided in this paragraph (g) and otherwise except to the extent the Director, TRICARE Management Activity determines them to be infeasible because of the remote area.

(2) *Active duty family member.* For purposes of this paragraph (g), the term ''active duty family member'' means one of the following dependents of an active duty member of the Uniformed Services: spouse, child, or unmarried child placed in the legal custody of the active duty member as a result of an order of a court of competent jurisdiction for a period of at least 12 consecutive months.

(3) *Eligibility.* An active duty family member is eligible for TRICARE Prime Remote for Active Duty Family Members if he or she is eligible for CHAMPUS and meets all of the following additional criteria:

(i) The family member's active duty sponsor has been assigned permanent duty as a recruiter; as an instructor at an educational institution, an administrator of a program, or to provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps; as a full-time adviser to a unit of a reserve component; or any other permanent duty more than 50 miles, or approximately one hour driving time, from the nearest military treatment facility that the Executive Director, TRICARE Management Activity determines is adequate to provide care.

(ii) The family member's active duty sponsor, pursuant to the assignment of duty described in paragraph (g)(3)(i) of this section, resides at a location that is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility that the Director, TRICARE Management Activity determines is adequate to provide care.

(iii) The family member resides with the active duty sponsor.

(4) *Enrollment.* TRICARE Prime Remote for Active Duty Family Members requires enrollment under procedures set forth in paragraph (o) of

this section or as otherwise established by the Executive Director, TRICARE Management Activity.

(5) *Health care management requirements under TRICARE Prime Remote for Active Duty Family Members.* The additional health care management requirements applicable to Prime enrollees under paragraph (n) of this section are applicable under TRICARE Prime Remote for Active Duty Family Members unless the Executive Director, TRICARE Management Activity determines they are infeasible because of the particular remote location. Enrollees will be given notice of the applicable management requirements in their remote location.

(6) *Cost sharing.* Beneficiary cost sharing requirements under TRICARE Prime Remote for Active Duty Family Members are the same as those under TRICARE Prime under paragraph (m) of this section, except that the higher point-of-service option cost sharing and deductible shall not apply to routine primary health care services in cases in which, because of the remote location, the beneficiary is not assigned a primary care manager or the Executive Director, TRICARE Management Activity determines that care from a TRICARE network provider is not available within the TRICARE access standards under paragraph (p)(5) of this section. The higher point-of-service option cost sharing and deductible shall apply to specialty health care services received by any TRICARE Prime Remote for Active Duty Family Members enrollee unless an appropriate referral/preauthorization is obtained as required by section (n) under TRICARE Prime. In the case of pharmacy services under § 199.21, where the Director, TRICARE Management Activity determines that no TRICARE network retail pharmacy has been established within a reasonable distance of the residence of the TRICARE Prime Remote for Active Duty Family Members enrollee, cost sharing applicable to TRICARE network retail pharmacies will be applicable to all CHAMPUS eligible pharmacies in the remote area.

* * * * *

Dated: January 29, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2676 Filed 2–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 01–020]

RIN 2115–AA97

Security Zone; San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the waters adjacent to the San Onofre Nuclear Generating Station in San Diego, CA. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the public and commercial structures and individuals near or in this structure. This security zone will prohibit all persons and vessels from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port (COTP), or his designated representative.

DATES: This rule is effective from 6 p.m. (PDT) on October 25, 2001 to 3:59 p.m. (PDT) on June 21, 2002.

ADDRESSES: Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 01–020, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: PO Christopher Farrington, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon in Arlington, Virginia on the same day. National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels operating in the waters adjacent to the San Onofre Nuclear Generating Station area. This security zone is needed to protect the United States and more specifically the personnel and property of the San Onofre Nuclear Generating Station.

The delay inherent in the NPRM process, and any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the San Onofre Nuclear Generating Station vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by the rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to the San Onofre Nuclear Generating Station facility. Immediate action is required to accomplish this objective. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the San Onofre Nuclear Generating Station present possible platforms from which individuals may gain unauthorized access to this installation, or launch terrorist attacks upon the waterfront structures and adjacent population centers.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended The Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the San Onofre Nuclear Generating Station.

This temporary security zone is necessary to provide for the safety and security of the United States of America and the people, ports, waterways and

properties within the San Onofre Nuclear Generating Station area. This temporary security zone, which prohibits all vessel traffic from entering, transiting or anchoring within a one nautical mile radius of San Onofre Nuclear Generating Station, is necessary for the security and protection of the San Onofre Nuclear Generating Station. This zone will be enforced by the official patrol (Coast Guard commissioned, warrant or petty officers) onboard Coast Guard vessels and patrol craft. The official patrol may also be onboard patrol craft and resources of any government agency that has agreed to assist the Coast Guard in the performance of its duties.

Persons and vessels are prohibited from entering into this security zone unless authorized by the Captain of the Port or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board any vessel in a security zone without the permission of the COTP.

Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years (class C felony).

Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Due to the recent terrorist actions against the United States the implementation of this security zone is necessary for the protection of the United States and its people. Because these security zones are established in an area near the San Onofre Nuclear Generating Station that is seldom used, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' includes small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because the portion of the security zone that affects the San Onofre Nuclear Generating Station area is infrequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Petty Officer Chris Farrington, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34), of Commandant Instruction M16475.1D, this rule, which establishes a security zone, is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add new § 165.T11–048 to read as follows:

§ 165.T11–048 Security Zone: Waters adjacent to San Onofre

Nuclear Generating Station San Diego, CA.

(a) *Location: San Onofre Nuclear Generating Station.* This security zone encompasses waters within a one nautical mile radius of San Onofre Nuclear Generating Station that is centered at the following coordinate: latitude 33° 22′ 30″ N, longitude 117° 33′ 50″ W.

(b) *Effective dates.* These security zones will be in effect from 6 p.m. (PDT) on October 25, 2001 to 3:59 p.m. (PDT) on June 21, 2002. If the need for these security zones ends before the scheduled termination time and date, the Captain of the Port will cease enforcement of the security zones and will also announce that fact via Broadcast Notice to Mariners and Local Notice to Mariners.

(c) *Regulations.* This section is also issued under section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226). In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the security zone established by this temporary section, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this temporary section. Mariners requesting permission to transit through the security zone must request authorization to do so from the Captain of the Port, who may be contacted through Coast Guard Activities San Diego on VHF-FM Channel 16.

Dated: October 25, 2001.

S. P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 02–2821 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 01–011]

RIN 2115–AA97

Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing two temporary security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5 p.m. (PDT) on October 31, 2001 to 4:59 p.m. (PDT) on June 21, 2002. Comments and related material must reach the Coast Guard on or before April 8, 2002.

ADDRESSES: Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of docket COTP San Francisco Bay 01–011, and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office, San Francisco Bay, Coast Guard Island, Alameda, CA 94501 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 21, 2001, we issued a similar temporary final rule under docket COTP San Francisco Bay 01–009, and published this rule in the **Federal Register** (66 FR 54663, Oct. 30, 2001). Upon further reflection, and after discussion with airport officials and members of the public, we have decided to withdraw the temporary section created by that rule (33 CFR 165.T11–095) and issue a new temporary section in title 33 of the Code of Federal Regulations.

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. On the same day, a similar attack was conducted on the Pentagon in Arlington, Virginia. Also, on the same date, a fourth commercial passenger airplane was hijacked, this one from Newark, New Jersey, and later crashed in Pennsylvania. National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels transiting in the San Francisco Bay, and particularly in waters adjacent to San Francisco International Airport and Oakland International Airport. These security zones are needed to protect the United States and more specifically the people, ports, waterways, and properties of the San Francisco Bay area.

The delay inherent in the NPRM process, and any delay in the effective

date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the San Francisco and Oakland airports vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to these west coast airports. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP San Francisco Bay 01–011, indicate the specific section of this document to which each comment applies, and give the reason for each comment.

Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to the person identified in the **FOR FURTHER INFORMATION CONTACT** section, or to the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the airports adjacent to the San Francisco Bay present possible platforms from which individuals may gain unauthorized access to the airports.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001 have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing two temporary security zones in the navigable waters of the United States surrounding San Francisco International Airport and Oakland International Airport.

As mentioned in the Regulatory Information section, we opened docket COTP San Francisco Bay 01–009 on September 21, 2001. We have since determined that the sizes of the zones created by that rule may be reduced. As a result, we are withdrawing that rule and are establishing new, smaller zones in this rule.

The security zones will extend 1000 yards seaward from the shorelines of the San Francisco International Airport and the Oakland International Airport. This distance from the shoreline is estimated to be an adequate zone size to provide increased security for each airport. The two security zones are designed to provide increased security for the airports, while minimizing the impact to vessel traffic on the San Francisco Bay.

These temporary security zones are necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Francisco Bay area. These zones will be enforced by the official patrol (Coast Guard commissioned, warrant or petty officers) onboard Coast Guard vessels and patrol craft. The official patrol may also be onboard the patrol craft and resources of any government agency that has agreed to assist the Coast Guard in the performance of its duties.

Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years (class C felony).

Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Due to the recent terrorist actions against the United States the implementation of these security zones are necessary for the protection of the United States and its people. Because these security zones are established in an area of the San Francisco Bay that is seldom used, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

These security zones will not have a significant impact on a substantial number of small entities because these security zones will not occupy an area of the San Francisco Bay that is frequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact

on a substantial number of small entities.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–3073.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation, because we are establishing security zones. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T11–095 [Removed]

2. Remove § 165.T11–095.

3. Add new § 165.T11–097 to read as follows:

§ 165.T11–097 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.

(a) *Locations:*

(1) *San Francisco International Airport Security Zone.* This security zone extends 1000 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37° 38′ 23″ N and longitude 122° 23′ 02″ W; thence to 37° 38′ 25″ N and 122° 22′ 26″ W; thence to 37° 37′ 45″ N and 122° 21′ 19″ W; thence to 37° 37′ 11″ N and 122° 20′ 46″ W, thence to 37° 36′ 45″ N and 122° 20′ 42″ W, thence to 37° 36′ 19″ N and 122° 20′ 57″ W, thence to 37° 35′ 45″ N and 122° 21′ 50″ W, and along the shoreline back to the beginning point.

(2) *Oakland International Airport Security Zone.* This security zone extends 1000 yards seaward from the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37° 44′ 00″ N and longitude 122° 15′ 11″ W; thence to 37° 43′ 40″ N and 122° 15′ 42″ W; thence to 37° 43′ 08″ N and 122° 15′ 30″ W; thence to 37° 41′ 37″ N and 122° 13′ 23″ W; thence to 37° 41′ 38″ N and 122° 12′ 25″ W; thence to 37° 42′ 10″ N and 122° 11′ 55″ W, and along the shoreline back to the beginning point.

(b) *Effective dates.* This section is in effect from 5 p.m. (PST) on October 31, 2001 to 4:59 p.m. (PDT) on June 21, 2002. If the need for these security zones ends before the scheduled

termination time, the Captain of the Port will cease enforcement of these security zones and will also announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in either of these security zones established by this temporary section, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zones established by this temporary section.

Dated: October 31, 2001.

L. L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 02–2820 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0007a, WY–001–0008a, WY–001–0009a; FRL–7130–3]

Clean Air Act Approval and Promulgation of State Implementation Plan; Wyoming; Revisions to Air Pollution Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action partially approving and partially disapproving revisions to the State Implementation Plan (SIP) submitted by the designee of the Governor of Wyoming on August 9, 2000; August 7, 2001; and August 13, 2001. These revisions are intended to restructure and modify the State's air quality rules so that they will allow for more organized expansion and revision and are up to date with Federal requirements. The August 9, 2000 revisions include a complete restructuring of the Wyoming Air Quality Standards and Regulations (WAQSR) from a single chapter into thirteen separate chapters. In addition to restructuring the regulations, the State's August 9, 2000 revisions also update the definition in Chapter 3, Section 6 Volatile organic compounds (previously Chapter 1, Section 9) and include revisions to Chapter 6, Section 4 Prevention of significant deterioration (PSD) (previously Chapter 1, Section 24). The August 7, 2001 revisions include the addition of a credible evidence provision and another update to the definition of VOC. The August 13, 2001 revisions include changes to the State's particulate matter regulations. We partially approve these SIP revisions because they are consistent with Federal requirements. We are partially disapproving the provisions of the State's submittal that allow the Administrator of the Wyoming Air Quality Division (WAQD) to approve alternative test methods in place of those required in the SIP, because such provisions are inconsistent with section 110(i) of the Clean Air Act (Act) and the requirement that SIP provisions can only be modified through revisions to the plan that must be approved by EPA. We are taking these actions under section 110 of the Act. We are not acting on Chapter 8, Section 4 Transportation Conformity (part of the August 9, 2000 submittal) or on the $PM_{2.5}$ revisions in Chapter 1 and Chapter 2 of the State's August 13, 2001 submittal.

DATES: This rule is effective on April 8, 2002, without further notice, unless we receive adverse comment by March 8, 2002. If we receive adverse comments, we 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: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466. Copies of the Incorporation by Reference material are available at the Air and Radiation Docket (6102), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Division, Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming, 82002.

FOR FURTHER INFORMATION CONTACT: Megan Williams, EPA Region VIII, (303) 312–6431.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''our'', or ''us'' is used, we mean EPA.

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I. What Is the Purpose of This Document?

In this document we are partially approving and partially disapproving revisions to the SIP submitted by the designee of the Governor of Wyoming on August 9, 2000; August 7, 2001; and August 13, 2001. Specifically, we are approving the following sections of the renumbered WAQSR from the State's submittals into the SIP: Chapter 1 Common Provisions, Sections 2–6, Chapter 2 Ambient Standards, Sections 2, 6, 8 and 10, Chapter 3 General Emission Standards, Sections 5 and 6, Chapter 4 State Performance Standards for Existing Sources, Section 3, Chapter 6 Permitting Requirements, Sections 2 and 4, Chapter 7 Monitoring Regulations, Section 2, Chapter 8 Non-attainment Area Regulations, Sections 2–3, Chapter 9 Visibility Impairment/PM Fine Control, Section 2, Chapter 10 Smoke Management, Sections 2–3, Chapter 12 Emergency Controls, Section 2 and Chapter 13 Mobile Sources, Section 2. We are partially approving and partially disapproving the following sections of the renumbered WAQSR: Chapter 2 Ambient Standards, Sections 3–5; Chapter 3 General Emission Standards, Sections 2–4; and Chapter 4 State Performance Standards for Specific Existing Sources, Section 2. We are not acting on Chapter 8 Non-attainment Area Regulations, Section 4 Transportation Conformity (part of the August 9, 2000 submittal) or on the $PM_{2.5}$ revisions in Chapter 1 and

Chapter 2 of the State's August 13, 2001 submittal.

II. Is the State's Submittal Approvable?

Section 110(k) of the Act addresses our actions on submissions of SIP revisions. The Act also requires States to observe certain procedures in developing SIP revisions. Section 110(a)(2) of the Act requires that each SIP revision be adopted after reasonable notice and public hearing. We have evaluated the State's submission and determined that the necessary procedures were followed. We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act). Our completeness criteria for SIP submittals can be found in 40 CFR part 51, appendix V. We attempt to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we do not determine completeness within six months after we receive it. The State's August 9, 2000 submission became complete by operation of law on February 9, 2001, in accordance with section 110(k)(1)(B) of the Act. We reviewed the State's August 7, 2001 and August 13, 2001 submissions against our completeness criteria in 40 CFR Part 51, Appendix V. We determined these submissions were complete and notified the State in a letter dated August 24, 2001.

A. The State's August 9, 2000 Revisions

1. Restructuring of WAQSR

The State restructured the entire WAQSR from a single chapter into thirteen separate chapters. This was done, according to the State, to create a more organized set of rules that will be more accessible to the public and the regulated community and will allow for more organized expansion and revision, when necessary.

Several of the sections submitted to us for approval into the SIP continue to provide for the use of an equivalent or alternative test method to be approved by the Administrator of the WAQD. In an August 19, 1998 letter to the WAQD and in our December 21, 2000 partial approval and partial disapproval of earlier revisions to the WAQSR (65 FR 80329), we raised concerns about provisions in the WAQSR where the WAQD has the discretion to approve the use of alternative or equivalent test methods in place of those required in the SIP. Such discretionary authority for the State to change test methods that are included in the SIP, without obtaining prior EPA approval is not consistent with section 110 of the Act. These ''director's discretion'' provisions essentially allow for a variance from SIP requirements, which is not allowed under section 110(i) of the Act and the requirement that SIP provisions may only be modified by SIP revisions approved by EPA. In our August 19, 1998 letter, we identified the sections in the WAQSR that contain these ''director's discretion'' provisions, and informed the State that the provisions needed to be revised to require EPA approval of any alternative or equivalent test methods. In a September 9, 1998 letter responding to our comments, the WAQD committed to address our concerns through revisions to these rules in the future. However, until these provisions are revised, we believe it is necessary to continue to disapprove the various ''director's discretion'' provisions, to ensure that any alternatives to the test methods required in the SIP are approved by EPA. Therefore, we are partially disapproving these provisions in Chapter 2 Ambient Standards, Sections 3–5, Chapter 3 General Emission Standards, Sections 2–4 and Chapter 4 State Performance Standards for Specific Existing Sources, Section 2.

2. Chapter 3, Section 6 (Volatile Organic Compounds)

The State revised Chapter 3, Section 6 (previously Chapter 1, Section 9) of the WAQSR to adopt the July 1, 1998 definition of volatile organic compound (VOC) in 40 CFR 51.100(s). In the State's August 7, 2001 submittal Chapter 3, Section 6 was again revised to adopt the July 1, 1999 definition of VOC in 40 CFR 51.100(s). We are approving this more recent update to the incorporation by reference into the SIP, which will supercede the revisions submitted to us on August 7, 2000.

3. Chapter 6, Section 4 (Prevention of Significant Deterioration (PSD))

The State made two substantive changes to its PSD permitting regulations. The first revision is a modification to the definition of ''Minor source baseline date'' to remove the specific trigger date of January 1, 2001 from the definition. With this revision, the minor source baseline date is triggered only by the date on which a major stationary source or major modification submits a complete permit application as opposed to the date on which a major stationary source or major modification submits a complete permit application *or* January 1, 2001, whichever occurs first. The revised definition is consistent with our definition in 40 CFR 51.166(b)(14)(ii). The minor source baseline date has been triggered for SO_2, PM_{10} and NO_2 in all attainment and unclassifiable areas in the State. Most recently, a permit application from ENCOAL Corporation to construct a Liquids from Coal facility and an associated 240 megawatt coal-fired power plant in the Powder River Basin of Campbell County, Wyoming, was deemed complete on March 6, 1997; this triggered the minor source baseline date for the entire Powder River Basin PM_{10} unclassifiable area. We are approving the State's revision to delete the January 1, 2001 date since the minor source baseline date was already triggered, prior to January 1, 2001, for all attainment and unclassifiable areas in the State.

The second revision establishes a significance level for non-methane hydrocarbons from municipal solid waste landfills. Since the state-adopted significance level of 50 tons per year is the same as the significance level for non-methane hydrocarbons from municipal solid waste landfills in 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i), we are approving this revision into the SIP.

B. The State's August 7, 2001 Revisions

1. Chapter 1, Section 6 (Credible Evidence)

The addition of Section 6 Credible Evidence was made in response to a SIP call issued by EPA on October 20, 1999. EPA promulgated Credible Evidence Revisions (see 62 FR 8314) which became effective December 30, 1997 and which changed certain regulations to clarify that EPA can use, and has always been able to use, any credible evidence to prove violations of applicable requirements. In the Credible Evidence Revisions, EPA amended 40 CFR 51.212 to require SIPs to allow for the use of credible evidence for the purposes of submitting compliance certifications and for establishing whether or not a person has violated a standard in a SIP. Wyoming submitted a provision in Chapter 1, Section 6 that meets the requirements of 40 CFR 51.212; we are approving this provision into the SIP.

2. Chapter 3, Section 6 (Volatile Organic Compounds)

Chapter 3, Section 6 was revised to adopt the July 1, 1999 definition of VOC in 40 CFR 51.100(s). We are approving this update to the incorporation by reference into the SIP.

C. The State's August 13, 2001 Revisions

1. Chapter 1, Section 3 (Definitions)

Chapter 1, Common Provisions was revised to add definitions for ''fugitive emissions,'' ''$PM_{2.5}$'' and ''$PM_{2.5}$

emissions''. We are approving the definition of ''fugitive emissions'' into the SIP, but we are not taking action on the other definitions for $PM_{2.5}$. Currently, we are not approving provisions in any SIPs related to the implementation of a $PM_{2.5}$ standard because there is no $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) at this time. On May 18, 1999, the United States Court of Appeals for the D.C. Circuit in *American Trucking Associations, Inc. et al.,* v. *United States Environmental Protection Agency,* 175 F.3d 1027 (D.C. Cir. 1999), vacated the 1997 PM_{10} standard, determined that we were attempting to double-regulate the fine particulate fraction with the promulgation of the 1997 PM_{10} and $PM_{2.5}$ standards, and asked for further information from EPA regarding health effects of $PM_{2.5}$. Although the Court eventually agreed that there was a clear, health-based need for a $PM_{2.5}$ standard, we did not proceed with the $PM_{2.5}$ implementation schedule. Since the Court had determined that EPA would be double-regulating the fine particle fraction of this pollutant if we were to implement the new PM_{10} and $PM_{2.5}$ NAAQS, EPA decided not to proceed with implementation of the 1997 $PM_{2.5}$ NAAQS, but to wait for the outcome of the next required review of the PM standards for any further implementation of a new standard. On review of the Court of Appeals' decision, the U.S. Supreme Court reversed in part, upholding the new and revised NAAQS, but affirmed the lower court decision on the issue of EPA's implementation policy for the revised NAAQS, holding the policy unlawful. See *Whitman* v. *American Trucking Associations, Inc.,* 531 U.S. 457, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001). Accordingly, we are enforcing only the 1987 PM_{10} NAAQS at this time.

In addition to the new definitions, the State made changes to correct ''director's discretion'' provisions in the definitions of ''particulate matter emissions'' and ''PM_{10} emissions.'' In our December 21, 2000 action partially approving and partially disapproving revisions to Wyoming's air pollution regulations (see 65 FR 80330), we partially disapproved this particular section of the State's rules, because it allowed the Wyoming Air Quality Director discretion to approve the use of alternative or equivalent test methods in place of those required in the SIP. The State has eliminated this discretion by revising these definitions to read, ''* * * or an equivalent or alternative method approved by the EPA Administrator.'' This will ensure that any alternatives to the test methods required in the SIP are approved by EPA. We are now fully approving the revisions to Chapter 1, Section 3 of the WAQSR that were partially disapproved in our December 21, 2000 action.

2. Chapter 2, Section 2 (Ambient Standards for Particulate Matter)

Chapter 2, Section 2 was revised to incorporate the 1997 $PM_{2.5}$ NAAQS and to remove the ambient air standard for total suspended particulate (TSP). Since EPA is currently not implementing a $PM_{2.5}$ standard, we are not taking action at this time on the new $PM_{2.5}$ standard adopted by the State. Since EPA repealed the national ambient air quality standard for TSP over ten years ago, we are approving this deletion of the State's ambient air standard for TSP. We raised a concern to the State during the public comment period for these revisions about whether the State plans to relax any permitted emission limits as part of this rule change; relaxations of any limits on particulate matter could potentially impact the PM_{10} National Ambient Air Quality Standards (NAAQS). We also wanted to be sure that this change to delete the TSP ambient air quality standard would not impact the State's particulate matter monitoring network that has been established in the Powder River Basin. The State made clear, in a February 16, 2000 letter from Dan Olson, Administrator, Wyoming Air Quality Division, to Richard Long, Director, EPA Region VIII Air and Radiation Program, that relaxing existing permit emission limits as a result of deleting the TSP standard would be contrary to the State's basic philosophy of minimizing impact to air resources and that the State has no plans to do so. The State further indicated that the TSP monitors in the Powder River Basin that are used to measure compliance with the NAAQS are required to continue operation under existing air quality permits. Any changes in monitoring, which could only occur through a permit modification, would need to consider the effect of the monitor on the comprehensive particulate matter monitoring network in the Powder River Basin, which the State is committed to maintaining. We are relying on these clarifications in approving the deletion of the State's TSP ambient air standard and are archiving the above-referenced letter as Additional Materials in 40 CFR 52.2620(c)(30)(ii).

3. Chapter 3, Section 2 (Emission Standards for Particulate Matter)

Chapter 3, Section 2 was revised to incorporate revised fugitive dust provisions. The revisions to this section are not any less stringent than the existing fugitive dust provisions in the SIP, and therefore are approvable. The proposed agricultural provisions do contain an apparent change in stringency, because the SIP currently states that all agricultural activities must be conducted, ''* * * in such a manner as to prevent dust from becoming airborne''; the revision to that provision states that these operations should ''minimize'' fugitive dust emissions. However, because it is unrealistic to expect that agricultural activities such as tilling will not produce any fugitive dust and because there is no enforceable limit or work practice requirement associated with this SIP provision, the proposed revision to the SIP should not result in an increase in fugitive dust from agricultural activities.

In addition, the State added a provision in Chapter 3, Section 2 to clarify that the particulate matter limitations established through the process weight rate tables (Chapter 3, Section 2 Tables I and II) are based on the maximum design production rate unless otherwise restricted by enforceable limits on potential to emit. This additional language in Chapter 3, Section 2(g)(i) is meant to clarify which limit is intended to apply to permitted sources. Finally, Section 2(e) has been modified to explain that more stringent limits, such as new source performance standards, established elsewhere in the regulations may apply. We are approving all of these revisions to Chapter 3, Section 2 into the SIP.

4. Chapter 6, Section 2 (Permit Requirements for Construction, (Modification, and Operation)

Chapter 6, Section 2 was revised to remove the significance level for TSP. This change was made in conjunction with the removal of the ambient air standard for TSP in Chapter 2, Section 2 (see discussion in part 2, above). Without a referenced ambient air standard, the TSP significance level is not needed. This change is consistent with 40 CFR 51.166, and we are approving the change into the SIP.

III. What Is EPA's Final Action?

In this action, we are granting partial approval and partial disapproval of revisions to the WAQSR submitted as a SIP revision by the designee of the Governor of Wyoming on August 9, 2000; August 7, 2001; and August 13, 2001. The portions of the restructured regulations and revisions that we are approving replace the prior SIP approved regulations. Specifically, we are granting approval of the following

sections of the renumbered WAQSR into the SIP: Chapter 1 Common Provisions, Sections 2–6; Chapter 2 Ambient Standards, Sections 2, 6, 8 and 10; Chapter 3 General Emission Standards, Sections 5 and 6; Chapter 4 State Performance Standards for Existing Sources, Section 3; Chapter 6 Permitting Requirements, Sections 2 and 4; Chapter 7 Monitoring Regulations, Section 2; Chapter 8 Non-attainment Area Regulations, Sections 2 and 3; Chapter 9 Visibility Impairment/PM Fine Control, Section 2; Chapter 10 Smoke Management, Sections 2 and 3; Chapter 12 Emergency Controls, Section 2; and Chapter 13 Mobile Sources, Section 2. We are granting partial approval and partial disapproval of the following sections of the renumbered WAQSR: Chapter 2 Ambient Standards, Sections 3–5; Chapter 3 General Emission Standards, Sections 2–4; and Chapter 4 State Performance Standards for Specific Existing Sources, Section 2. We are not acting on Chapter 8 Non-attainment Area Regulations, Section 4 Transportation Conformity (part of the August 9, 2000 submittal) or on the $PM_{2.5}$ revisions in Chapter 1 and Chapter 2 of the State's August 13, 2001 submittal.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective April 8, 2002, without further notice unless the Agency receives adverse comments by March 8, 2002. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. What Are the Administrative Requirements for This Action?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

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

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

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.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not

have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final partial approval rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This final partial disapproval rule will not have a significant impact on a substantial number of small entities because this partial disapproval only offsets the State's ability to grant variances from SIP testing requirements. As explained in this notice, the provisions of the SIP revision related to director's discretion do not meet the requirements of the Clean Air Act and EPA cannot approve the State's request to approve these provisions into the SIP. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

The partial approval and partial disapproval will not affect existing state requirements applicable to small entities. Federal disapproval of a state submittal does not affect its state-enforceability.

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action partially approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective April 8, 2002, unless EPA receives adverse written comments by March 8, 2002.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. 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 April 8, 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) of the Clean Air Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 3, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart ZZ—Wyoming

2. Section 52.2620 is amended by adding paragraph (c)(30) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(30) On August 9, 2000, August 7, 2001, and August 13, 2001, the designee of the Governor of Wyoming submitted a restructured version of the Wyoming Air Quality Standards and Regulations (WAQSR) along with revisions to Chapter 1, Section 3 Definitions; Chapter 1, Section 6 Credible evidence; Chapter 2, Section 2 Ambient standards for particulate matter; Chapter 3, Section 2 Emission standards for particulate matter; Chapter 3, Section 6 Volatile organic compounds (VOCs); Chapter 6, Section 2 Permit requirements for construction, modification, and operation; and Chapter 6, Section 4 Prevention of significant deterioration (PSD). EPA is replacing in the SIP all of the previously approved Wyoming air quality regulations with those regulations listed in paragraphs (c)(30)(i)(A) through (C) of this section.

(i) Incorporation by reference.

(A) Revisions to the WAQSR submitted on August 9, 2000: Chapter 1, Section 2, Section 3 (excluding the words ''or an equivalent or alternative method approved by the Administrator'' in the definition of ''Particulate matter emissions'' and ''PM_{10} emissions''), Sections 4 and 5; Chapter 2, Section 2, Section 3 (excluding the words ''or by an equivalent method''), Section 4 (excluding the words ''or an equivalent method''), Section 5 (excluding the words ''or by an equivalent method''), Sections 6, 8 and 10; Chapter 3, Section 2 (excluding the words ''specified by the Administrator'' and excluding the sentence ''Provided that the Administrator may require that variations to said methods be included or that entirely different methods be utilized if he determines that such variations or different methods are necessary in order for the test data to reflect the actual emission rate of particulate matter'' in subsection 2(h)(iv)), Section 3, Section 4 (excluding the words ''or an equivalent method'' in subsection (f)), Sections 5 and 6; Chapter 4, Section 2 (excluding the words ''or an equivalent method''), and Section 3; Chapter 6, Sections 2 and 4; Chapter 7, Section 2; Chapter 8, Sections 2 and 3; Chapter 9, Section 2; Chapter 10, Sections 2 and 3; Chapter 12, Section 2; and Chapter 13, Section 2; all effective 10/29/99.

(B) Revisions to the WAQSR submitted on August 7, 2001: Chapter 1, Section 6; and Chapter 3, Section 6; effective December 8, 2000.

(C) Revisions to the WAQSR submitted on August 13, 2001: Chapter 1, Section 3; Chapter 2, Section 2; Chapter 3, Section 2 (excluding the words ''specified by the Administrator'' and excluding the sentence ''Provided that the Administrator may require that variations to said methods be included or that entirely different methods be utilized if he determines that such variations or different methods are necessary in order for the test data to reflect the actual emission rate of particulate matter'' in subsection 2(h)(iv)); and Chapter 6, Section 2; all effective March 30, 2000.

(ii) Additional Material.

(A) February 16, 2000 letter from Dan Olson, Administrator, Wyoming Air Quality Division, to Richard Long, Director, EPA Region VIII Air and Radiation Program, clarifying the State's commitments to maintaining TSP permitting and monitoring requirements that contribute to protection of the PM_{10} NAAQS.

3. Section 52.2622 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2622 Approval status.

* * * * *

(b) Wyoming Air Quality Standards and Regulations Chapter 2, Sections 3–5, Chapter 3, Section 3 and Chapter 4, Section 2, which were submitted by the designee of the Governor on August 9, 2000, as well as Chapter 3, Section 2, which was submitted by the designee of the Governor on August 13, 2001, and which all allow the Administrator of the Wyoming Air Quality Division the discretion to approve the use of alternative or equivalent test methods in place of those required in the SIP, are partially disapproved. Such discretionary authority for the State to change test methods that are included in the SIP, without obtaining prior EPA approval, cannot be approved into the SIP. Pursuant to section 110 of the Clean Air Act, to change a requirement of the SIP, the State must adopt a SIP revision and obtain our approval of the revision.

[FR Doc. 02–2706 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 55 and 71

[FRL–7138–1]

State and Local Jurisdictions Where a Federal Operating Permits Program Became Effective on December 1, 2001—Connecticut; Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of States and local jurisdictions subject to 40 CFR parts 55 and 71.

SUMMARY: On July 1, 1996, pursuant to title V of the Clean Air Act (Act) as amended in 1990, EPA published a new regulation at 61 FR 34202 (codified as 40 CFR part 71) setting forth the procedures and terms under which the Administrator will issue operating permits to covered stationary sources of air pollution. This rule, called the ''part 71 rule,'' became effective on July 31, 1996. In general, the primary responsibility for issuing operating permits to sources rests with State, local, and Tribal air agencies. However, EPA will administer a Federal operating permits program in areas that lack an EPA-approved or adequately administered operating permits program and in other limited situations. The Federal operating permits program will serve as a ''safety net'' to ensure that sources of air pollution are meeting their permitting requirements under the Act. Federally issued permits will meet the same title V requirements as do State issued permits. The purpose of this document is to provide the names of those State and local jurisdictions where a Federal operating permits program is effective on December 1, 2001.

FOR FURTHER INFORMATION CONTACT: A. Scott Voorhees at (919) 541–5348 (e-mail: voorhees.scott@epa.gov).

SUPPLEMENTARY INFORMATION:

I. Background, Authority and Purpose

What Is the Intent of ''Title V'' of the Clean Air Act?

Title V of the Act as amended in 1990 (42 U.S.C. 7661 et seq.) directs States to develop, administer, and enforce operating permits programs that comply with the requirements of title V (section 502(d)(l)). Section 502(b) of the Act requires that EPA promulgate regulations setting forth provisions under which States develop operating permits programs and submit them to EPA for approval. Pursuant to this section, EPA promulgated 40 CFR part 70 on July 21, 1992 (57 FR 32250) which specifies the minimum elements of approvable State operating permits programs.

What Is a ''Federal Operating Permits Program''?

Sections 502(d)(3) and 502(i)(4) of the Act require EPA to promulgate a Federal operating permits program when a State does not obtain approval of its program within the timeframe set by title V or when a State fails to adequately administer and enforce its approved program. The part 71 rule published on July 1, 1996 establishes a national template for a Federal operating permits program that EPA will administer and enforce in those situations. Part 71 also establishes the procedures for issuing Federal permits to sources for which States do not have jurisdiction (*e.g.*, Outer Continental Shelf sources outside of State jurisdictions and sources located in Indian Country over which EPA and Indian Tribes have jurisdiction). Finally, part 71 provides for delegation of certain duties that may provide for a smoother program transition when part 70 programs are approved.

This notice makes frequent use of the term ''State.'' This term includes a State or a local air pollution control agency that would be the permitting authority for a part 70 permit program. The term ''permitting authority'' can refer to State, local, or Tribal agencies and may

also apply to EPA where the Agency is the permitting authority of record.

II. Description of Action

What Is the Purpose of This Notice?

The EPA is, by this notice, providing a list of State and local jurisdictions where EPA assumed responsibility to issue permits, effective as of December 1, 2001. The EPA received submittals of part 70 operating permits programs from all 52 State and territorial agencies and all 60 local programs. The EPA has granted full approvals to all of the operating permits programs except Connecticut and Maryland. As a result, EPA expects that the impact of the Federal operating permits program rule will be minimal. The EPA is working with the affected States in an effort to fully approve a State program before significant resources must be expended.

Will Some Pollution Sources Be Required To Prepare New Permit Applications?

Yes. Section 71.5(a)(1) of part 71 provides that a timely application is one that is submitted within 12 months or an earlier date after a source that does not have an operating permit issued by a State under the State's part 70 program becomes subject to the part 71 program. Because part 71 for these two State jurisdictions was effective on December 1, 2001, such sources are required to submit part 71 permit applications no later than December 1, 2002. Sources required to submit applications earlier than 12 months will be notified in advance by the permitting authority (whether it is EPA or a State in the case of a delegated part 71 program) and given a reasonable time to submit their applications. In general, this notice shall not be given less than 180 days in advance of the deadline for submittal of the application.

III. List of States and Local Jurisdictions

Which State and Local Jurisdictions Became Subject to a Federal Operating Permits Program on December 1, 2001?

Connecticut: The EPA's Region I proposed full approval of the State's program on August 13, 2001. *See* 66 FR 42496. However, EPA is unable to take final action on this proposal because Connecticut's interim approval expired on December 1, 2001, and the necessary corrections to the State's program will not become effective until early 2002. Until Connecticut's program receives final full approval, part 71 is effective in the State.

Maryland: Maryland acknowledged that it would not have in place by December 1, 2001 law to unambiguously provide standing for judicial review of the permits consistent with the Act and 40 CFR part 70. Therefore, on December 1, 2001, Maryland lost its interim approval status of its part 70 permitting program. *See* 66 FR 63236 (December 5, 2001) for further details.

The Office of Management and Budget has exempted this action informing the public of a Federal air quality permitting program, as outlined above, from Executive Order 12688 review. This notice is issued under the authority of sections 101, 110, 112 and 301 of the Act as amended (42 U.S.C. 7401, 7410, 7412, 7601).

Dated: January 30, 2002.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 02–2834 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 27 and 73

[GN Docket No. 01–74; FCC 01–364]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts allocation and service rules for the 698–746 MHz spectrum band (Lower 700 MHz Band), which is being reallocated pursuant to statutory requirements. The Commission takes these actions to support the development of new services in the Lower 700 MHz Band, and to protect existing television operations that will occupy the band throughout the transition to digital television.

DATES: Effective April 8, 2002 except for § 27.50(c)(5) which contains information collection that has not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Office of Engineering and Technology, at (202) 418–2472 or Michael Rowan, Wireless Telecommunications Bureau, at (202) 418–7240.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order* (*R&O*), FCC 01–364, in GN Docket No. 01–74, adopted on December 12, 2001 and released on January 18, 2002. The full text of this *R&O* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893. The complete text may also be downloaded at: *www.fcc.gov.*

Synopsis of R&O

In the *R&O*, the Commission: (1) Reallocates the entire 48 megahertz of spectrum in the Lower 700 MHz Band to the fixed and mobile services while retaining the existing broadcast allocation; (2) establishes technical criteria designed to protect television (TV) operations during the digital television (DTV) transition period; (3) allows low power television (LPTV) and TV translator stations to retain secondary status and operate in the band after the transition; (4) sets forth a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58; (5) divides the 48 megahertz of reallocated spectrum into three 12-megahertz blocks, with each block consisting of a pair of 6-megahertz segments, and two 6-megahertz blocks of contiguous, unpaired spectrum; (6) licenses the two six-megahertz blocks of contiguous unpaired spectrum and two of the three 12-megahertz blocks of paired spectrum over six Economic Area Groupings (EAGs) and the remaining 12-megahertz block of paired spectrum over 734 Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs); (7) provides for a 50 kW effective radiated power (ERP) power limit for the Lower 700 MHz Band to permit both wireless services and certain new broadcast operations; and (8) establishes competitive bidding procedures and voluntary band-clearing mechanisms for the Lower 700 MHz Band.

I. Background

1. In the *Notice of Proposed Rulemaking* (*NPRM*) (66 FR 19106, April 13, 2001) in this proceeding, the Commission proposed to reallocate and adopt service rules for the Lower 700 MHz Band as part of the ongoing conversion to DTV broadcasting. Because DTV technology is more

spectrally efficient than the current analog standard, the same amount of television service can operate in a reduced allocation. 47 U.S.C. 309(j)(14) requires the Commission to assign spectrum recovered from broadcast television using competitive bidding, and envisions that the Commission will conduct an auction of this spectrum by September 30, 2002. The statute further requires analog broadcasters to cease operation in the recovered spectrum by the end of 2006 unless the Commission extends the end of the transition. As provided in the statute, the Commission is required to extend the end of the transition at the request of individual broadcast licensees on a market-by-market basis if one or more of the four largest network stations or affiliates are not broadcasting in digital, digital-to-analog converter technology is not generally available, or 15 percent or more television households are not receiving a digital signal. While the end of the DTV transition is targeted for the end of 2006, the statute anticipates that the Commission will reclaim excess television spectrum by September 30, 2002. Therefore, the auction for this spectrum will occur a number of years in advance of the end of the digital transition.

2. The Commission previously determined that television operations can be relocated to a core spectrum (TV Channels 2–51), which will make existing broadcast spectrum on TV Channels 52–69 available for reallocation. The Commission previously reallocated TV Channels 60–69 (Upper 700 MHz Band). In this *R&O*, the Commission adopts a flexible allocation for the Lower 700 MHz Band that will allow service providers to select the technology they wish to use to provide new services that the market may demand. At the same time, it takes steps to protect incumbent broadcasters during the technically complex transition to digital broadcasting during which there will be significant interference protection issues for new licensees seeking to initiate service in the Lower 700 MHz Band.

II. Discussion

A. Spectrum Allocation Issues

1. Reallocation of the 698–746 MHz Band

3. Domestically, the Lower 700 MHz Band is currently allocated on a primary basis to non-government broadcasting. TV Channels 52–59 (each channel represents 6 megahertz of spectrum) occupy the band. TV broadcast services may also use TV subcarrier frequencies, and, more generally, their TV channels, on a secondary basis for other purposes, including datacasting. The band is further allocated to the fixed service for subscription television operations in accordance with part 73 of the Commission's rules. Internationally, the band is allocated worldwide on a primary basis to broadcasting services. The band is also allocated to fixed and mobile services in Region 2 (which includes the United States) on a secondary basis and in Region 3 on a co-primary basis. A footnote to the International Table of Frequency Allocations elevates the allocation to fixed and mobile services to primary status in the United States, Mexico, and several other Region 2 countries, but this primary allocation has yet to be implemented domestically.

4. In recent years, there has been tremendous growth in new wireless services and demand for spectrum. In previous proceedings, the Commission has noted that the propagation characteristics of the Lower 700 MHz Band are ideal for two-way mobile communications. Further, a resolution adopted at World Radiocommunication Conference-2000 (WRC–2000) recognized that some administrations may use the Lower 700 MHz Band for 3G services. At WRC–2000, the United States proposed that the Lower 700 MHz Band be identified as one of several candidate bands for the terrestrial component of new advanced communication applications. However, significant investment and planning is required by broadcasters to build new digital facilities and relocate operations. The Commission has anticipated that the band will remain principally a television band until the end of the digital transition and early recovery of additional spectrum beyond the Upper 700 MHz Band was not contemplated in the DTV transition plan. Because of the statutory requirement to auction this spectrum several years in advance of the end of the transition, the Commission balances the opportunities for new services with the challenges faced by incumbent broadcasters.

a. Fixed, Mobile, and Broadcast Allocation

5. The Commission reallocates the entire 48 megahertz of spectrum in the Lower 700 MHz Band to fixed and mobile services, and retains the existing broadcast allocation. This decision is consistent with the Commission's allocation plans as set forth in the *Spectrum Reallocation Policy Statement* (14 FCC Rcd 19868 (1999)). It is also consistent with the principles of the policy statement " that flexible allocations can promote efficient spectrum markets, which, in turn, encourages efficient use of the spectrum. Furthermore, it conforms with positions the United States has taken at the World Radio Conference (WRC). The broadcast allocation supports broadcasting that will take place during the DTV transition period (and LPTV and TV translator operations on a secondary basis for the indefinite future). It also draws on the Upper 700 MHz Band proceeding, where the Commission permitted both broadcast and advanced fixed and mobile service use of the band (with service rules that limited the power of any new broadcasting services in order to insure the protection of new wireless entrants in the band). The Commission notes that no commenter suggested an alternative basis for its allocation decision, but, instead, those who do not fully support the Commission's proposal expressed narrow technical concerns about a shared allocation as opposed to broader concerns about the overall spectrum management approach.

6. The Commission describes how the *R&O* meets several additional statutory responsibilities. 47 U.S.C. 309(j)(14) requires the Commission to reclaim and assign the Lower 700 MHz Band by competitive bidding. Furthermore, 47 U.S.C. 309(j)(3) sets forth objectives that the Commission must promote in developing our competitive bidding methodology including, *inter alia*, the development, and rapid deployment of new technologies. As in the Upper 700 MHz Band proceeding, the Commission expects many of the new technologies to be developed and deployed will support advanced wireless applications, and wants to provide licensees with the maximum opportunity to make use of these opportunities.

7. The Commission finds that the flexible use approach it is adopting is consistent with 47 U.S.C. 303(y), and meets all four of the criteria outlined in that section. 47 U.S.C. 303(y) requires the Commission to make affirmative findings that a proposed flexible use allocation (1) is consistent with international agreements; (2) would be in the public interest; (3) would not deter investment in communications services and systems, or technology development; and (4) would not result in harmful interference among users. Because the band is allocated worldwide on a primary basis to the broadcasting service, and is also allocated to the fixed and mobile services in Region 2 (which includes the United States) on a primary basis, via footnote to the International Table of Frequency Allocations, the Commission may add a fixed and mobile service

allocation to the existing broadcast allocation and be consistent with international band management plans. The Commission envisions that the existing broadcast allocation (in conjunction with the new technical rules designed to support both broadcast and fixed and mobile services) will support investment in and development of a variety of broadcast-type applications in the band, including two-way interactive services and services using coded orthogonal frequency division multiplex (COFDM) technology. These applications could include video transmissions to mobile receivers, similar to services being developed in Europe and Asia. Development of these applications, it concludes, would be in the public interest.

8. The Commission recognizes that these public interest benefits might be frustrated if broadcast and fixed and mobile services cannot successfully co-exist, and it therefore adopts technical rules that account for the differences between the services. The rules it adopts will allow the two services can co-exist without harmful interference among users and, in doing so, will not deter investment in and development of technology for the two services. The flexible use characteristic of the allocation—by which both broadcast and fixed and mobile services is allowed in the band—is identical to the approach the Commission took in the Upper 700 MHz Band proceeding.

9. The Commission prohibits licensees who acquire the reallocated spectrum from providing full-power broadcast services of the type that has traditionally been made available in this band because such high-powered broadcasting is likely to cause harmful interference and deter development of the band. Otherwise, the Commission would have to adopt interference protection criteria that would make a large portion of this band effectively unusable for those licensees who seek to offer new wireless applications. However, the approach the Commission takes also recognizes that a highly restrictive approach to broadcasting power limits would sharply limit broadcasting options for this band and would frustrate the public interest afforded by a broadcast allocation.

b. Special Considerations for Broadcast Allocation

10. At the end of the DTV transition, television broadcasting will remain adjacent to the Lower 700 MHz Band, with full power and Class A low power television stations operating on TV Channel 51. The Commission declines to adopt a guard band or other specialized mechanism to protect DTV operations on Channel 51, but instead relies on interference protection criteria to ensure that new licensees adequately protect core TV channel operations. The Commission takes this approach because the protection for Channels 52–59 is no different from the protection for the core TV channels (Channels 2–51)—only the duration of that protection differs. Accordingly, the Commission concludes that there is no basis for adopting additional protective measures at the lower end of the Lower 700 MHz Band and instead finds that the protective measures suggested by commenters are unnecessarily restrictive. Instead of making special considerations for new licensees—such as adjusting our allocation to minimize the presence of systems with low immunity to high-power signals—the Commission chooses a flexible approach and expects licensees to consider potential interference situations when designing and developing their systems. The Commission believes that bidders for this spectrum will take into account criteria established to protect the core TV channels and will develop their business plans, services, and facilities accordingly.

c. Low Power Television Service and Television Translators

11. The Commission will permit LPTV operations (which, for purposes of this proceeding, includes television translators) in the Lower 700 MHz Band after the end of the transition on a secondary basis. These stations may operate until they cause actual interference to a DTV station or new licensee and LPTV stations may negotiate interference agreements with new service providers. The Commission prohibits LPTV stations, licensed under 47 CFR 74 subpart G from causing harmful interference to stations of primary services—including new licensees in the band. (However, if a licensee who acquires Lower 700 MHz Band spectrum through the competitive bidding process opts to use the spectrum for low power digital broadcasting, such a station would have primary regulatory status.)

12. The Commission concludes that its approach appropriately balances two largely conflicting interests. 47 U.S.C. 337(e)(2) states that after allocating the Upper 700 MHz Band, the Commission ''shall seek to assure * * * that each qualifying low-power television station is assigned a frequency below 746 MHz to permit the continued operation of such station.'' However, LPTV operators in the Lower 700 MHz Band must be prepared to cease service once television Channels 52–59 are reclaimed, pursuant to 47 U.S.C. 309(j)(14), when new licensees (who will have primary status) begin using the band. Congress has recognized—and the Commission has repeatedly noted—that not all LPTV stations can be guaranteed a certain future due to the emerging DTV service, and the Commission concludes that it is inadvisable to defer the ultimate displacement of LPTV operations to the detriment of new primary service licensees in the band. To grant LPTV operations special considerations vis-à-vis new licensees would turn the concept of secondary status upside down and would retard the potential development of new and innovative services.

13. Because the overall framework for the Commission's treatment of LPTV stations was previously decided outside of this proceeding, the Commission concludes that there is no reason to modify those decisions and notes that those commenters who outline circumstances in which they believe LPTV should have greater protection do not explain how circumstances have changed since the Commission last examined the issue. LPTV licensees have been aware of their secondary status throughout the transition and LPTV entities with operations on Channels 52–59 must recognize the possibility that a primary licensee can initiate service in the band. The *DTV Sixth Report and Order* (62 FR 26684, May 14, 1997) identified the core DTV spectrum to consist of those TV channels below Channel 52 and stated that secondary operations (such as LPTV) will be able to continue to operate until a displacing DTV station or a new primary service provider is operational. The requirement to auction reclaimed spectrum has also been in place since 1997. Because of the steps it has taken to allow continued LPTV operation, including allowing LPTV licensees to remain in the band until they actually cause interference and permitting LPTV operators to negotiate with new licensees for interference protection agreements, the Commission nevertheless expects that many LPTV licensees will be able to continue to operate in the band for some time to come.

14. The Commission also rejects specific comments that suggest that some LPTV stations should receive the same protection from displacement and interference as full power television stations because of the Commission's obligations with respect to Class A status, and decides that a proposal that

out-of-core LPTV stations that are eligible for Class A status be allowed to continue operating until such a time as an in-core channel becomes available is overly broad and inconsistent with the Commission's ultimate goals for the band. Furthermore, it rejects a request to afford continued secondary status to part 74 low power broadcast auxiliary devices (such as wireless microphones) operating in the Lower 700 MHz Band, and to establish a new service in part 95 of our Rules to accommodate their use.

d. Satellite Services

15. The Commission does not include a satellite allocation in the Lower 700 MHz Band and concludes allowing satellite operations would be inconsistent with the principles of effective spectrum management in the Lower 700 MHz Band. The Commission concludes that the inherent difficulties in coordinating satellite and terrestrial services could delay or stifle the introduction of new services in this band; questions whether a flexible satellite allocation in this band could meet the statutory requirements 47 U.S.C. 303(y); and notes that current international allocations do not include satellite operations in this band.

2. Transition Issues

a. Incumbent Broadcasters

16. The Commission's treatment of issues related to incumbent broadcasters who will continue to use the band throughout the DTV transition recognizes differences between the Upper and Lower 700 MHz Bands. Early recovery of additional spectrum beyond the Upper 700 MHz Band was not contemplated in the DTV transition plan. Even with the mechanisms it adopts to encourage voluntary band clearing in both the Upper and Lower 700 MHz Bands, the Commission has never anticipated that it will be able to clear the Lower 700 MHz Band before the Upper 700 MHz Band. Because of this history, and because encumbrances in the Lower 700 MHz Band are likely to make band clearing a more complex operation, the Commission realizes that some broadcasters may have accepted an allotment in the Lower 700 MHz Band with the expectation that the band would continue to be extensively used for broadcasting throughout the transition.

17. New licensees will need to take into account the large number of digital broadcasters who will operate in the Lower 700 MHz Band during the transition. On average, there are slightly more than ten times the number of digital stations per channel on Channels 52–59 as compared to Channels 60–69. While the planning for the DTV Table of Allotments sought to minimize use of out-of-core channels, the Commission was unable to accommodate a second digital channel for all broadcasters within the ''core'' broadcast spectrum. The degree of incumbency in the Lower 700 MHz Band—consisting of both digital and analog broadcasters—is likely to make it far more difficult for new services to operate in this band, particularly in major metropolitan markets, prior to the end of the transition. The Commission notes that the degree of incumbency in the Lower 700 MHz Band underscores its obligation to fully protect incumbent full-power analog and digital broadcasters during the transition period, and the rules it adopts are designed to support this core value.

(i) Analog Stations

18. Currently, there are 94 licensed full service NTSC analog stations and seven approved analog construction permits in the Lower 700 MHz Band. Although this figure represents approximately the same number of analog incumbents as in the Upper 700 MHz Band, the Lower 700 MHz Band consists of less spectrum and, therefore, incumbent licensees are more densely situated across the band. The Commission addresses requests for new NTSC stations in the 698–746 MHz band in two parts: (1) Petitions for new allotments and (2) applications for construction permits. Some of these applications may also include requests for modifications of the allotment such as changes in frequencies to cure interference to new DTV operations or as a replacement channel for channels in the Upper 700 MHz Band (*i.e.* channels 60–69). The Commission dismisses the pending petitions for new NTSC channel allotments in the 698–746 MHz band. In this regard, it notes that its staff previously dismissed a number of petitions for rulemaking for new station allotments on channels 52–58 as defective, and petitions for reconsideration have been filed. Given its decision to dismiss all petitions on these channels, the Commission concludes that the pending petitions for reconsideration are now rendered moot and determines that they will be dismissed. The Commission concludes that beginning the process of adding new analog television allotments or stations at this stage of the transition to digital television would be inconsistent with the DTV transition process because the allotment proceedings, station authorization, and construction would likely not be completed until much later in the DTV transition. The new licensee might then have only a limited period of time to operate in analog before being required to transition to digital service. The Commission also notes that the Balanced Budget Act of 1997 requires that analog television spectrum be reclaimed for new services and concludes that adding analog allotments or stations in the 698–746 MHz band would be inconsistent with the purpose of that Act and would not foster the timely and efficient transition to digital television. The Commission notes that petitioners may, however, refile a new DTV channel allotment petition on a core channel (2–51), subject to meeting the DTV spacing requirements.

19. With regard to applications for construction permits, the Commission recognizes that parties have made investments in these applications and that they are generally further along in the regulatory process and thus could potentially provide service to the public on a more near-term basis. While it believes that these applications can be processed in a manner consistent with our DTV transition policies, the Commission does not believe that deploying service in analog format is consistent with the statutory mandate to reclaim this spectrum for new services or with its DTV transition policies. It concludes that authorizing additional analog television operations at this stage in the DTV transition so close the May 1, 2002, date when commercial broadcast stations are required to be operating on their digital allotments would be inconsistent with the goal of achieving a rapid conclusion of the transition.

20. Although the Commission does not wish to encourage the expansion of analog television service, it also notes that digital deployment on the allotments for which there are pending analog applications will introduce new digital services and will promote the acquisition of digital receiving equipment by consumers. In addition, the Commission concludes that such an approach will avoid the complications that could arise in requiring licensees to convert their analog operation to digital operation relatively soon after they commence analog operation. It also believes that new service providers may be able to co-exist more easily with digital television stations given that such stations operate with lower power and their signals may generally be less susceptible to interference than analog television signals. Accordingly, the Commission provides a 45-day opportunity for applicants to request a change in their pending applications for a construction permit or petition for rule

making. Requests to provide analog or digital service in the core spectrum will require the filing of a petition for rulemaking to amend either the TV Table of Allotments (47 CFR 73.606) or the DTV Table of Allotments (47 CFR 73.622) or an amendment to such a petition if the applicants have already filed one. The Mass Media Bureau will set forth these procedures in a soon-to-be released Public Notice. The Commission made the 45-day window effective upon release of the Commission's *R&O.* Applications can be modified in one of two ways: (1) To provide analog or digital service in the core television spectrum, *i.e.,* channels 2–51 or (2) to provide digital service in the 698–740 MHz band, *i.e.,* channels 52–58 (In this limited circumstance, the Commission will not treat these application amendments to provide digital service in channels 52–58 as new DTV allotments under 47 CFR 73.622(a)(1)). At the end of the 45-day period, the Commission will dismiss any pending application that does not meet either of the above conditions. Finally, because of the adjacent channel interference that new stations on channel 59 could cause to new licensees in the adjacent Upper 700 MHz Band, the Commission will no longer accept or grant any application for channel 59, and parties with outstanding applications that specify channel 59 and who have not yet filed a channel allotment rulemaking petition to specify another channel must do so within the 45-day period. The Commission also amends its rules to specify that petitions requesting a change in the channel of an initial DTV allotment may only be amended to specify channels 2–58.

(ii) Low Power Stations

21. At the time the *NPRM* was adopted, there were 835 licenses and 244 construction permits for LPTV operations on Channels 52–59, and an additional 607 pending applications for LPTV stations on those channels. Although the Commission recognizes that it must clear all LPTV operations from the Upper 700 MHz Band at the end of the transition, it also finds that it has additional flexibility with respect to operations in the Lower 700 MHz Band. Thus, to ensure the continuation of television service, the Commission will continue to permit LPTV and TV translator stations to request the use of channels 52–69 in order to eliminate or avoid conflicts with NTSC and DTV stations or allotments. This decision recognizes that these ''displacement relief'' stations may be in very rural areas of the country where the 700 MHz Band could be used by these stations with little chance that they would again be displaced in the near future. The Commission takes a measured approach with regard to the filing and processing of applications seeking new LPTV and TV translator stations to operate on channels 52–69. With respect to all such applications on file, namely those tendered in the August 2000 LPTV and TV translator filing window, the Commission will process these applications and, if found acceptable, grant them. The proposed channel 52–69 operations will also be authorized on a secondary basis.

22. The Commission sought an approach that will not unduly encumber the 700 MHz Band further during the DTV conversion, but will also further its desire to treat fairly all of the nearly 4,700 LPTV and TV translator applicants that filed during the August 2000 window. Accordingly, it revises its LPTV displacement relief policies and rules as follows: Future LPTV and TV translator permittees and licensees that tendered new station applications during or subsequent to the August 2000 filing window and have been authorized to operate in the 700 MHz Band (TV channels 52–69) will be entitled to displacement relief only in order to eliminate or avoid interference conflicts. Priority over pending Class A TV, LPTV or TV translator station applications will not be afforded to the displacement applications of these future LPTV or TV translator permittees or licensees solely by virtue of their authorization to operate in the 700 MHz Band. With respect to future filing windows, the Commission retains the discretion to geographically restrict or preclude altogether the filing of applications for new LPTV and TV translator stations seeking to operate on channels 52–69. The Commission will permit secondary operation of LPTV stations below channel 60 after the end of the transition.

23. Throughout the DTV and related proceedings, the Commission has recognized that the transition and reallocation of spectrum will significantly affect LPTV. It concludes that the rule changes previously adopted in the DTV proceeding, in conjunction with its decision to allow continued LPTV operations in the Lower 700 MHz Band strike the appropriate balance between facilitating the DTV transition and reallocating the spectrum as required by law, and permitting continued LPTV operations outside the core channels.

b. Interference Protection for TV Services

24. The Commission adopts the same protection criteria for analog TV stations in the Lower 700 MHz Band at it previously adopted in the Upper 700 MHz Band. Because these limits are based on the results of a thorough experimental study of land mobile interference to analog television conducted many years before the advent of digital television, the Commission concludes that they properly apply only to analog television and finds that it is not necessary or appropriate to apply the same interference protection for DTV stations in the Lower 700 MHz Band. It concludes that the D/U ratio of 17 dB for co-channel interference to digital stations should be 23 dB for protection of DTV from wideband land mobile transmissions. At the edge of the DTV (noise-limited) service area, where the DTV S/N ratio is small, the value of D/U is 23 dB for co-channel interference protection from another DTV station (*i.e.*, the desired signal must be at least 23 dB greater than the undesired signal). A wideband land mobile or digital broadcast signal will increase the noise floor for the DTV reception just as though it were a DTV transmission. Because DTV receivers treat interference from wideband co-channel signals as an increase in the noise floor of the desired signal, the Commission finds that new land mobile systems operating in the Lower 700 MHz Band employing wide band noise-like signals need to provide co-channel DTV stations with an additional 6 dB of protection. 6 dB is the difference between the D/U ratio of 17 dB that applies to the Upper 700 MHz Band and the value 23 dB that the Commission finds is necessary to fully protect DTV from wideband transmissions. The corresponding maximum field strengths are 18 dBμ and 64 dBμ respectively for co- and adjacent-channel land mobile transmissions. The Commission permits fields no stronger than these at the DTV service contour where the DTV signal strength is 41 dBμ. This criterion, the Commission concludes, will best protect existing broadcast operations.

25. The Commission concludes that its approach is warranted because the number and density of incumbent TV stations in the Lower 700 MHz Band is greater than those in the Upper 700 MHz Band and a major factor that led to the specific protection standards adopted in the Upper 700 MHz Band—the goal of maximizing the utility of the new public safety allocation—is not present in this case. The Commission also rejects a proposal to revise the

Grade B contour predictions/broadcast television protections based on new field strength measurements. The Commission concludes that any such ad hoc re-evaluation of broadcast protections could inadvertently lead to loss of service by viewers.

c. Coordination With Canada and Mexico

26. Because the United States is obligated under existing agreements to protect the signals of Canadian and Mexican TV broadcast stations located in the border areas, new licensees' use of the band will be subject to any future agreements that the United States establishes with Canada and Mexico. Until that time, new licensees in the band will be subject to existing agreements and the condition that harmful interference not be caused to, and must be accepted from, television broadcast operations in those countries.

B. Service Rules

27. The *R&O* provides the service rule decisions required by the Commission's reallocation of the Lower 700 MHz Band to fixed, mobile, and broadcast services. In the *R&O*, the Commission generally applies the part 27 licensing and operational rules that it applied previously to the spectrum band 747–762 MHz and 777–792 MHz (Upper 700 MHz Commercial Band). The Commission believes that the general application of the same part 27 licensing and operating rules to the 700 MHz Band as a whole will help promote flexible and efficient use of the spectrum. In the *Spectrum Reallocation Policy Statement*, the Commission explained that flexibility can be promoted by harmonizing the rules for like services. The Commission continues to believe that regulatory neutrality and operational uniformity across the 700 MHz Band will permit the marketplace to achieve the highest valued end use of the spectrum. These part 27 rules will enable the broadest possible use of this spectrum consistent with the spectrum management obligations and objectives identified in the Commission's *Spectrum Reallocation Policy Statement*.

28. While the Commission generally adopts the same part 27 framework established for licenses in the Upper 700 MHz Commercial Band, the Commission's service rules for the Lower 700 MHz Band also contain some distinctive elements based on its assessment of similarities and differences between these spectrum resources. These include the specific record pertaining to the band, the potential demand for these licenses, the nature of the spectrum resource (*e.g.*, propagation characteristics), statutory considerations, various external constraints (*e.g.*, degree of incumbency, scarcity of spectrum suitable for mobile applications), and several longer-term policy objectives (*e.g.*, the pace of the DTV transition, the feasibility of clearing the band). As a result, the Commission has added definitional and technical rules to part 27 to reflect what it believes to be the optimal initial scope of licenses for the Lower 700 MHz Band.

29. These service rules, along with the competitive bidding provisions that the Commission adopts in the *R&O*, derive from the Commission's statutory obligations under 47 U.S.C. 309(j). 47 U.S.C. 309(j)(3) outlines a number of public interest objectives that the Commission must consider when establishing the characteristics of licenses that are to be assigned by competitive bidding and designing auction systems. These statutory objectives include the development and rapid deployment of new technologies, products, and services for the benefit of the public, the promotion of economic opportunity and competition, the recovery of a portion of the value of the spectrum made available for commercial use, and the efficient and intensive use of the spectrum. Further, 47 U.S.C. 309(j)(14)(c) directs the Commission to reclaim, reorganize, and auction this spectrum well before broadcasters are required to vacate the band at the end of the DTV transition period. The Commission believes that adopting flexible, market-based service rules is the most appropriate approach for implementing its 47 U.S.C. 309(j) statutory directives.

1. Scope of Licenses

30. The *NPRM* sought comment on the three sets of issues that define the scope of licenses for the Lower 700 MHz Band: the permissible licensed services, the size of spectrum blocks, and the size of licensed service areas. By these decisions, the Commission seeks to define an initial scope of licenses that can be obtained and used by a wide range of entities and services. It is the Commission's intent that market forces assign this spectrum to its highest valued use and thereby determine the ultimate use of the band.

a. Permissible Licensed Services

31. The Commission will apply § 27.2 of its rules to define the permissible communications for the Lower 700 MHz Band and allow a multitude of fixed, mobile, and broadcast uses that the market may demand. Because the Commission has declined to reallocate the Lower 700 MHz Band for satellite use, the *R&O* does not consider service rules for the deployment of satellite operations on this band. Consistent with the Commission's *Spectrum Reallocation Policy Statement*, this flexible use approach will allow the provision of services to the public that could include mobile and other digital new broadcast operations, fixed and mobile wireless commercial services (including Frequency Division Duplex (FDD) and Time Division Duplex (TDD) based services), as well as fixed and mobile wireless uses for private, internal radio needs. The record in this proceeding demonstrates demand for expanded wireless services in the Lower 700 MHz Band, particularly in non-urban areas, for uses ranging from the implementation of next generation applications and extensions of existing mobile and fixed networks to the implementation of various innovative stand-alone technologies. It also demonstrates demand for certain broadcast and other broadband applications that could include two-way interactive, cellular, and mobile television broadcasting services. The Commission therefore declines to exclude all broadcast services and will instead allow any broadcast services that meet its part 27 technical rules. These technical rules will provide opportunities for existing broadcasters and others who wish to operate certain new digital television services in the Lower 700 MHz Band. The Commission does not wish to exclude competitors by adopting use restrictions on spectrum with characteristics suitable for new broadcast, wireless, and broadband services.

32. This decision will permit market forces to effectively assign spectrum to its highest valued use as well as meet the Commission's statutory mandate under 47 U.S.C. 303(y) to ensure harmful interference will not result from the permitted flexibility. As part of the Commission's commitment to establish maximum practicable flexibility for services, the Commission has determined and lessened the potential for interference by the Commission's power limit and other technical decisions set forth in the *R&O*. The Commission believes this approach affords maximum flexibility while promoting efficient use of scarce spectrum and preventing harmful interference between mobile wireless and broadcast applications using a variety of different technologies.

b. Band Plan

33. The Commission adopts a band plan that divides the 48 megahertz of

reallocated spectrum into three 12-megahertz blocks, with each block consisting of a pair of 6-megahertz segments, and two 6-megahertz blocks of contiguous, unpaired spectrum. The Commission's decision to institute multiple paired and unpaired blocks in a combination of sizes and pairings accommodates the proposals of nearly all of the parties participating in this proceeding. Although two commenters advocated a larger initial allocation per spectrum block, their recommended sizes were not significantly larger than 12 megahertz. The block sizes that the Commission adopt, therefore, should not burden their attempts to acquire more than 12 megahertz of spectrum in any given area. Moreover, the Commission's decision not to apply any spectrum aggregation limits to the Lower 700 MHz Band will permit parties seeking larger blocks to aggregate spectrum both at auction and in the secondary market.

34. The size and placement of the five blocks reflect several important spectrum management considerations. Each of these blocks corresponds with either one or two 6 megahertz television channels. The Commission agrees that this will facilitate use of the Lower 700 MHz Band by analog and digital broadcasters as well as a variety of fixed and mobile wireless services. In addition, this alignment will minimize the number of incumbent television licensees to which a new Lower 700 MHz Band licensee's operations would potentially cause interference.

35. Placing the two unpaired 6-megahertz blocks at the center of the band plan has several advantages. It provides an opportunity for licensees to aggregate both licenses and thereby offer services with very wide emission types that may require more than 6 megahertz of contiguous spectrum. Centering these two blocks also results in 30-megahertz separation between the upper and lower segments of the 12-megahertz paired licenses. Such separation is consistent with licenses in the Upper 700 MHz Commercial Band and meets the requirements of many two-way technologies and equipment.

36. Finally, the size and nature of each paired segment should make those portions of the spectrum equally suitable to firms employing technologies that rely on unpaired spectrum, as well as firms seeking to launch certain new broadcast operations. Each segment consists of 6 megahertz of contiguous spectrum, an amount cited by both broadcast interests and TDD advocates as instrumental to their operations. In addition, all six segments are symmetric in size and will be subject to power limits based on usage rather than frequency, an approach that was adopted for the Upper 700 MHz Commercial Band in the *Upper 700 MHz MO&O and FNPRM.* By not imposing different restrictions on operations in upper versus lower segments, the Commission increases the potential use of these segments by new technologies and new service providers that do not rely on paired spectrum.

37. This flexible band plan offers five licenses in any given area that are of sufficient bandwidth to permit a variety of services. The Commission has considered commenters' desires for multiple blocks by adopting smaller blocks of spectrum. The Commission has balanced this demand, however, against its goal of enabling new broadband services and advanced wireless services on spectrum with propagation characteristics well suited for such applications. Although it acknowledges that encumbrances by broadcasters may preclude such services in the near term, the Commission is committed to reorganizing the spectrum in such a way that its bandwidth assignments, at a minimum, can eventually support the deployment of the new technologies and services that it is bound to promote by statute

38. As compared to smaller block sizes, the Commission believes that 12 megahertz paired blocks are required to afford sufficient capacity for the provision of many new services. Accordingly, the Commission has adopted three 12-megahertz paired blocks to provide opportunities for augmentation of existing systems, especially CMRS systems, as well as for new systems. The Commission also believes that 12-megahertz licenses could in some cases facilitate band clearing and new licensees' use of the Lower 700 MHz Band during the DTV transition.

39. In addition to the three 12-megahertz paired blocks, the Commission has adopted two 6-megahertz unpaired blocks because it believes they add flexibility to the band plan while offering the minimum capacity for the provision of additional new services, including certain broadband services. The Commission finds that a combination approach is appropriate given the interest in small spectrum block sizes, the support by broadcasters for 6-megahertz blocks, and the *R&O*'s technical rule decisions that permit certain new broadcast operations in the Lower 700 MHz Band. In addition, a 6-megahertz contiguous block of spectrum is sufficient to allow for development and deployment of certain services including new broadcast services and fixed and mobile wireless services that do not depend on paired frequencies.

40. In providing a flexible band plan with multiple spectrum blocks and small sizes, the Commission presents ample opportunities for participation by rural telephone companies and small businesses. The Commission therefore declines to set aside 10 to 12 megahertz in each geographic licensing area for designated entities. As opposed to restricting certain firms' access to spectrum, the Commission has created five smaller spectrum licenses in each geographic area of the United States.

c. Size of Service Areas for Geographic Area Licensing

41. The Commission adopts a geographic area licensing approach to assign licenses in the Lower 700 MHz Band. This is consistent with the Commission's past experience that geographic area licensing, as compared to site-specific licensing, offers licensees superior flexibility to respond to market demands.

42. Regarding the size of each service area for geographic licensing, the Commission has determined that the most appropriate configuration for the Lower 700 MHz Band is based on a combination of large regional areas and small geographic areas. The Commission therefore will license the five blocks in the Lower 700 MHz Band plan as follows: the two 6-megahertz blocks of contiguous unpaired spectrum, as well as two of the three 12-megahertz blocks of paired spectrum, will be assigned over 6 EAGs as defined in the Upper 700 MHz Band proceeding; the remaining 12 megahertz block of paired spectrum (designated as Block C) will be licensed over 734 MSAs and RSAs originally adopted for the cellular radiotelephone service with modifications for cellular market 306, which covers the Gulf of Mexico, and for all MSAs and RSAs that border the Gulf. *See* 47 CFR 27.6(c).

43. The Commission's assignment of 36 megahertz of spectrum in this band over EAGs complements the approach used for the Upper 700 MHz Commercial Band. As the Commission observed in the Upper 700 MHz Band proceeding, EAGs can provide licensees significant flexibility to address issues associated with protection of incumbent TV stations. The Commission believes that certain interference risks are offset by avoiding the need for complicated agreements that could arise if spectrum were licensed in smaller areas where several geographic service areas could overlap a TV protection zone.

44. The use of EAGs establishes an initial license scope that provides flexibility and opportunities for a wide variety of fixed, mobile, and new broadcast services. In the Upper 700 MHz Band proceeding, the Commission noted that the ability to build nationwide service was an important advantage of EAGs, along with the opportunity EAGs offer providers to achieve economies of scale in their operations. Such efficiencies have allowed providers to offer or expand innovative pricing plans such as one-rate type plans, which in turn reduce prices to consumers. Licensees may, therefore, use EAGs to build larger, even nationwide footprints.

45. Despite the efficiencies associated with nationwide service, however, the Commission believes the use of EAGs is preferable to the assignment of nationwide service areas. The vast majority of commenters recommend using much smaller geographic areas, and only two commenters recommend assigning any portion of this spectrum across a nationwide service area. Using EAGs instead of nationwide license areas facilitates the acquisition of spectrum by different providers with spectrum needs that are confined to their particular region or market. As the Commission observed in the Upper 700 MHz Band proceeding, EAGs are easier to partition than nationwide licenses, which also may help serve the needs of regional providers. Furthermore, the Commission believes aggregating EAGs into nationwide areas is an administratively straightforward process, and the Commission notes that this may be simplified through the auction process. While any type of aggregation is not without cost, the Commission believes that such costs are outweighed by the significant benefits associated with use of large regional areas, such as EAGs.

46. The Commission's assignment of a 12-megahertz block of paired spectrum, 25 percent of the Lower 700 MHz Band spectrum, over MSAs/RSAs reflects its desire to promote opportunities for a wide variety of applicants, including small and rural wireless providers, to obtain spectrum. This is consistent with the Commission's congressional mandate to promote ''economic opportunity and competition'' and to disseminate licenses ''among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' 47 U.S.C. 309(j)(3)(B). In contrast to the Commission's experience in the Upper 700 MHz Band proceeding, many commenters in this proceeding favor geographic areas that are smaller than the 6 EAGs used for the Upper 700 MHz Commercial Band. Licensing a portion of the Lower 700 MHz Band over these small geographic areas balances the playing field such that small and rural providers will have an opportunity to participate in the auction and the provision of spectrum-based services. The Commission believes that a combination of large and small geographic service areas best accomplishes these various statutory objectives.

47. The Commission, therefore, recognizes the importance to small and regional providers of licensing a significant portion of this spectrum band across MSAs and RSAs. The propagation characteristics of the spectrum in this band make it conducive to business models that are built on serving consumers over a large area. The Commission concludes that MSAs and RSA are the appropriate size for small geographic licenses based on the record in this proceeding, which indicates a strong preference for these areas over, for example, EAs or MEAs. MSAs and RSAs represent known area sizes to many business entities, especially small regional and rural providers. These smaller areas also may correspond to the needs of many customers, including customers of small regional and rural providers. Specifically, MSAs and RSAs represent areas over which many customers may desire to receive the majority of their wireless or broadcast-type services and thus can be the focus of smaller carriers that do not wish to bid on or provide service to larger regions. Assigning a portion of the Lower 700 MHz Band across MSAs and RSAs may allow licensees to focus on consumers that seldom travel outside of these geographic areas and that do not place a high value on roaming or long distance services. While some commenters recommend that all of the spectrum in this band be allocated to such small areas, the Commission declines to take such an approach. As the Commission noted in the *Spectrum Reallocation Policy Statement*, it seeks to make this spectrum available for use by a variety of new technologies and providers. The Commission believes that a combination of large and small geographic service areas, rather than an assignment comprised only of small service areas, best accomplishes these goals.

2. Technical Rules

48. In the interest of maximizing spectrum use, all new broadcast and fixed and mobile wireless operations in the Lower 700 MHz Band will be governed generally by the flexible technical standards contained in part 27 of the Commission's rules. Licensees are subject, therefore, to part 27's provisions relating to equipment authorization, frequency stability, antenna structures and air navigation safety, international coordination, disturbance of AM broadcast station antenna patterns, and protection from interference. *See* 47 CFR 27.51, 27.54, 27.56, 27.57, 27.63, 27.64. Although part 27 provides an appropriate technical framework for the development of both wireless and new broadcast services, the Commission has revised certain provisions as they apply to the Lower 700 MHz Band so as to promote greater flexibility in the choice of licensed services.

a. Power Limits and Related Requirements

(i) Power Limits

49. For all services operating in the Lower 700 MHz Band, the Commission adopts a maximum power limit of 50 kW ERP subject to specific requirements regarding non-interference. Specifically, for those services operating base or fixed stations at power levels greater than 1 kW ERP, the Commission adopts a power flux density (PFD) standard as a way to address the interference potential, as well as a general notification requirement. Following the approach adopted for the Upper 700 MHz Commercial Band, the Commission adopts a maximum power limit of 30 watts ERP for mobile and control stations, and 3 watts ERP for portable (hand-held) devices. In addition, all operations 1 kW ERP or below will be subject to previously established requirements governing antenna height above average terrain (HAAT).

50. The Commission's choice of a 50 kW maximum ERP limit will promote efficiency and maximize flexibility to the extent practicable by allowing the greatest number of different services to co-exist—and to serve more consumers—subject only to reasonable standards for non-interference. The Commission believes such a power limit will produce the most efficient use of this spectrum resource. The Commission disagrees with comments suggesting that use of this spectrum should be limited to wireless applications, or that the 1 kW limit applied to the Upper 700 MHz Commercial Band should be applied to the Lower 700 MHz Band. In the Lower 700 MHz Band, unlike the Upper 700 MHz Band, there is no issue regarding the need to protect public safety

spectrum from interference. In addition, the Commission has been able to adopt 6 and 12 megahertz blocks for the Lower 700 MHz Band, a band plan that more readily accommodates new broadcast services. The Commission notes that providers of non-broadcast services may also operate at power levels up to 50 kW ERP, provided they comply with the same technical requirements associated with such operation. The Commission believes that to promote flexibility and efficiency, it is important to create a consistent set of technical rules for all services operating in this band.

51. The Commission recognizes that establishing a power limit in excess of 1 kW ERP creates the potential for stations operating at such power levels to cause interference to systems on adjacent channels, especially those that operate at lower power levels. However, the Commission believes that any risk that such interference will be harmful can be mitigated so as not to outweigh the added flexibility that is afforded by the higher power limit. Accordingly, in order to limit such interference and to make the various services compatible, the Commission imposes the following requirement on licensees operating at higher power levels: Licensees operating base stations at power levels in excess of 1 kW ERP must design their systems such that transmissions from their base station antenna produce PFD levels that are no greater than the PFD levels that would ordinarily occur from stations operating at power levels of 1 kW ERP or less. Specifically, the Commission will require licensees operating base stations at power levels greater than 1 kW ERP to limit the calculated PFD of the signal from their base station to 3000 microwatts per square meter at any location at ground level within 1 km of their base station transmitter.

52. This PFD standard will minimize the likelihood of adjacent channel interference to ground-based devices by effectively limiting the energy received by such devices to levels no greater than what they would receive from adjacent channel base stations operating at 1 kW ERP or less. For UHF operations, antenna height tends to be a more important variable than output power in causing/mitigating interference, so the effect of a 50 kW ERP signal on adjacent channel devices operating on the ground will be minimized given the tower heights likely to be used. The Commission has provided calculations that demonstrate, for example, how 50 kW ERP, high antenna broadcast operations can co-exist with lower-power/low antenna height land mobile operations.

53. The Commission believes that current technologies reasonably and practically allow certain measures to limit interference among various services that may be provided in this band. The Commission provides a table that describes the potential for interference that may be caused by a base station operating at 50 kW ERP to a nearby, adjacent channel base station receiver. Based on these sample computations, the Commission concludes that a licensee operating a base station receiver could mitigate potential harmful interference through use of a selective vertical antenna pattern or by downtilting of its receive antenna. In addition to these antenna selections or adjustments, a licensee could mitigate interference through use of improved filtering, by avoiding the use of spectrum at the edge of its authorized block, or through other measures. In any bid for a license within this band, the Commission expects that prospective licensees will take into account any costs that may be necessary to incorporate technical features to alleviate interference issues if adjacent channel licensees operate systems at power levels greater than 1 kW ERP.

54. The Commission will not, however, permit broadcasting at power levels higher than 50 kW (*e.g.*, conventional full-power broadcasting under part 73). As the Commission found for the Upper 700 MHz Commercial Band, the contrasting technical characteristics of broadcasting at these higher power levels and wireless services effectively preclude the development of interference rules that would enable the practical provision of both sets of services on this spectrum. Spectrum for full-power terrestrial broadcast television service has been provided on Channels 2–51. Since the adoption of the *Upper 700 MHz First Report and Order*, the Commission has received no convincing evidence that contradicts its finding that part 73 full-power broadcasting is too different technically from fixed and mobile commercial wireless services to permit a spectrum-efficient co-existence of these services in the Lower 700 MHz Band. Those commenters who believe that these two services may coexist do not provide any specific engineering proposals and only offer generalized assertions that maximum flexibility should be ensured. Maximizing flexibility without due consideration of harmful interference is not in the public interest. Accordingly, the Commission concludes that a 50 kW ERP limit is practicable for maximizing both flexibility and freedom from harmful interference for the widest number of potential users.

55. The Commission declines to adopt a proposal to let licensees increase their power above 50 kW ERP within their service areas provided they do not cause co- or adjacent-channel interference to other users. The Commission is concerned that this additional flexibility will result in uncertainty as to how all potentially affected licensees (both co- and adjacent-channel) are made aware of a licensee's proposed higher-power and whether these licensees have consented to such operation.

(ii) Notification Requirement

56. In the *NPRM*, the Commission requested comment on how innovative service rules can maximize use of this spectrum by different services. To facilitate licensees' use of spectrum and prevent harmful interference, the Commission will require licensees intending to operate base or fixed stations in excess of 1 kW ERP to file notifications with the Commission and provide notifications to all part 27 licensees authorized on adjacent blocks in their area of operation. When applicable, this requirement includes notification to part 27 commercial and guard band manager licensees operating on Channel 60 (746–752 MHz) in the Upper 700 MHz Band. The Commission shall require a licensee intending to operate a higher-power base or fixed station to provide notifications to all adjacent channel part 27 licensees authorized to construct and operate base or fixed stations within 75 km of the higher-power base or fixed station. Licensees filing notifications with the Commission and adjacent channel licensees must provide the location and operating parameters of all base and fixed stations operating in excess of 1 kW ERP. *See* 47 CFR 27.50(c)(5). Such notification must be filed with the Commission and adjacent channel licensees at least 90 days prior to the commencement of station operation. Licensees operating at or below the 1 kW ERP will not be subject to this requirement.

57. This action will ensure that licensees will be notified that their base, fixed, mobile, or portable receivers could be situated in the vicinity of an adjacent channel, high-powered base or fixed station. As discussed in the *R&O*, the Commission has concluded that, under appropriate regulations, a 50 kW ERP limit can be permitted without causing harmful interference among adjacent channel broadcasting and wireless operations. This notification requirement provides an opportunity for licensees to take steps to mitigate

potential interference to their stations—*e.g.*, by employing filters or modifying base station vertical attenuation patterns. In addition to notification, the Commission believes that licensees could employ voluntary coordination to prevent harmful interference.

(iii) RF Safety

58. The Commission will require transmitting facilities and devices in the Lower 700 MHz Band to comply with the existing RF safety criteria identified in § 27.52 of the Commission's rules. *See* 47 CFR 27.52. The Commission has provided guidance on complying with its RF safety exposure limits in OET Bulletin No. 65. The Commission is adopting these RF safety thresholds for this band because the Commission regards them to be essential for the protection of human beings from exposure to radiated RF energy.

b. Co-Channel Interference Control

59. Consistent with the Commission's intent to maximize spectrum use through application of flexible technical standards, the Commission is adopting a field strength limit to address co-channel interference in the Lower 700 MHz Band. The Commission agrees that a field strength limit provides established, objective criteria for licensees to understand the co-channel interference environment in which to construct and operate facilities in the geographic edges of their service areas. The Commission is not adopting a general coordination approach because, as it determined in the Upper 700 MHz Band proceeding, such an approach could impose unnecessary coordination costs for facilities and could lead to possible anti-competitive activities.

60. The Commission adopts for the Lower 700 MHz Band a field strength limit of 40 dBuV/m, the same field strength limit the Commission adopted for the Upper 700 MHz Band and the 800 MHz EA-based and 900 MHz MTA-based SMR services. *See* 47 CFR 27.55(a). The Commission believes that using the same field strength limit that it adopted for these other bands will enable licensees in the Lower 700 MHz Band, including new broadcast providers, to provide effective service within their authorized geographic area, while minimizing co-channel interference to co-channel licensees in adjacent areas. The Commission also notes that § 27.55(a) of the Commission's rules permits licensees, pursuant to mutual agreement, to use a different field strength limit. This will provide licensees with increased flexibility in implementing their systems without increasing the risk of harmful interference.

c. Out-of-Band Emission Limits

61. The Commission has determined that licensees operating in the Lower 700 MHz Band should be required to attenuate the power below the transmitter power (P) by at least 43 + 10 log (P) dB for any emission on all frequencies outside the licensee's authorized spectrum. The Commission adopts this standard consistent with the requirements for many of the Commission's radio services, including services in the Upper 700 MHz Commercial Band, which limits out-of-band emissions (OOBE) to no more than 50 microwatts (50 μW) of transmitter output power over a typical instrument measurement bandwidth. The Commission notes one commenter's preference for a stricter limit, but determines that in the absence of data and other support from the many parties to this proceeding, it should not increase OOBE limits given the potential adverse effects that may result on the commercial usefulness of the spectrum.

62. Although the Commission adopted an additional 76 + 10 log P dB limit to apply to OOBE of Upper 700 MHz commercial licensees that might fall within the Upper 700 MHz public safety bands, the Commission sees no need to apply this requirement to licensees in the Lower 700 MHz Band. Given the 18 megahertz of separation between the Lower 700 MHz Band and the Upper 700 MHz spectrum set aside for public safety, the Commission believes that public safety will be adequately protected by the attenuation limits the Commission has imposed on use of the Lower 700 MHz Band.

3. Licensing Rules

63. By its decisions in the *R&O*, the Commission will generally apply part 27's existing rules on applications and licenses to all fixed, mobile, and new broadcast services offered in the Lower 700 MHz Band. The part 27 rules that address applications and licenses provide a licensing framework for the common elements of regulation that are applicable to wireless and new broadcast services alike. Section 27.3 provides for the potential application of specific licensing provisions contained in other parts of the Commission's rules to the extent that they do not conflict with the supervening application of part 27. *See* 47 CFR 27.3. Therefore, a Lower 700 MHz Band licensee could be subject, for example, to licensing aspects of part 22 if providing public mobile services, to part 73 if providing radio broadcast services, to part 90 if providing private land mobile radio services, and to part 101 if providing fixed microwave services.

64. The Commission finds that the application of part 27 licensing rules permits the flexible use necessary for the variety of services that are permitted by the band's reallocation. The Lower 700 MHz Band, like the Upper 700 MHz Band, is being reclaimed as part of the DTV transition and reallocation for uses that include both broadcast and non-broadcast operations. Part 27 allows licensees to make determinations respecting the services provided and technologies to be used, including provision of the full range of FDD- and TDD-based wireless services, as well as possible new broadcast services. Applying the licensing rules of part 27 will promote innovative services and encourage the efficient use of the 700 MHz Band as a whole.

a. Regulatory Status

65. The Commission agrees with the commenters and finds that a part 27 approach is likely to achieve efficiencies in the licensing and administrative process. Consistent with § 27.10 of the Commission's rules, Lower 700 MHz Band licensees will be permitted to provide any combination of services anywhere within their licensed areas at any time, consistent with the regulatory status specified by the licensee on its FCC Form 601 (*i.e.*, common carrier, non-common carrier, private internal communications, and/or broadcast services) and with applicable interference protection requirements. Licensees operating in the Lower 700 MHz Band are subject to other FCC rule parts depending on the regulatory status of the services provided. *See generally* 47 CFR 27.3. For example, providers of CMRS must comply with applicable sections of Title II of the Communications Act, which governs common carrier service, as well as part 20 of the Commission's rules. To fulfill the Commission's enforcement obligations and ensure compliance with the statutory requirements of Titles II and III of the Communications Act, the Commission will require all Lower 700 MHz Band licensees to identify the service(s) they seek to provide. Consistent with § 27.10 of the Commission's rules, licensees in the Lower 700 MHz Band will not be required to describe the specific services they seek to provide, but only to designate the regulatory status of the service(s). Licensees will also be required to notify the Commission within 30 days of service changes that alter their regulatory status. Pursuant to

§ 27.66 of the Commission's rules, when the change results in the discontinuance, reduction, or impairment of the existing service, a different approach may apply, depending on the nature of the service affected.

66. With respect to the provision of broadcast services, the Commission is adopting the same regulatory approach for the Lower 700 MHz Band as it employed for the Upper 700 MHz Commercial Band. In the *Upper 700 MHz First Report and Order*, the Commission determined that the provision of new broadcast-type services under a part 27 license does not alter the underlying broadcast nature of such services. However, in the *Upper 700 MHz MO&O and FNPRM*, the Commission declined to apply the part 73 regulatory regime to part 27 new broadcast-type licensees in the Upper 700 MHz Commercial Band, stating that it would determine the applicable regulatory framework in the context of the offering of specific, actual new broadcast-type services. The Commission adopts this approach for the Lower 700 MHz Band and will allow any new broadcast services that meet the Commission's part 27 power limits and other technical standards. New broadcast services offered under part 27 will remain subject to the statutory provisions of the Communications Act governing broadcasting and the Commission will determine the applicability of additional provisions from part 73 on a case-by-case basis.

67. Consistent with the approach taken for the Upper 700 MHz Commercial Band, the Commission is permitting private radio uses in the Lower 700 MHz Band. In auctioning recaptured broadcast spectrum subject to 47 U.S.C. 309(j)(14), Congress did not preclude use of the spectrum for private, internal communications. The Commission's reallocation of the Lower 700 MHz Band, therefore, includes the ability to provide private fixed and mobile radio services.

b. Eligibility; Foreign Ownership Restrictions

68. Consistent with the Commission's tentative conclusion in the *NPRM*, the Commission will apply § 27.12's eligibility provisions to the Lower 700 MHz Band. *See* 47 CFR 27.12; *see also id.* § 27.302. As the Commission determined for the Upper 700 MHz Commercial Band, the Commission believes that the benefits of open eligibility also apply to the Lower 700 MHz Band. The Commission agrees that open eligibility will enhance the opportunities for licensees to provide service in any market or combinations of markets. A policy of open eligibility for the Lower 700 MHz Band will best serve the public interest by encouraging entrepreneurial efforts to develop new services and ensuring the most efficient use of the spectrum.

69. Because the Commission is adopting a flexible approach to regulatory status, all licensees will be subject to the same requirements to file changes in foreign ownership information to the extent required by the part 27 rules. In light of a part 27 licensee's ability to provide common carrier, non-common carrier, private internal communications and/or broadcast services, the part 27 rules require all licensees to report alien ownership to enable the Commission to monitor compliance. By establishing parity in reporting obligations, however, the Commission does not establish a single substantive standard for compliance. A non-broadcast applicant requesting authorization only for non-common carrier or private radio services will be subject to 47 U.S.C. 310(a) but not to the additional prohibitions of 47 U.S.C. 310(b). An applicant requesting authorization for new broadcast or common carrier services will be subject to both 47 U.S.C. 310(a) and 47 U.S.C. 310(b). Regarding foreign ownership of common carrier licenses under 47 U.S.C. 310(b)(4), the Commission will continue to apply the foreign ownership precedent set forth in prior Commission decisions.

c. Spectrum Aggregation Limits

70. The Commission will impose no specific limitations on the aggregation of spectrum in the Lower 700 MHz Band. Consistent with the Commission's *Spectrum Cap Report and Order* (67 FR 1626, January 14, 2002) the Commission believes entities should have the flexibility to aggregate Lower 700 MHz spectrum subject only to its 47 U.S.C. 310(d) public interest review.

71. Accordingly, the Commission will not adopt any Lower 700 MHz in-band or 700 MHz cross-band aggregation limits. The Commission agrees that parties should be afforded flexibility at auction or in the secondary market to aggregate sufficient unencumbered spectrum and to commence new services. The Commission recognizes that a single entity could acquire all 48 megahertz of the Lower 700 MHz Band spectrum in any given geographic area. The Commission believes, however, that given the high level of incumbency in the band and the need for flexibility to engineer around incumbent broadcasters, certain aggregations of spectrum may be in the public interest.

72. The Commission has also determined that the Lower 700 MHz Band should not be subject to any out-of-band aggregation limits, including the CMRS spectrum cap. The Commission disagrees with claims that exempting this band from the spectrum cap would lead to excessive concentration of spectrum in the hands of mega-carriers. Given the additional flexibility the Commission is permitting for the provision of new broadcast services, it is not clear that this spectrum will be used for CMRS. In addition, the Lower 700 MHz Band spectrum is significantly encumbered and is likely to remain so during the DTV transition, especially by the operations of DTV incumbents who await relocation to the core DTV spectrum. Thus, compared to the Upper 700 MHz Commercial Band, there is even less reason to extend the spectrum cap to the Lower 700 MHz Band. Moreover, to count this spectrum against the spectrum cap would be inconsistent with the Commission's decision to sunset the cap three months after the statutory deadline for auctioning Lower 700 MHz Band licenses.

d. License Term; Renewal Expectancy

73. Consistent with § 27.13(b) of the Commission's rules, the Commission is establishing a license expiration date of January 1, 2015 for Lower 700 MHz Band licenses. Because licensees need additional time to develop and use this spectrum in light of its continued use by incumbent broadcasters, the Commission has set an expiration date that is eight years after the earliest date that incumbent broadcasters may be required to vacate the Lower 700 MHz Band. The Commission is setting a definite license term that terminates January 1, 2015. The Commission believes that eight additional years will provide new licensees a reasonable period in which to comply with the performance requirements set forth in the *R&O*. If the continued presence of a substantial number of incumbents remains beyond this date, the Commission will consider whether extensions are warranted at that time. For licensees that elect to commence new broadcast operations prior to January 1, 2007, their renewal deadline will be set at the end of an eight-year term following commencement of such broadcast operations.

74. The Commission also is adopting the right to a renewal expectancy established in § 27.14(b), 47 CFR 27.14(b), for non-broadcast services. To claim a renewal expectancy, a Lower 700 MHz Band renewal applicant involved in a comparative renewal

proceeding must demonstrate, at a minimum, the showing required in § 27.14(b) of the Commission's rules. In the event that a license is partitioned or disaggregated, the Commission will permit any partitionee or disaggregatee to hold its license for the remainder of the original licensee's license term and obtain a renewal expectancy on the same basis as other licensees in the Lower 700 MHz Band. All licensees meeting the Lower 700 MHz Band's performance requirements will be deemed to have met this element of the renewal expectancy requirement regardless of which of the construction options the licensee has chosen.

e. Performance Requirements

75. Consistent with the Commission's approach towards the Upper 700 MHz Commercial Band, the Commission will apply the construction requirement in § 27.14(a) of the Commission's rules to the Lower 700 MHz Band. *See* 47 CFR 27.14(a). Accordingly, a licensee must provide ''substantial service'' to its license service area no later than the end of its license term.

76. Section 27.14(a)'s construction requirement provides the flexibility required to accommodate the new and innovative services that are permitted by the Lower 700 MHz Band's reallocation. The substantial service standard is particularly appropriate for the Lower 700 MHz Band given the highly-encumbered nature of this particular spectrum. The Commission disagrees with those commenters that advocate stricter standards such as an unserved area approach. Because new licensees in different geographic areas will not be similarly situated due to the varying levels of incumbency, specific benchmarks for all new licensees would be inequitable. In contrast, the substantial service standard provides the Commission with flexibility to consider the particular circumstances of each licensee and how the level of incumbency has had an impact on the licensee's ability to build-out and commence service in its licensed area.

77. The Commission adopts the following safe harbors for licensees in the Lower 700 MHz Band to demonstrate substantial service: (1) The construction of four permanent links per one million people in the licensed service area of a licensee that chooses to offer fixed, point-to-point services; (2) the demonstration of coverage for 20 percent of the population of the licensed service area of a licensee that chooses to offer fixed, point-to-multipoint services; and (3) the demonstration of coverage for 20 percent of the population of the licensed service area of a licensee that chooses to offer mobile services.

f. Partitioning and Disaggregation

78. The Commission will permit licensees in the Lower 700 MHz Band to partition their service areas and to disaggregate their spectrum in accordance with § 27.15 of the Commission's rules. *See* 47 CFR 27.15. Compared to an approach that restricts such transfers in the secondary market, the Commission believes that permitting partitioning and disaggregation in the Lower 700 MHz Band improves smaller entities' ability to overcome barriers to entry. The Commission does not agree with certain commenters that allowing licensees to partition and/or disaggregate their licensed spectrum fails to provide opportunities for small entities to enter and compete. As a part of the Commission's broader policy to facilitate efficient use of spectrum by its highest valued use, these allowances provide a mechanism by which all parties, including small businesses and rural telephone companies, can negotiate agreements to modify the geographic or spectral scope of any given license in the Lower 700 MHz Band. The Commission's decisions to adopt multiple blocks of spectrum and MSA/RSA-based service areas for 25 percent of the spectrum are specifically designed to identify an efficient starting point for small entities in this band.

79. A number of commenters recommend that the Commission permit spectrum leasing in the Lower 700 MHz Band. The Commission finds that a Lower 700 MHz Band licensee's right to lease its spectrum usage rights will be subject to decisions the Commission make in the Secondary Markets proceeding.

4. Operating Rules

80. The Commission has considered operating rules for a full range of possible licensees in the Lower 700 MHz Band and believe part 27 provides an appropriate licensing framework for this spectrum. The part 27 rules provide for the potential application of specific operating provisions contained in other parts of the Commission's rules. *See* 47 CFR 27.3.

a. Forbearance

81. The Commission declines to adopt additional forbearance initiatives in this proceeding. Although the Commission solicited comment on the proper application of the Commission's forbearance authority with respect to the Lower 700 MHz Band, the Commission received no comments on the appropriate interpretation of the forbearance criteria in this context and only general proposals concerning additional forbearance from regulatory provisions applicable to service providers operating on this spectrum. The Commission continues to invite suggestions on ways in which it can alleviate or streamline regulations that would otherwise be applicable to Lower 700 MHz Band services.

b. Equal Employment Opportunity

82. Consistent with the approach adopted in the *Upper 700 MHz First Report and Order*, the Commission finds that an applicant's Equal Employment Opportunity (EEO) requirements will depend on the type of service the applicant chooses to elect on its FCC Form 601. As explained in the *R&O*, the Commission's FCC Form 601 enables an applicant to choose one, or several, regulatory statuses, including common carrier, non-common carrier, private internal communications and/or broadcast services. All CMRS providers are subject to the Commission's EEO requirements in §§ 22.321 and 90.168 of the Commission's rules. The Commission also notes that CMRS providers are generally subject to the Commission's common carrier EEO obligations. *See* 47 CFR 1.815.

83. A licensee that provides broadcast service will be subject to the EEO rules contained in § 73.2080 of the Commission's rules. The U.S. Court of Appeals for the D.C. Circuit held a portion of the broadcast EEO rule unconstitutional and vacated the rule in *MD/DC/DE Broadcasters Associations v. FCC* (236 F.3d 13 (D.C. Cir.), *rehearing denied*, 253 F.3d 732 (D.C. Cir. 2001), *pet. for cert. filed, MMTC v. MC/DC/DE Broadcasters Ass'n*, No. 01–639 (October 17, 2001)). The Commission thereafter suspended the EEO program requirements (but not the nondiscrimination requirement) for broadcasters, cable entities, and multichannel video program distributors (MVPDs) until further order of the Commission. That suspension order is still in effect. The Commission recently proposed new EEO requirements for broadcast, cable and MVPDs that would be consistent with the court's decision in *MD/DC/DE Broadcasters Associations*. Thus, licensees who elect to provide broadcast services will be required to comply with the nondiscrimination requirement currently in effect and any other EEO requirements that may subsequently be adopted by the Commission.

5. Competitive Bidding Procedures

84. Pursuant to statutory mandate, competitive bidding procedures will be

used to assign licenses for spectrum in the Lower 700 MHz band.

a. Incorporation by Reference of the Part 1 Standardized Auction Rules

85. The Commission will use the general competitive bidding rules set forth in part 1, subpart Q, of its rules to conduct the auction of initial licenses in the Lower 700 MHz Band. The Commission's decision to adopt the part 1 rules is consistent with its ongoing effort to streamline the Commission's general competitive bidding rules for all radio services that are subject to competitive bidding and increase the efficiency of the competitive bidding process. Application of the part 1 rules will be subject to any modifications that the Commission may subsequently adopt.

86. The Commission will attribute casino gaming revenues in determining eligibility for small business preferences. The Commission's part 1 rules include an attribution rule that requires auction applicants to include gaming revenues in the calculations used to determine eligibility for small business status. The Commission adopted this policy in recognition that gaming revenues are exceptional revenues that, if not attributed to the applicant, could create an unfair competitive advantage with regard to all other applicants, and not just other Indian tribes. The Commission's attribution rules make no distinction among the types of businesses from which an attributable entity's gross revenues might arise, nor do they consider whether that entity is profitable. Given that gaming revenues are available for telecommunications uses, the Commission finds no basis to grant tribal entities an exemption from the attribution rule for gaming revenues. To the extent that tribal entities seek licenses with the intention to serve tribal lands, however, they may benefit from the Commission's policies and rules under which the Commission will award bidding credits in future auctions, including the Lower 700 MHz auction, for winning bidders who use licenses to deploy facilities and provide service to federally-recognized tribal areas that are either unserved by any telecommunications carrier or that have a telephone service penetration rate below 70 percent.

87. The Commission acknowledges certain commenters concerns regarding the use of combinatorial bidding procedures, but regards them as speculative at this time. The Commission notes that, consistent with statutory obligations, the Wireless Telecommunications Bureau (WTB) will seek comment on auction-related procedural issues, including auction design, prior to the start of the Lower 700 MHz auction pursuant to WTB's existing delegated authority. This will provide WTB with an opportunity to weigh the benefits and disadvantages of any particular bidding design, among other auction-specific issues (*e.g.*, minimum opening bids), prior to the start of the Lower 700 MHz Band auction.

b. Provisions for Designated Entities

88. The Commission will extend bidding preferences to small business entities that seek an opportunity to participate in an auction of Lower 700 MHz Band licenses. The Commission has long recognized that bidding preferences for qualifying bidders provides such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission has also found that the use of tiered or graduated small business definitions is useful in furthering the Commission's mandate under 47 U.S.C. 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants.

89. The Commission will adopt the same two small business definitions for the EAG-based licenses in the Lower 700 MHz Band that were applied to the EAG-based licenses in the Upper 700 MHz Commercial Band. Specifically, with respect to all EAG-defined licenses in the Upper and Lower 700 MHz Bands, the Commission will define a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, and a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million. The Commission believes that the considerations that formed the basis for its decision in the Upper 700 MHz Band proceeding are equally applicable with respect to the larger, EAG-based licenses that the Commission is establishing in this decision.

90. The Commission concludes that a third small business definition should be extended to those Lower 700 MHz Band licenses that are defined on the basis of MSAs and RSAs. In light of the expressions of interest in this proceeding by small business and rural interests in favor of smaller license areas, the Commission agrees to use the third small business definition that was suggested in the *NPRM* to allow ''small business and rural telecommunications providers to participate more meaningfully'' in a Lower 700 MHz Band auction. The Commission anticipates that new services that may be deployed in the smaller, non-EAG license areas could have different characteristics and capital requirements. Many of the same considerations that led the Commission to adopt smaller-sized licenses in the Lower 700 MHz Band also favor the use of a third small business size standard for those non-EAG licenses. Some new services that may be deployed in the smaller license areas may have lower capital requirements than for the larger EAG-based licenses. For example, these smaller license areas may be suited to applications with relatively low costs, such as fixed broadband wireless services which use only the ''white areas'' of a heavily-encumbered, smaller license area. In this regard, the Commission believes that this situation is analogous to that of the 24 GHz service, in which license areas were defined on the basis of EAs and a broad range of services were permitted. For these reasons, the Commission will use three small business definitions for the MSA and RSA-based licenses in the Lower 700 MHz Band, and will adjust the terms for size standards in this service accordingly. Thus, for services in the Lower 700 MHz Band, the Commission defines a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and an ''entrepreneur'' as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. Qualifying small businesses will be entitled to a bidding credit of 15 percent, qualifying very small businesses will be entitled to a 25 percent bidding credit, and qualifying entrepreneurs will be entitled to a 35 percent bidding credit.

91. We do not agree with commenters that criticize the Commission's designated entity preference program on the grounds that it has not been successful in meeting its objectives. The Commission's analysis of the results of its auction of licenses in the 39 GHz band demonstrates that small businesses can and will successfully compete for licenses. In that auction, entities that had average gross revenues of not more than $40 million for the three preceding years (including those that had average gross revenues of not more than $15 million for the preceding three years) successfully bid for 849 licenses, or almost 40 percent of the licenses sold. Such small businesses also successfully bid for 21 of the 46 licenses in the

largest EAs (defined for this purpose as the top 25 percent of the EAs, as ranked by population). The Commission believes that the use of a third small entity definition may result in the dissemination of Lower 700 MHz Band licenses among an even wider range of small business entities, consistent with the Commission's obligations under 47 U.S.C. 309(j)(3)(B).

92. The Commission does not find that the Communications Act requires it to adopt an independent bidding credit for large telephone companies that serve rural areas. The consideration of this issue is guided by a line of Commission decisions in which the Commission has consistently found no basis for establishing an independent bidding credit for large telephone companies in rural areas. Large rural telcos have failed to demonstrate any barriers to capital formation similar to those faced by other designated entities. Rural telcos have access to low-cost financing through the National Rural Utilities Cooperative Finance Corporation, and may seek below-market rate lending through the Department of Agriculture's Rural Utilities Service. These financing options suggest that rural telephone companies may have greater ability than other designated entities to attract capital. The Commission also notes that, in conducting the analysis of its 39 GHz auction, all six qualified bidders that identified themselves on their short-form applications as rural telephone companies were successful at auction.

93. The Commission will apply unjust enrichment penalties to assignments of this spectrum. Congress has directed the Commission to establish rules that prevent unjust enrichment. Having recognized the potential for abuse of its designated entity preference policies, the Commission has established unjust enrichment rules to safeguard against speculation in the auction process and participation by entities that lack *bona fide* intent to offer communications services. The Commission does not rescind the entire bidding discount from a designated entity that partitions or disaggregates portions of its license to a non-qualifying entity. Rather, in such cases, the licensee is required to remit an unjust enrichment payment only in an amount equal to the proportion of the population in the partitioned area. The Commission notes that the question of the applicability of the unjust enrichment rules to leasing situations is under consideration in the Commission's Secondary Markets proceeding and defers its consideration of this issue to that proceeding.

94. The Commission remains committed to meeting the statutory objectives of promoting economic opportunity and competition, avoiding excessive concentration of licenses, and ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. The Commission stated that it will continue to track the rate of participation in the Commission's auctions by minority- and women-owned firms and evaluate this information with other data gathered to determine whether additional provisions to promote participation by minorities and women are warranted.

c. Public Notice of Initial Applications/ Petitions to Deny

95. The Commission intends to follow the time periods set forth under § 1.2108 of the Commission's rules. *See* 47 CFR 1.2108. The Commission has recognized that, in most cases, a ten-day filing period serves the public interest by providing parties, including small businesses, more flexibility in challenging license awards than a five-day period. The Commission also confirms, however, that WTB may, in its discretion, shorten that period to five days, if exigent circumstances exist. In this regard, the Commission notes that the statutory auction deadline is approaching, and that it may be necessary to limit this period to comply with that deadline. In addition, the other time periods set forth in § 1.2108 will apply, including the requirement to allow at least seven days following the issuance of the public notice that long-form applications have been accepted for filing before acting on any such application.

6. Measures to Facilitate Early Clearing of the Lower 700 MHz Band and Accelerate the DTV Transition

a. Voluntary Band-Clearing Policies

96. The Commission agrees with those commenters that argue that any efforts to clear this band must be purely voluntary. However, in light of certain differences between the Upper and Lower 700 MHz Bands, the Commission concludes that the Commission should employ a different approach from that established for the Upper 700 MHz Band. For instance, there is no public safety allocation in the Lower 700 MHz Band, and there is a significantly greater degree of broadcast incumbency relative to the Upper 700 MHz Band. In addition, the Commission notes that Congress has directed it to reclaim the Upper 700 MHz Band for public safety and commercial use under an accelerated time frame, but did not accord the same priority to recovery of the Lower 700 MHz Band. Therefore, rather than apply the presumptions that the Commission established in the Upper 700 MHz Band for analyzing voluntary band-clearing proposals, the Commission will not adopt any rules, and will instead rely on the Commission's basic responsibility to consider any regulatory requests related to band clearing in the Lower 700 MHz Band on a case-by-case basis, considering all relevant public interest factors. Broadcasters seeking to implement early band-clearing agreements must generally comply with existing broadcast rules and policies. Accordingly, the Commission does not extend to the Lower 700 MHz Band the extended DTV construction period that was provided to certain single-channel broadcasters in connection with the arrangements for early clearing of the Upper 700 MHz Band.

b. Other Issues

97. Although the Commission did not seek comment in the *NPRM* on broader issues relating the DTV transition process generally, a number of commenters urge the Commission to adopt proposals that they have been advocating in the Commission's DTV and DTV must-carry proceedings. The Commission believes that these requests in this proceeding do not raise distinctive or additional factual or policy considerations that justify departure from the broad determinations made or under consideration in those other proceedings. The Commission therefore defers consideration of those requests to the proper proceedings.

98. The Commission agrees that incumbent broadcasters and new 700 MHz licensees should not be constrained from developing new and innovative approaches to band clearing, however, the Commission declines to adopt a rule of general applicability for approving sharing arrangements at this time, particularly in light of the limited record on the issue. While the Commission does not adopt a general sharing rule at this time, the Commission will consider any such proposal on a case-by-case basis.

Final Regulatory Flexibility Act Analysis

99. As required by section 603 of the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix C of the *NPRM* in this proceeding. The Commission sought written public

comment on the proposals set forth in the *NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) complies with the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA) (Public Law No. 104–121, 110 Stat. 847 (1996)).

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

100. In the *R&O*, the Commission adopts rules to reclaim and reallocate the Lower 700 MHz Band currently used for TV Channels 52–59, for new commercial services as part of the Commission's transition of TV broadcasting from analog to digital transmission systems, consistent with the statutory directives enacted in the Balanced Budget Act of 1997. This *R&O* reallocates the entire 48 megahertz of spectrum in the Lower 700 MHz Band to fixed and mobile services, while retaining the existing broadcast allocation. The *R&O* establishes technical criteria designed to protect incumbent television operations in the band during the DTV transition period, allows LPTV and TV translator stations to retain secondary status and operate in the band after the transition, and sets forth a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58. The decision to reallocate this band in a manner that will permit new licensees to provide a broad range of services was guided by the Commission's previously announced policies favoring flexible spectrum allocations. This reallocation is also consistent with the Commission's obligations under sections 303(y) and 309(j)(3) of the Communications Act.

101. The *R&O* also establishes service rules for the Lower 700 MHz Band using the flexible regulatory framework in part 27 of the Commission's rules. In particular, the band plan for the Lower 700 MHz Band divides this spectrum into three 12-megahertz blocks (with each block consisting of a pair of 6-megahertz segments) and two 6-megahertz blocks of contiguous, unpaired spectrum. The Commission will license the five blocks in the Lower 700 MHz Band plan as follows: the two 6-megahertz blocks of contiguous unpaired spectrum, as well as two of the three 12-megahertz blocks of paired spectrum, will be assigned over six EAGs; the remaining 12 megahertz block of paired spectrum will be licensed over 734 MSAs and Rural Service Areas RSAs. The service rules have been designed to promote the objectives identified in 47 U.S.C. 309(j), including the development and rapid deployment of new technologies, products, and services for the benefit of the public; the promotion of economic opportunity and competition; the recovery of a portion of the value of the spectrum made available for commercial use; and the efficient and intensive use of the spectrum.

102. Although the decisions in the *R&O* were patterned on the approach adopted for the Upper 700 MHz Band, the *R&O* adopts a geographic area licensing approach to assign licenses in the Lower 700 MHz Band that includes smaller license areas than were established for the Upper 700 MHz Band. As with the Upper 700 MHz Band, the *R&O* for the Lower 700 MHz Band also uses relatively small spectrum block sizes. The 48 megahertz of spectrum that comprises the Lower 700 MHz Band will be licensed with two six-megahertz blocks of contiguous unpaired spectrum and two 12-megahertz blocks of paired spectrum over 6 EAGs. The remaining 12-megahertz block of paired spectrum will be licensed over 734 MSAs/RSAs.

103. The use of these small license areas also is intended to satisfy the Commission's obligations in prescribing characteristics of licenses to ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' 47 U.S.C. 309(j)(3)(B). Establishing such small license areas also furthers the Commission's obligation to ''prescribe area designations and bandwidth assignments that promote '' economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' 47 U.S.C. 309(j)(4)(C).

104. The *R&O* also establishes competitive bidding rules and voluntary clearing procedures for the Lower 700 MHz Band. Consistent with the Commission's responsibility under 47 U.S.C. 309(j) to promote opportunities for, and disseminate licenses to, a wide variety of applicants, the *R&O* also adopts small business size standards and bidding preferences for qualifying bidders that will provide such bidders with opportunities to compete successfully against large, well-financed entities. In particular, for services in the Lower 700 MHz Band, the Commission has defined a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and an ''entrepreneur'' as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. The Commission will use its standard schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules. *See* 47 CFR 1.2110(f)(2). The entrepreneur standard and associated 35 percent bidding credit will, however, not apply to the larger EAG-based licenses in the Lower 700 MHz Band. Drawing on recent precedent involving another flexible-use service (the 24 GHz service), the Commission found that ''[b]ecause the capital costs of operational facilities in the '' band are likely to vary widely, the Commission believe that the use of three small business definitions will be useful in promoting opportunities for a wide variety of applicants * * *.'' The Commission has concluded that these bidding credits will provide adequate opportunities for small businesses to participate in the Lower 700 MHz Band auction.

105. The *R&O* also establishes a policy of permitting incumbent broadcasters and new licensees to reach voluntary agreements that would result in the early clearing of incumbents from the Lower 700 MHz spectrum. These policies are intended to further the Commission's objective of establishing rules that will facilitate, rather than hinder, the clearing of incumbent broadcasters from this spectrum in a manner consistent with the Commission's DTV transition policy goals.

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

106. Only one commenter, the National Telephone Cooperative Association (NTCA), specifically raises issues in response to the IRFA. NTCA urges the Commission to assign spectrum in the Lower 700 MHz Band across small geographic areas, arguing that small businesses such as rural telephone companies cannot compete against large carriers in auctions for large geographic areas. According to NTCA, assigning at least a portion of this spectrum across small geographic areas will allow small providers an opportunity to bid on, acquire, and develop service in the more limited areas in which they wish to operate. In

response to comments made by NTCA and other small business interests on this issue, the Commission decided to use the smallest geographic area option that was described in the *NPRM*, the 734 MSAs and RSAs, for 12 of the 48 megahertz of spectrum in the Lower 700 MHz Band.

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

107. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' under section 3 of the Small Business Act. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. According to SBA reporting data, there were approximately 4.44 million small business firms nationwide in 1992. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 local governments in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. The Commission therefore estimates that, of the 85,006 governmental entities, 81,600 (96 percent) are small entities. The Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by the rules adopted in the *R&O*.

108. The policies and rules adopted in the *R&O* and discussed in this FRFA will affect all entities, including small entities, that seek to acquire licenses in wireless services in the 698–746 MHz band, or are television broadcasters in this band.

109. *Wireless services.* The policies and rules adopted in this *R&O* affect all small entities that seek to acquire licenses in wireless services in the Lower 700 MHz Band currently used for television broadcasts on Channels 52–59, or are incumbent television broadcasters on Channels 52–59. The Commission has adopted small business size standards that define a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and an ''entrepreneur'' as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. (The entrepreneur standard does not extend to the larger EAG-based licenses in the Lower 700 MHz Band.) The SBA has approved this small business size standard for the Lower 700 MHz auction. However, the Commission cannot know until the auction begins how many entities will seek entrepreneur, small business, or very small business status. The Commission will allow partitioning and disaggregation, yet it cannot determine in advance how many licensees will partition their license areas or disaggregate their spectrum blocks. In view of the Commission's lack of knowledge of these factors, it is therefore assumed that, for purposes of the Commission's evaluations and conclusions in the FRFA, all of the prospective licenses are small entities, as that term is defined by the SBA or the Commission's small business definitions for these bands.

110. *Television Broadcast.* The SBA defines a television broadcasting station as a small business where it is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. There were 1,509 television stations operating in the United States in 1992, of which 1,155 (76.5 percent) produced less than $10.0 million in revenue. As of May 31, 1998, official Commission records indicate that 1,579 full power television stations, 2,089 low power television stations, and 4,924 television translator stations were licensed. Using the percentage of television broadcasting licensees that were small entities in 1992 (76.5 percent) and the 1998 records indicating 1,579 full power stations, the Commission concludes that there are approximately 1,208 full power television stations that are small entities.

111. The rules adopted in the *R&O* may affect approximately 1,663 television stations currently operating in the Lower 700 MHz Band, approximately 1,281 of which are considered small businesses. In addition, the rules adopted in the *R&O* will affect some 12,717 radio stations currently operating in this band, approximately 12,209 of which are small businesses. These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,366 LPTV stations. Given the nature of this service, the Commission presume that all LPTV licensees qualify as small entities under the SBA definition.

112. *Auxiliary or Special Broadcast.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable SBA definition is that noted previously, under the SBA rules applicable to television broadcasting stations. The Commission estimates that there are approximately 2,700 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. The Commission believes that most, if not all, of these auxiliary facilities could be classified as small businesses if viewed apart from any associated broadcasters. The Commission also recognizes that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($10.5 million for a TV

station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.

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

113. Entities interested in acquiring initial licenses for new services in the 698–746 MHz band will be required to submit short form applications (FCC Form 175) to participate in an auction and high bidders will be required to apply for their individual licenses. Also, commercial licenses will be required to make showings that they are in compliance with construction requirements, file applications for license renewals, and make certain other filings as required by the Communications Act and Commission regulations. Entities seeking to acquire licenses (or disaggregated or partitioned portions of licenses) from Commission licensees in the post-auction market are also required to submit long-form applications (FCC Form 601) seeking Commission authority to complete any such transactions. In addition to the general licensing requirements of part 27 of the Commission's rules, other parts may be applicable to commercial licensees, depending on the nature of service provided. For example, commercial licensees proposing to provide broadcast services on these bands may be required to comply with all or part of the broadcast-specific regulations in part 73 of the Commission's rules.

114. By this *R&O*, the Commission requires licensees to notify the Commission within 30 days of a change in regulatory status between common carrier and/or non-common carrier. In addition, because the Commission considers partitioning and disaggregation to be a form of license assignment, the Commission requires such action to receive Commission approval via application for assignment on FCC Form 603. With regard to alien ownership, the Commission requires licensees to amend their FCC Form 602 to reflect any changes in foreign ownership information, together with the initial information required by FCC Form 601.

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

115. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its decision, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

116. Commenters in this proceeding recommend a variety of steps the Commission may take to lessen the impact on small businesses while assigning spectrum in the Lower 700 MHz Band. For example, the majority of commenters advocate the use of small geographic license areas, especially MSAs and RSAs, so that small providers may avoid having to bid on areas that are larger than they need. A few commenters suggest the Commission could benefit small providers in a similar manner by assigning the spectrum across multiple blocks, and one party urges a set-aside for small businesses. Another commenter argues that spectrum aggregation limits must be maintained so as to prevent an excessive concentration of licenses by large providers that may work against the interests of other competitors.

117. With these RFA requirements and comments from the record in mind, the Commission adopts rules in the *R&O* that are designed to reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. They increase economic opportunities to a variety of spectrum users, including small businesses. Specifically, the Commission reallocates the entire 48 megahertz of spectrum in the 698–746 MHz band to fixed and mobile services, while retaining the existing broadcast allocation. New licensees, including smaller entities, will enjoy flexible use for the full range of proposed allocated services consistent with necessary interference requirements.

118. In addition, the Commission adopts rules on spectrum block size and geographic areas that may be of even greater significance for small entities. For example, with respect to the size of spectrum blocks for licensees, the Commission declines to allocate the 48 megahertz over a single block, instead choosing an allocation over multiple blocks of six and twelve megahertz each. The Commission also permits disaggregation and partitioning of these spectrum blocks. With respect to the size of geographic license areas, the Commission allocates licenses over large regional EAGs as well as small MSAs/RSAs. As small business commenters have observed, a MSA/RSA-based license area may be a particularly appropriate alternative for small providers that wish to avoid having to acquire a larger license area that they must subsequently partition. At the same time, consistent with the Commission's flexible approach, the Commission allows both partitioning and aggregation of all of these licenses, such that licensees may increase or decrease the size of their service areas to better meet market demands. Because the Commission believes that the use of multiple spectrum blocks and MSAs/RSAs effectively meets the needs of small providers, it therefore declines to adopt other suggested alternatives, such as spectrum aggregation limits, in this band.

119. The Commission further notes that the *R&O* adopts small business definitions and preferences for qualifying bidders in the 698–746 MHz band. These standards define an ''entrepreneur'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. Although the Commission had initially proposed the adoption of only two small business definitions, it has found that the use of a third small business definition for MSA/RSA-based licenses will allow small business and rural telecommunications providers to participate more meaningfully in a Lower 700 MHz Band auction.

120. Finally, the *R&O* establishes a policy of permitting incumbent broadcasters and new licensees to reach voluntary agreements that would result in the early clearing of the Lower 700 MHz spectrum. Broadcasters electing to enter into such agreements may be required to seek Commission approvals in order to implement such agreements. Such regulatory requests may be submitted using existing application forms. Because the Commission's policy is entirely voluntary, broadcasters and new licensees, including small entities, are under no obligation to enter into such early clearing arrangements or to seek Commission approval of same.

121. The regulatory burdens contained in the *R&O,* such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and

efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

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

Paperwork Reduction Act of 1995 Analysis

123. This *R&O* contains either a new or modified information collection. The Commission is seeking immediate approval for the information collection contained herein pursuant to the ''emergency processing'' provisions of the Paperwork Reduction Act of 1995. *See* 5 CFR 1320.13. The Commission will publish a document in the **Federal Register** announcing the effective date of the information collection.

Procedural Matters and Ordering Clauses

124. Pursuant to sections 1, 2, 4(i), 5(c), 7, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535, this *R&O* is hereby ADOPTED and parts 2, 27 and 73 of the Commission's rules, 47 CFR parts 2, 27 and 73, ARE AMENDED to establish service rules for the 698–746 MHz band, as set forth in the *R&O,* effective April 8, 2002. The information collection contained in these rules will become effective upon OMB approval.

125. *Authority is delegated* to the Mass Media Bureau to implement the policies for the introduction of new wireless services and to promote the early transition of incumbent analog television licensees to DTV service *to the extent discussed in the R&O.*

126. A 45-day filing window period *will commence* on January 22, 2002 and *will end* March 8, 2002 for applicants to amend their pending proposals in accordance with the policies and procedures set forth in the *R&O.*

127. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Radio, Television.

47 CFR Part 27

Communications common carriers, Radio.

47 CFR Part 73

Radio, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 27, and 73 as follows:

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

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

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

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Revise page 37.

b. In the International Footnotes under heading I., revise footnotes S5.293, S5.296, and S5.297.

c. In the list of non-Government (NG) Footnotes, revise footnotes NG149 and NG159.

§ 2.106 Table of Frequency Allocations.

* * * * *

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470-849 MHz (UHF) Page 37

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile S5.292 S5.293	470-585 FIXED MOBILE BROADCASTING S5.291 S5.298	470-608	470-512 BROADCASTING NG128 NG149 FIXED NG127 LAND MOBILE NG66 NG114	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING S5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION S5.149 S5.305 S5.306 S5.307		512-608 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	610-890 FIXED MOBILE S5.317A BROADCASTING	608-614 RADIO ASTRONOMY US74 LAND MOBILE US350 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile		614-890	614-698 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
				698-746 BROADCASTING NG128 FIXED MOBILE NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)

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International Footnotes

* * * * *

I. New ''S'' Numbering Scheme

* * * * *

S5.293 Different category of service: in Canada, Chile, Colombia, Cuba, the United States, Guyana, Honduras, Jamaica, Mexico, Panama and Peru, the allocation of the bands 470–512 MHz and 614–806 MHz to the fixed and mobile services is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21. In Argentina and Ecuador, the allocation of the band 470–512 MHz to the fixed and mobile services is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21.

* * * * *

S5.296 Additional allocation: in Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Lithuania, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, Syria, the United Kingdom, Sweden, Switzerland, Swaziland and Tunisia, the band 470–790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries listed in this footnote shall not cause harmful interference to existing or planned stations operating in accordance with the Table of Frequency Allocations in countries other than those listed in this footnote.

S5.297 Additional allocation: in Costa Rica, Cuba, El Salvador, the United States, Guatemala, Guyana, Honduras, Jamaica and Mexico, the band 512–608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under No. S9.21.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG149 The frequency bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–512 MHz, 512–608 MHz, and 614–698 MHz are also allocated to the fixed service to permit subscription television operations in accordance with part 73 of the rules.

* * * * *

NG159 Full power analog television stations licensed and new digital television (DTV) broadcasting operations in the band 698–806 MHz shall be entitled to protection from harmful interference until the end of the DTV transition period. Low power television and television translators in the band 746–806 MHz must cease operations in the band at the end of the DTV transition period. Low power television and television translators in the band 698–746 MHz are secondary to all other operations in the band 698–746 MHz.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

3. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

4. Section 27.1 is amended by adding paragraph (b)(3) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(3) 698–746 MHz.

* * * * *

5. Section 27.3 is amended by redesignating paragraph (n) as paragraph (p), and by adding new paragraphs (n) and (o) to read as follows:

§ 27.3 Other applicable rule parts.

* * * * *

(n) *Part 73.* This part sets forth the requirements and conditions applicable to radio broadcast services.

(o) *Part 90.* This part sets forth the requirements and conditions applicable to private land mobile radio services.

* * * * *

6. Section 27.5 is amended by adding paragraph (c) to read as follows:

§ 27.5 Frequencies.

* * * * *

(c) *698–746 MHz band.* The following frequencies are available for licensing pursuant to this part in the 698–746 MHz band:

(1) Three paired channel blocks of 12 megahertz each are available for assignment as follows:

Block A: 698–704 MHz and 728–734 MHz;

Block B: 704–710 MHz and 734–740 MHz; and

Block C: 710–716 MHz and 740–746 MHz.

(2) Two unpaired channel blocks of 6 megahertz each are available for assignment as follows:

Block D: 716–722 MHz; and

Block E: 722–728 MHz.

7. Section 27.6 is amended by adding paragraph (c) to read as follows:

§ 27.6 Service areas.

* * * * *

(c) *698–746 MHz band.* WCS service areas for the 698–746 MHz band are as follows.

(1) Service areas for Blocks A, B, D, and E in the 698–746 MHz band are based on Economic Area Groupings (EAGs) as defined in paragraph (b)(2) of this section.

(2) Service areas for Block C in the 698–746 MHz band are based on cellular markets comprising Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by Public Notice Report No. CL–92–40 ''Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties,'' dated January 24, 1992, DA 92–109, 7 FCC Rcd 742 (1992), with the following modifications:

(i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline.

(ii) The service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

8. Section 27.10 is amended by revising paragraphs (a), (b), and (c)(1)(ii) to read as follows:

§ 27.10 Regulatory status.

* * * * *

(a) *Single authorization.* Authorization will be granted to provide any or a combination of the following services in a single license: common carrier, non-common carrier, private internal communications, and broadcast services. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service. An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status for which authorization is required to provide a specific communications service.

(b) *Designation of regulatory status in initial application.* An applicant shall specify in its initial application if it is requesting authorization to provide common carrier, non-common carrier, private internal communications, or broadcast services, or a combination thereof.

(c) * * *

(1) * * *

(ii) Add to the pending request in order to obtain common carrier, non-common carrier, private internal communications, or broadcast services status, or a combination thereof, in a single license.

* * * * *

9. Section 27.11 is amended by adding paragraph (d) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(d) *698–746 MHz band.* Initial authorizations for the 698–746 MHz band shall be for 6 or 12 megahertz of spectrum in accordance with § 27.5(c).

(1) Authorizations for Blocks A and B, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(1).

(2) Authorizations for Block C, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(2).

(3) Authorizations for Blocks D and E, consisting of an unpaired channel block of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(1).

10. Section 27.13 is amended by revising paragraph (b) to read as follows:

§ 27.13 License period.

* * * * *

(b) *698–764 MHz and 776–794 MHz bands.* Initial authorizations for the 698–764 MHz and 776–794 MHz bands will extend until January 1, 2015, except that a part 27 licensee commencing broadcast services will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations.

11. Section 27.50 is amended by redesignating paragraph (c) as paragraph (d), adding a new paragraph (c), and revising the heading of Table 1, which follows newly redesignated paragraph (d), to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(c) The following power and antenna height requirements apply to stations transmitting in the 698–746 MHz band:

(1) Fixed and base stations are limited to a maximum effective radiated power (ERP) of 50 kW, with the limitation on antenna heights as follows:

(i) Fixed and base stations with an ERP of 1000 watts or less must not exceed an antenna height of 305 m height above average terrain (HAAT) except when the power is reduced in accordance with Table 1 of this section;

(ii) The antenna height for fixed and base stations with an ERP greater than 1000 watts but not exceeding 50 kW is limited only to the extent required to satisfy the requirements of § 27.55(b).

(2) Control and mobile stations are limited to 30 watts ERP.

(3) Portable stations (hand-held devices) are limited to 3 watts ERP.

(4) Maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(5) Licensees intending to operate a base or fixed station at a power level greater than 1 kW ERP must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees that must be notified are all licensees authorized under this part to operate a base or fixed station on an adjacent spectrum block at a location within 75 km of the base or fixed station operating at a power level greater than 1 kW ERP. Notices must provide the location and operating parameters of the base or fixed station operating at a power level greater than 1 kW ERP, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notices must be provided at least 90 days prior to the commencement of station operation.

* * * * *

Table 1—Permissible Power and Antenna Heights for Base and Fixed Stations in the 698–764 MHz and 777–792 MHz Bands

* * * * *

12. Section 27.53 is amended by redesignating paragraph (f) as paragraph (g), and adding a new paragraph (f) to read as follows:

§ 27.53 Emission limits.

* * * * *

(f) For operations in the 698–746 MHz band, the power of any emission outside a licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by at least 43 + 10 log (P) dB. Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kilohertz or greater. However, in the 100 kilohertz bands immediately outside and adjacent to a licensee's frequency block, a resolution bandwidth of at least 30 kHz may be employed.

* * * * *

13. Section 27.55 is revised to read as follows:

§ 27.55 Signal strength limits.

(a) *Field strength limits.* For the following bands, the predicted or measured median field strength at any location on the geographical border of a licensee's service area shall not exceed the value specified unless the adjacent affected service area licensee(s) agree(s) to a different field strength. This value applies to both the initially offered service areas and to partitioned service areas.

(1) 2305–2320 and 2345–2360 MHz bands: 47 dBμ V/m.

(2) 698–764 and 776–794 MHz bands: 40 dBμ V/m.

(b) *Power flux density limit.* For base and fixed stations operating in the 698–746 MHz band, with an effective radiated power (ERP) greater than 1 kW, the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

14. Section 27.57 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 27.57 International coordination.

* * * * *

(b) Operation in the 698–764 MHz and 776–794 MHz bands is subject to international agreements between Mexico and Canada. Unless otherwise modified by international treaty, licenses must not cause interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada.

15. Section 27.60 is amended by revising introductory text, paragraphs (a)(1) and (b) to read as follows:

§ 27.60 TV/DTV interference protection criteria.

Base, fixed, control, and mobile transmitters in the 698–764 MHz and 776–794 MHz frequency bands must be operated only in accordance with the rules in this section to reduce the potential for interference to public reception of the signals of existing TV and DTV broadcast stations transmitting on TV Channels 51 through 68.

(a) * * *

(1) The minimum D/U ratio for co-channel stations is:

(i) 40 dB at the hypothetical Grade B contour (64 dBμ V/m) (88.5 kilometers (55 miles)) of the TV station;

(ii) For transmitters operating in the 698–746 MHz frequency band, 23 dB at the equivalent Grade B contour (41 dBμ V/m) (88.5 kilometers (55 miles)) of the DTV station; or

(iii) For transmitters operating in the 746–764 MHz and 776–794 MHz frequency bands, 17 dB at the equivalent Grade B contour (41 dBμ V/m) (88.5 kilometers (55 miles)) of the DTV station.

* * * * *

(b) *TV stations and calculation of contours.* The methods used to calculate TV contours and antenna heights above average terrain are given in §§ 73.683 and 73.684 of this chapter. Tables to determine the necessary minimum distance from the 698–764 MHz or 776–794 MHz station to the TV/DTV station, assuming that the TV/DTV station has a hypothetical or equivalent Grade B contour of 88.5 kilometers (55 miles), are located in § 90.309 of this chapter and labeled as Tables B, D, and E. Values between those given in the tables may be determined by linear interpolation. Distances for station parameters greater than those indicated in the tables should be calculated in accordance with the required D/U ratios, as provided in paragraph (a) of this section. The locations of existing and proposed TV/DTV stations during the period of transition from analog to digital TV service are given in part 73 of this chapter and in the final proceedings of MM Docket No. 87–268.

(1) Licensees of stations operating within the ERP and HAAT limits of § 27.50 must select one of four methods to meet the TV/DTV protection requirements, subject to Commission approval:

(i) Utilize the geographic separation specified in Tables B, D, and E of § 90.309 of this chapter, as appropriate;

(ii) When station parameters are greater than those indicated in the tables, calculate geographic separation in accordance with the required D/U ratios, as provided in paragraph (a) of this section;

(iii) Submit an engineering study justifying the proposed separations based on the actual parameters of the land mobile station and the actual parameters of the TV/DTV station(s) it is trying to protect; or,

(iv) Obtain written concurrence from the applicable TV/DTV station(s). If this method is chosen, a copy of the agreement must be submitted with the application.

(2) The following is the method for geographic separations.

(i) Base and fixed stations that operate in the 746–764 MHz and 777–792 MHz bands having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to co-channel and adjacent channel TV/DTV stations in accordance with the values specified in Table B (co-channel frequencies based on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. Base and fixed stations that operate in the 698–746 MHz band having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to adjacent channel DTV stations in accordance with the values specified in Table E in § 90.309 of this chapter, shall afford protection to co-channel DTV stations by providing 23 dB protection to such stations' equivalent Grade B contour (41 dBμ V/m), and shall afford protection to co-channel and adjacent channel TV stations in accordance with the values specified in Table B (co-channel frequencies based on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. For base and fixed stations having an antenna height (HAAT) between 152–914 meters (500–3,000 ft.) the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power reduction graph in Figure B in § 90.309 of this chapter. For heights of more than 152 m. (500 ft.) above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the hypothetical or equivalent Grade B contour of a co-channel TV/DTV station (*i.e.*, it exceeds the distance from the appropriate Table in § 90.309 of this chapter to the relevant TV/DTV station), an authorization will not be granted unless it can be shown in an engineering study (*see* paragraph (b)(1)(iii) of this section) that actual terrain considerations are such as to provide the desired protection at the actual Grade B contour (64 dBμ V/m for TV and 41 dBμ V/m for DTV stations) or unless the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the actual Grade B contour (64 dBμ V/m for TV and 41 dBμ V/m coverage contour for DTV stations) will be achieved. Directions for calculating powers, heights, and reduction curves are listed in § 90.309 of this chapter for land mobile stations. Directions for calculating coverage contours are listed in §§ 73.683 through 73.685 of this chapter for TV stations and in § 73.625 of this chapter for DTV stations.

(ii) Control, fixed, and mobile stations (including portables) that operate in the 776–777 MHz and 792–794 MHz bands and control and mobile stations (including portables) that operate in the 698–746 MHz, 747–762 MHz and 777–792 MHz bands are limited in height and power and therefore shall afford protection to co-channel and adjacent channel TV/DTV stations in the following manner:

(A) For control, fixed, and mobile stations (including portables) that operate in the 776–777 MHz and 792–794 MHz bands and control and mobile stations (including portables) that operate in the 747–762 MHz and 777–792 MHz band, co-channel protection shall be afforded in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection for TV stations and 17 dB for DTV stations) in § 90.309 of this chapter.

(B) For control and mobile stations (including portables) that operate in the 698–746 MHz band, co-channel protection shall be afforded to TV stations in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection) and to DTV stations by providing 23 dB protection to such stations' equivalent Grade B contour (41 dBμ V/m).

(C) For control, fixed, and mobile stations (including portables) that operate in the 776–777 MHz and 792–794 MHz bands and control and mobile stations (including portables) that operate in the 698–746 MHz, 747–762 MHz, and 777–792 MHz band, adjacent channel protection shall be afforded by providing a minimum distance of 8 kilometers (5 miles) from all adjacent channel TV/DTV station hypothetical or equivalent Grade B contours (adjacent channel frequencies based on 0 dB protection for TV stations and −23 dB for DTV stations).

(D) Since control, fixed, and mobile stations may affect different TV/DTV stations than the associated base or fixed station, particular care must be taken by applicants/licensees to ensure that all appropriate TV/DTV stations are considered (e.g., a base station may be operating within TV Channel 62 and the mobiles within TV Channel 67, in which case TV Channels 61, 62, 63, 66, 67 and 68 must be protected). Control, fixed, and mobile stations shall keep a minimum distance of 96.5 kilometers (60 miles) from all adjacent channel TV/DTV stations. Since mobiles and portables are able to move and communicate with each other, licensees must determine the areas where the mobiles can and cannot roam in order to protect the TV/DTV stations.

* * * * *

16. Add subpart H to part 27 to read as follows:

Subpart H—Competitive Bidding Procedures for the 698–746 MHz Band

Sec.
27.701 698–746 MHz band subject to competitive bidding.
27.702 Designated entities.

§ 27.701 698–746 MHz band subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 698–746 MHz band are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

§ 27.702 Designated entities.

(a) *Eligibility for small business provisions.* (1) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. This definition applies only with respect to licenses in Block C (710–716 MHz and 740–746 MHz) as specified in § 27.5(c)(1).

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(3) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(4) A consortium of entrepreneurs, a consortium of very small businesses, or a consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the applicable definition in paragraphs (a)(1), (a)(2) or (a)(3) of this section. Where an applicant or licensee is a consortium of entrepreneurs, a consortium of very small businesses, or a consortium of small businesses, the gross revenues of each entrepreneur, very small business, or small business shall not be aggregated.

(b) *Bidding credits.* A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

PART 73—RADIO BROADCAST SERVICES

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

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

18. Section 73.622 is amended by revising paragraph (a)(2) to read as follows:

§ 73.622 Digital television table of allotments.

(a) * * *

(2) Petitions requesting a change in the channel of an initial allotment must specify a channel in the range of channels 2–58.

* * * * *

3. Section 73.3572 is amended by revising the last sentence of paragraph (a)(4)(ii) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translator and TV booster station applications.

(a) * * *

(4) * * *

(ii) * * * Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the displacement application(s) to the exclusion of other applications, provided the permittee or licensee had tendered its initial application for a new LPTV or TV translator station to operate on channels 52–69 prior to the August 2000 filing window.

* * * * *

[FR Doc. 02–2866 Filed 2–5–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR 1104

[STB Ex Parte 576]

Electronic Access to Case Filings

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is amending its rules governing how documents are filed in agency proceedings to facilitate the scanning of those documents for publication on the Board's Internet website, *www.stb.dot.gov.* The Board also is amending its rules governing electronic submissions to comport with current technology and is amending one rule to update a citation.

EFFECTIVE DATE: The amended rules are effective March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Anne K. Quinlan (202) 565–1727. [TDD for the hearing impaired: 1–800–877–7339.]

SUPPLEMENTARY INFORMATION: For several years, the Board has been making filings received in select agency proceedings available to the public by publishing them under the ''Filings'' link on the Board's Internet website, *www.stb.dot.gov.* We have used two methods to make filings available on the Internet.

Initially, we made filings available by downloading text files from diskettes, which were required to be filed along with the paper copies in certain cases to facilitate case processing. Public reaction to having filings available on the Internet was positive, and we were encouraged to make all filings available on our website. However, downloading text files was labor intensive, and some files could not be downloaded at all. Moreover, text files included only text that the filer had word processed; no signatures, stamps, or graphics could be made available on-line. A more complete solution was needed.

More recently, the Board acquired scanning resources. Instead of downloading text files, we began to scan filings received in select cases and publish images of the filings on our website. Scanning technology has given the Board the ability to place on the Internet a replica of every documentary filing, in its entirety, in every case. Thus, scanning will be used to provide the public with more complete Internet access to the documentary record in Board proceedings.

To ensure that the highest quality image is captured during the scanning process and to facilitate high-speed scanning, rule 1104.2 will be amended. Amended rule 1104.2 will provide that filings must be typed, double-spaced, on 8½ by 11-inch white paper, with dark type no smaller than 12 point. These standards will provide adequate contrast for scanning and photographic reproduction. To facilitate the scanning process, original documents must be unbound and without driver tabs [1] and

[1] However, *copies* of filings may contain divider tabs. And, as prescribed in *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases,* STB Ex Parte No. 347 (Sub-No. 3) (STB

Continued

printed only on one side of the paper.[2] Documents of more than one page may be clipped with a removable clip or similar device. These measures will reduce the possibility of damage to documents during removal of pins and staples and facilitate the use of the high-speed scanner mechanism for automated scanning. All pages of a submission (each side of each page, if printing is on both sides), including cover letters and attachments, must be paginated continuously.[3] This will help ensure scanning accuracy.

We recognize that some filings may not conform to the above specifications and, therefore, we will be unable to scan them. For example, spreadsheet data in electronic format and oversized maps or blueprints may be included in a filing, but will not be susceptible to scanning. To address this, we have developed procedures for referencing the location of non-scannable submissions and making them available to the public at the Board's offices. Where there are oversized documents, however, parties are encouraged to file, in addition to the oversized documents, representations of them that fit on the standard paper described in section 1104.2(a), if possible. For example, a copy of an oversized map may be reduced in size (but only if the map and any writing on the map remain legible), or may be cut into multiple sequential standard pages that, when placed together, make up the whole. The standard sized representation should be identified and placed immediately behind the oversized document it represents.

The Board has the capability to scan in color. However, scanning of color pages requires special handling. Accordingly, to ensure timely processing of all filings, color printing may not be used for textual submissions. Use of color in filings is limited to images such as graphs, maps and photographs. In addition, pages containing color images may be filed only as appendices or attachments to filings and not inserted among pages containing text. Also, the original of any filing that includes color images must bear an obvious notation, on the cover sheet, that the filing contains color.

Confidential filings will be processed so that persons using the Board's website will know by looking at the on-line list of filings that a particular filing is in the record as a confidential filing. However, the contents of confidential filings will not be viewable or downloadable from the Board's website.[4]

Rule 1104.3 is being amended to clarify the number and type of electronic filings required by the Board and to reflect the Board's use of more current technology. Electronic submissions must be submitted on compact discs or 3.5-inch IBM-compatible floppy diskettes (collectively referred to as discs).[5] Discs should be clearly labeled with (1) the Docket Number of the proceeding in which it is filed; (2) the name(s) of the party(ies) on whose behalf the filing is made; and (3) ''CONFIDENTIAL'' or ''REDACTED'' as appropriate. If more than one disc is needed for a single filing, the label of each disc must be sequentially numbered to indicate the disc number and the total number of discs filed (e.g., the first disc of a 4-disc set should be labeled ''Disc 1 of 4,'' the second disc ''Disc 2 of 4,'' and so forth.)

Rule 1104.15, which addresses certification of eligibility for Federal benefits, is being amended to reflect that the underlying statute has been transferred to a different section of the U.S. Code without substantive change.

Because these changes update rules to agency procedure and practice and are not substantive changes, we find good cause to dispense with notice and comment. 5 U.S.C. 553(b)(A) and (B).

The amended regulations are set forth in the Appendix.

Pursuant to 5 U.S.C. 605(b), we certify that these rules will not have a significant economic impact on a substantial number of small entities. They affect only the technical specifications for filing the original copy of documentary submissions and for filing electronic submissions.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1104

Administrative practice and procedure.

Decided: January 28, 2002.

By the Board, Chairman Morgan, Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, amend part 1104 of title 49 of the Code of Federal Regulations as follows:

PART 1104—FILING WITH THE BOARD—COPIES—VERIFICATION—SERVICE—PLEADINGS, GENERALLY

1. Revise the authority citation for part 1104 to read as follows:

Authority: 5 U.S.C. 553 and 559; 18 U.S.C. 1621; 21 U.S.C. 862; and 49 U.S.C. 721.

2. Revise section 1104.2 to read as follows:

§ 1104.2 Document specifications.

(a) Documents filed with the Board must be on white paper not larger than 8½ by 11 inches, including any tables, charts, or other documents that may be included. Ink must be dark enough to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations, which may be single-spaced), using type not smaller than 12 point. Printing may appear only on one side of the paper for original documents, but copies of filings may be printed on both sides of the paper.

(b) In order to facilitate automated processing in document sheet feeders, original documents of more than one page may not be bound in any permanent form (no metal, plastic, or adhesive staples or binders) but must be held together with removable metal clips or similar retainers. Original documents may not include divider tabs, but copies must if workpapers or expert witness testimony are submitted. All pages of original documents, and each side of pages that are printed on both sides, must be paginated continuously, including cover letters and attachments. Where, as a result of assembly processes, such pagination is

served Mar. 12, 2001), *copies* of filings that include expert testimony or workpapers *must* include divider tabs.

[2] However, *copies* of filings may be printed on both sides of the paper.

[3] For very large filings, often assembled at different times and locations, this may be impractical. Accordingly, these types of filings may be numbered within the logical sequence of volumes or sections that make up the filing and need not be renumbered to maintain a single numbering sequence throughout the entire filing.

[4] Filers are reminded that requests to maintain confidentiality of materials should be sought only when absolutely necessary. Also, in accordance with rule 1104.14, materials that parties believe are entitled to confidential treatment should be submitted in a separate package and marked ''Confidential material subject to a (request for a) protective order.'' Any accompanying request for a protective order should be submitted as a separate filing.

[5] Electronic submissions of textual material (pleadings, petitions, etc.) must be submitted in Corel WordPerfect format version 9.0 or earlier releases. Current rule 1104.3 requires the submission of electronic spreadsheets in Lotus format. However, we now have Excel spreadsheet software and will accept electronic spreadsheets in either Lotus or Excel format. Parties are reminded that in order to fully evaluate the evidence, we must be able to access and manipulate all spreadsheets. A more detailed description of current procedures for filing spreadsheets and related information in stand-alone cost proceedings appears in *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases.* STB Ex Parte No. 347 (Sub-No. 3) (STB served Mar. 12, 2001).

impractical, documents may be numbered within the logical sequences of volumes or sections that make up the filing and need not be renumbered to maintain a single numbering sequence throughout the entire filing.

(c) Some filings or portions of filings will not conform to the standard paper specifications set forth in paragraph (a) of this section and may not be scannable. For example, electronic spreadsheets are not susceptible to scanning, but oversized documents, such as oversized maps and blueprints, may or may not be scannable. Filings that are not scannable will be referenced on-line and made available to the public at the Board's offices. If parties file oversized paper documents, they are encouraged to file, in addition to the oversized documents, representations of them that fit on the standard paper, either through reductions in size that do not undermine legibility, or through division of the oversized whole into multiple sequential pages. The standard paper representations must be identified and placed immediately behind the oversized documents they represent.

(d) Color printing may not be used for textual submissions. Use of color in filings is limited to images such as graphs, maps and photographs. To facilitate automated processing of color pages, color pages may not be inserted among pages containing text, but may be filed only as appendices or attachments to filings. Also, the original of any filing that includes color images must bear an obvious notation, on the cover sheet, that the filing contains color.

3. Revise section 1104.3 to read as follows:

§ 1104.3 Copies.

(a) An executed original, plus 10 copies, of every pleading, document, or paper permitted or required to be filed under this subchapter, including correspondence, must be furnished for the use of the Board, unless otherwise specifically directed by another Board regulation or notice in an individual proceeding. Copies may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used so that matters shown in color on the original, but in black and white on the copies, will be accurately identified on all copies.

(b) Electronic submissions must be furnished as follows:

(1) Textual submissions of 20 or more pages must be accompanied by three electronic copies submitted on compact discs or 3.5-inch IBM-compatible formatted floppy diskettes in WordPerfect 9.0 format or earlier releases.

(2) Three sets of evidence or workpapers consisting of mathematical computations must be submitted as functioning electronic spreadsheets in Lotus 1–2–3 Release 9 or Microsoft Excel 97, or compatible versions, on compact discs or 3.5-inch IBM-compatible formatted floppy diskettes. In order to fully evaluate evidence, all spreadsheets must be fully accessible and manipulable. Electronic databases placed in evidence or offered as support for spreadsheet calculations must be compatible with the Microsoft Open Database Connectivity (ODBC) standard. ODBC is a Windows technology that allows a database software package to import data from a database created using a different software package. We currently use Microsoft Access 97 and databases submitted should be in either this format or another ODBC-compatible format. All databases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, and so forth.

(3) One copy of each diskette or compact disc submitted to the Board should, if possible, be provided to any other party requesting a copy.

(4) Each diskette and compact disc must be clearly labeled with the Docket Number of the proceeding in which it is filed; the name(s) of the party(ies) on whose behalf the filing is made, and ''CONFIDENTIAL'' or ''REDACTED'' as appropriate. If more than one diskette or disc is submitted for one filing, the label of each must be sequentially numbered to indicate the diskette or disc number and the total number of diskettes or discs filed (e.g., the first disc of a 4-disc set should be labeled ''Disc 1 of 4,'' the second disc ''Disc 2 of 4,'' and so forth).

4. In section 1104.15, remove the citation ''21 U.S.C. 853a'' and add, in its place, the citation ''21 U.S.C. 862'' in the section heading and in the text.

[FR Doc. 02–2844 Filed 2–5–02; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Washington Plant *Hackelia venusta* (Showy Stickseed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status under the Endangered Species Act of 1973, as amended (Act), for the Washington plant *Hackelia venusta* (showy stickseed). This plant species is a narrow endemic restricted to one small population of approximately 500 plants on less than 1 hectare (2.5 acres) of unstable, granitic talus on the lower slopes of Tumwater Canyon, Chelan County, Washington, entirely on Federal land. Major threats to *H. venusta* include: Collection; physical disturbance to the plants and habitat by humans, competition and shading from native trees and shrubs; encroachment onto the site by nonnative noxious weed species; wildfire; fire suppression and associated activities; and low seedling establishment. Highway maintenance activities, such as the spreading of sand and salt, and the use of de-icers during winter months, threaten the species. Also, the application of herbicides may pose a threat. Reproductive vigor may be depressed because of the plant's small population size and limited gene pool. A single natural or human-caused random environmental disturbance could destroy a significant percentage of the population.

We determine that the designation of critical habitat is not prudent for *Hackelia venusta* because it would likely increase the threats from collection and both direct and inadvertent habitat degradation and destruction. This rule implements the Federal protections provided by the Act for this plant.

DATES: This final rule is effective March 8, 2002.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive, Suite 102, Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: Ted Thomas, (see **ADDRESSES** section), telephone 360/753–4327; facsimile 360/753–9518.

SUPPLEMENTARY INFORMATION:

Background

Hackelia venusta (showy stickseed) is a showy perennial herb of the Borage family (Boraginaceae). The plant was originally described by Charles Piper as *Lappula venusta*, based on a collection from Tumwater Canyon, Chelan County, Washington made by J. C. Otis in 1920. In 1929, Harold St. John reexamined the specimen and placed it in the related genus *Hackelia* upon recognizing that, being a perennial plant, it more properly fit with *Hackelia* than *Lappula*, a genus of annual plants (St. John 1929).

Hackelia venusta is a short, moderately stout species, 20 to 40 centimeters (cm) (8 to 16 inches (in)) tall, often with numerous, erect to ascending stems from a slender taproot. It has large, showy, five-lobed flowers that are white and reach approximately 1.9 to 2.2 cm (0.75 to 0.87 in) across. Basal leaves are 7 to 14 cm (2.8 to 5.5 in) long and 0.64 to 1.3 cm (0.25 to 0.5 in) wide, while the upper stem leaves are 2.5 to 5.1 cm (1 to 2 in) long and 0.38 to 0.64 cm (0.15 to 0.25 in) wide (Barrett *et al.* 1985). The fruit consists of a prickly nutlet, approximately 0.38 to 0.43 cm (0.15 to 0.17 in) long, and is covered with stiff hairs that aid in dispersal by wildlife.

Hackelia venusta is morphologically uniform and is distinct from other species of *Hackelia* occurring in central Washington. It can be distinguished from other species in the genus, in part, by its smaller stature, shorter leaf length, fewer basal leaves, and the large size of the flowers. High-elevation *Hackelia* populations that have, in the past, been assigned to *Hackelia venusta* have distinct morphological features with the most obvious distinction being blue flowers. The Tumwater Canyon flowers are white and on rare occasion washed with blue. Other distinct morphological differences between the Tumwater Canyon and the high-elevation *Hackelia* populations are limb width, plant height, and radical leaf length (Harrod *et al.* 1999).

Hackelia venusta is shade-intolerant (Robert Carr, Eastern Washington University, pers. comm., 1998) and grows in openings within *Pinus ponderosa* (ponderosa pine) and *Pseudotsuga menziesii* (Douglas-fir) forest types. This vegetation type is described as the Douglas-fir zone by Franklin and Dyrness (1988). *H. venusta* is found on open, steep slopes (minimum of 80 percent inclination) of loose, well-drained, granitic weathered and broken rock fragmented soils at an elevation at about 486 meters (m) (1,600 feet (ft)). The type specimen for *H. venusta* was collected at a site between Tumwater and Drury in Tumwater Canyon, west of Leavenworth, Washington. *H. venusta* is restricted to this single population in Tumwater Canyon. The population is found in an area designated as the Tumwater Botanical Area by the Wenatchee National Forest. This designation was originally established in 1938 to protect a former candidate plant, *Lewisia tweedyi* (Tweedy's lewisia), that has been found to be more widespread than previously considered (F.V. Horton, U.S. Forest Service (Forest Service), *in litt.* 1938; Forest Service 1971). The designation for the botanical area remains because of the presence of *Hackelia venusta* and *Silene seelyi* (Seely's catch-fly), a species of concern due to its declining status.

Three other locations within 20 km (12 mi) of the type locality were thought to harbor *Hackelia venusta.* One location near Crystal Creek Cirque was relocated in 1986 after not having been seen since 1947 (Gamon 1988a). A second location near Asgard Pass was not discovered until 1987 (Gamon 1988a). The Asgard Pass population was apparently extirpated by a major landslide during 1994 or 1995 (Richy Harrod, Forest Service, pers. comm., 1996). A third location was discovered on Cashmere Mountain in August 1996 (R. Harrod, pers. comm., 1996). The Crystal Creek and Cashmere Mountain locations occur about 10 km (6 mi) apart and are both within the Alpine Lakes Wilderness Area of the Wenatchee National Forest. Elevations for these populations range from 1,920 to 2,255 m (6,300 to 7,400 ft). Recent information indicates these two high-elevation locations are a distinct taxon, different from the *H. venusta* found in the Tumwater Canyon population (Harrod *et al.* 1999). The Tumwater Canyon plants have a larger white corolla, a taller habit, remote lower leaves, and in general, the leaves are less stiff and leathery. The Crystal Creek and Cashmere Mountain populations, in contrast, have small, blue flowers and are more compact. The population at Tumwater Canyon does not have individuals that are intermediate in these characters. Also, the Tumwater Canyon population is geographically and reproductively isolated from the Crystal Creek and Cashmere Mountain populations. The Crystal Creek and Cashmere Mountain populations are temporally isolated from the Tumwater Canyon population in relation to their local seasons and climatic zones. The Tumwater Canyon population flowers in spring, while the Crystal Creek and Cashmere Mountain populations are under several meters of snow and normally flower in July.

Isozyme analysis conducted by the Forest Service indicates a clear separation between the Tumwater Canyon and high-elevation populations of *Hackelia* (Carol Aubry, Forest Service, pers. comm., 1998; Wilson *et. al.*, in review). This analysis measures the differences in plant proteins (usually an enzyme) and can be used to detect genetic differences among populations. Dr. Robert Carr, Professor of Botany, Eastern Washington University, attempted specific and intraspecific crosses with 18 species of North American *Hackelia* over a 3-year period but was unable to produce viable seed from these crosses in the greenhouse. Dr. Carr indicated that he had not attempted to cross the Tumwater Canyon and Crystal Creek/Cashmere Mountain populations, primarily because of the difficulty of growing *Hackelia* from seed in the greenhouse, and the temporal differences in the two populations' flowering. Dr. Carr, an expert on the genus *Hackelia*, has confirmed on numerous occasions that the Tumwater Canyon and high-elevation populations are separate and should be considered two separate and distinct species (R. Carr, pers. comm., 1998, *in litt.* 2000). The high-elevation species of *Hackelia* has been recently described and named as *H. taylori* (Harrod *et al.*, in review). Since the Crystal Creek and Cashmere Mountain populations are distinct from *Hackelia venusta,* they are not the subject of this final rule and will not be further discussed.

An occurrence of what was originally cataloged as *Hackelia venusta* was found in 1948 in Merritt, WA, in Chelan County, but attempts to relocate the site have failed. Changes in land use do not support growth of this species in this area anymore. The current element occurrence records of the Washington Natural Heritage Program designate this site as historic. Recent taxonomic work on the genus *Hackelia* indicates that the herbarium specimen for the Merritt site fits more closely into the subspecies *H. diffusa* var. *arida.* This subspecies will often have large white flowers and could have been misleading to the early plant collectors (Harrod *et al.*, 1999; R. Harrod, *in litt.* 2000). This being the case, the Tumwater Canyon population of *Hackelia venusta* may have always been the only location for the species.

In Tumwater Canyon, *Hackelia venusta* occurs primarily on unstable soils on steep rocky slopes and outcrops, though scattered individuals formerly occurred along a State highway roadcut and within the road right-of-way (ROW). The species is found entirely on Federal land administered by the Wenatchee National Forest. *H. venusta* appears to be somewhat adapted to natural and possibly human-caused substrate disturbance (R. Carr pers. comm., 1998). Although potential habitat for this species is widespread in Tumwater Canyon, the plant is scattered throughout an area of less than 1 hectare (ha) (2.5 acres (ac)).

In 1968, the taxon appeared ''limited to a few hundred acres'' (Gentry and Carr 1976), and in 1981 the population was estimated to have 800 to 1,000 plants. In 1984, and again in 1987, fewer than 400 individuals were found over an area of approximately 5 ha (12 ac) (Gamon 1988a). Personal observations by Ted Thomas (Service) (in cooperation with Richy Harrod (Forest Service) and Paul Wagner, Washington Department of Transportation (WDOT)), using an intensive search and count method on May 11, 1995, revealed fewer than 150 individuals growing on less than 1 ha (2.5 ac) of suitable habitat. According to Dr. Carr, the area occupied by *H. venusta* is greatly reduced, and the number of individual plants has seriously declined since he first visited the Tumwater Canyon population in the early 1970s (R. Carr, pers. comm., 1996). Although earlier counts were conducted by different workers using different techniques, the population size shows a clear downward trend.

During the late 1990s, and since the publication of the proposed rule to list the species on February 14, 2000 (65 FR 7339), the population of *H. venusta* has been monitored on an annual basis. In May 2000, nearly 300 plants were counted, and in May 2001, the number of plants in the population approached 500 plants (Lauri Malmquist, Forest Service, *in litt.* 2000, pers comm., 2001). The increase in the population size can be attributed to several events that have occurred in the past 7 years within the habitat for the species. Wildfires burned through Tumwater Canyon in 1994, resulting in both positive and negative effects on *H. venusta* habitat. The primary positive outcome was that the forest canopy was reduced, creating less shade and competition, and more open growing space that created new, suitable sites for the natural regeneration and establishment of *H. venusta* seedlings. The negative impact is the increased potential of landslides when wildfire removes overstory vegetation. Additionally, the Forest Service has been proactive in their treatment of the nonnative noxious weed problem within Tumwater Canyon. To reduce the nonnative plant threat to *H. venusta*, the Leavenworth Ranger District staff, Wenatchee National Forest, have both removed weeds by hand and carefully applied herbicides to them in *H. venusta* habitat. This project was implemented in 1999 and 2000, emphasizing treatment to the habitat directly adjacent to the State highway where invasive species tend to become established and then spread into the remainder of the population. (R. Harrod, pers comm., 2001).

Lastly, during the winter of 2000, the Forest Service, in cooperation with the WDOT and the Service, implemented a restoration project within the habitat of *Hackelia venusta.* About 35 small trees and one very large standing dead tree were felled and removed from the site (L. Malmquist, *in litt.* 2001; R. Harrod, pers. comm., 2000), using a deep snowpack to avoid impacts to the soil and protect the dormant *H. venusta* population. Each of these projects reduced shade; increased light onto the slope; reduced competition for light, water, and nutrients with native and nonnative trees, shrubs, and weeds; and provided new germination substrates for the establishment of *H. venusta* seedlings.

Previous Federal Action

Section 12 of the Act (16 U.S.C. 1541) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) announcing our decision to treat the Smithsonian report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and our intention to review the status of those plants. *Hackelia venusta* was included in this petition as an endangered species.

On December 15, 1980, we published a Notice of Review for plants (45 FR 82480) that included *Hackelia venusta* as a category 1 candidate species. Category 1 candidates were those species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. The plant notice revision of September 27, 1985 (50 FR 39525), included *H. venusta* as a category 2 candidate. Category 2 candidates were those species for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support a proposed rule. Pending completion of updated status surveys, the status was changed to category 1 in the February 21, 1990, Notice of Review (55 FR 6183). In the September 30, 1993, Notice of Review (58 FR 51144), *H. venusta* remained a category 1 candidate.

In the February 28, 1996, Notice of Review (61 FR 7596), we discontinued the use of multiple candidate categories and considered the former category 1 candidates as simply ''candidates'' for listing purposes. However, in that Notice of Review, *Hackelia venusta* was removed from the candidate list due to questions regarding the species' taxonomic status. An updated status review, completed in June 1997, reflected the new taxonomic information that determined only a single population of *H. venusta* currently existed. In the October 29, 1999, Notice of Review (64 FR 57534), *H. venusta* was included as a candidate species with a listing priority of 2.

We published a proposed rule to list the species as endangered on February 14, 2000 (65 FR 7339). The final rule for *Hackelia venusta* was delayed because of the need to focus our limited listing resources on listing actions that were under court order or settlement agreement during fiscal year 2001 which did not include *H. venusta.*

In March 2000, the Forest Service consulted with the Service on a restoration project to improve the habitat where *Hackelia venusta* is found. In an informal conference report, we concurred that the project ''was not likely to jeopardize the continued existence'' of *H. venusta.* If the species was listed in the future, the Forest Service concluded that the determination of effects for the project ''may affect, not likely to adversely affect'' the species (Service 2000).

On October 2, 2001, a consent decree was entered to settle listing litigation with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, Foundation for Global Sustainability, and the California Native Plant Society which requires us to complete work on a number of species proposed for listing. Under this settlement, we will issue several final listing decisions, including a final decision for *Hackelia venusta.* The consent decree requires us to send a final listing determination for this species to the **Federal Register** by

February 6, 2002 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)). On November 7, 2001, we reopened the comment period for an additional 30 days to accommodate the public notice requirement of the Act (66 FR 56265).

Summary of Comments and Recommendations

In the February 14, 2000, proposed rule (65 FR 7339), we requested all interested parties to submit factual reports, information, and comments that might contribute to the development of the final listing decision. We contacted appropriate State agencies, county and city governments, Federal agencies, university scientists, consulting organizations, conservation organizations and other interested parties and requested them to comment. Following the publication of the proposed rule, we received 20 written comments during the 60-day comment period. Comments were received from a variety of sources, including three Federal agencies, three Washington State agencies, three non-governmental organizations, four botanical and environmental consultants, one university, and six individuals. We reopened the comment period on November 7, 2001 (66 FR 56265) for 30 days and requested any new information from the public on the species since publication of the proposed rule. We published a legal notice in the *Wenatchee World* newspaper on November 13, 2001. We received an additional 12 comments during the second comment period, although three of these commenters had provided comments during the first comment period. Therefore, we received comments from a total of 29 respondents.

All 29 commenters supported the listing of *Hackelia venusta* as endangered. Several commenters provided new information on the current status of the species, and information on new threats to this single population of the *H. venusta*, which we have incorporated into this final rule. We have addressed each of the substantive issues raised by commenters by grouping the comments into four issues that are discussed below.

Issue 1: The overwhelming comment received from 28 of the 29 commenters was that designation of critical habitat for *Hackelia venusta* is not prudent. The principal concern is the increased risk of collection of the species that would occur from the publication of maps. Only one commenter supported critical habitat designation, although he admitted that designation of critical habitat would increase collection pressure on the population.

Our Response: Under the critical habitat section in the proposed rule, we stated that it was prudent to designate critical habitat for *Hackelia venusta* because it did not appear that collection of the species was a threat to its existence. However, information provided in the ''Summary of Factors Affecting the Species'' section (Factor B) of the proposed rule indicated otherwise. This section presented evidence of collection as a threat to the species. This information is consistent with the public comments expressing opposition to the designation of critical habitat for *H. venusta*. Only one commenter supported the designation of critical habitat, although this letter offered no substantive reason for this support. We are supported in our determination of a not prudent finding for the designation of critical habitat by a consensus of scientists, land managers (Federal, State, and county), professional botanists, local wildflower enthusiasts, non-governmental organizations, and environmental and botanical consultants. Each of these commenters expressed concern that the publicity associated with designating critical habitat for *H. venusta* would increase the threat of collection of the species, which exists in only one location.

Twenty commenters noted that they have witnessed, or were aware of collection of the species; many of these commenters admitted they have personally collected the species for herbarium or voucher specimens. One commenter presented information about a field botany class that had extensively collected the species on a taxonomy outing (Florence Caplow, Calypso Consulting, *in litt.* 2000). The rarity of the species was not known to the class or the instructor until they had returned to the laboratory to key and identify the plant. During the summer of 2000, while Forest Service personnel were counting the number of plants in the population and monitoring the habitat, they witnessed collection of a large individual specimen of *Hackelia venusta* and reported the action to our office the following day (L. Malmquist, pers. comm., 2000; J. Brickey, *in litt.* 2001; Terry Lillybridge, Forest Service, *in litt.* 2001; and R. Harrod, pers. comm., 2000). Forest Service personnel suspect the collector had purposely targeted a specific individual plant from the population because it was full, vigorous, and attractive (L. Malmquist, pers. comm., 2000). The specific plant had caught the attention of the Forest Service botanists as a particularly enticing plant, and its absence and the hole left from it being removed was easily noticed. Another commenter stated that ''rare plants bring a lot of money'' to collectors and designation of critical habitat would further advertise the species' presence, beyond listing of the species, so that it may be increasingly pursued (D. Werntz, *in litt.* 2000).

The District Ranger for the Leavenworth Ranger District commented that a critical habitat designation is not desirable, and it is against Forest Service policy (Forest Service Manual 2671.2) to make public the location of proposed, endangered, threatened, or sensitive species. This policy is consistent with the Thomas Bill (Pub. L. 105–391, section 207, 16 U.S.C. 5937), which was enacted to give the National Park Service the authority to withhold from the public any specific locality data for endangered, threatened, and rare species or commercially valuable resources within a park. The Forest Service believes that divulging locations or producing maps of *Hackelia venusta* habitat would greatly compromise their ability to protect the species on Forest Service lands where it occurs. Additionally, he commented that publicizing the location of critical habitat for this species was contrary to the ongoing coordination and Cooperative Agreement between Washington State's Natural Heritage Program, the Forest Service, and the Service, which includes a mutual agreement to not make public the location of proposed, endangered, threatened, or sensitive species.

It is not possible to designate critical habitat without increasing the public's attention to the species' location, and increased collection pressure will adversely affect the species and degrade its habitat. A single, heavily used highway allows access to the species' single location. While the species is in bloom, the plant population is easily visible. We have designated critical habitat for other attractive plants that were much less accessible to collectors, such as *Hudsonia montana* (mountain golden heather). *Hudsonia montana* was collected extensively and dwindled to only two plants soon after critical habitat was designated (Nora Murdock, Service, pers. comm., 2000). The situation for *Hackelia venusta* is comparable to the *Hudsonia montana* example, although the site location for *H. venusta* is more accessible to potential collectors than the more remotely located *Hudsonia montana*. We believe that because of the highly accessible location of this species, a designation of critical habitat would

increase collection and thereby increase the risk of extinction to this species.

Collection of *Hackelia venusta* has been documented for more than 35 years (R. Carr, *in litt.* 2000). The species has been collected for scientific purposes, by random visitors who were likely unaware of the rarity of the species, and perhaps by plant collectors who have purposely visited the site to collect the species. Those who have collected the species in the past for scientific purposes have observed the plant population decline to a low of 150 plants, and the spatial distribution of the suitable habitat has dwindled to less than 1 ha (2.5 ac) (T. Thomas, pers. obs., 1995, with R. Harrod and P. Wagner). These scientists are now aware of the extreme rarity and status of the species and seek its protection, without the designation of critical habitat (R. Carr, *in litt.* 2000; K. Robsen, *in litt.* 2001; R. Crawford, *in litt.* 2001; T. Lillybridge, *in litt.* 2001; William Null, *in litt.* 2001; E. Guerrant, *in litt.* 2001; Sarah Reichard, University of Washington, *in litt.* 2001). The conservation Chair of the Washington Native Plant Society (WNPS), on behalf of its 1,800 members, stated that ''the only real protection for rare plants is safeguarding of the specific location data and maps' (Debra Salstrom, WNPS Conservation Chair, *in litt.* 2001). In summary, the issue of long-term plant collection, and the high probability of continued and increased plant collection in the future support our determination to not designate critical habitat or publish associated maps for *H. venusta.*

We believe anything that increases the risk of losing individuals in this single population, such as publicizing its location, further imperils the species' survival and recovery. Based on the information provided in the comments, the recent, continued evidence of collection of the species, and the highly accessible and visible location of this showy plant, we have reconsidered our earlier decision that designation of critical habitat was prudent. We have determined that the designation of critical habitat is not prudent for *Hackelia venusta.* It would increase the threat of collection of the species and the associated degradation of its habitat.

Issue 2: Nine commenters were concerned that any increased visitation to the site resulting from designating critical habitat and publishing maps of the plant's location would increase erosion of the habitat and the potential for trampling *Hackelia venusta*. Dr. Ed Guerrant summarized this concern well by stating ''Even if the enthusiasts don't take whole plants (a common form of collection) or seeds, simply climbing up the very loose sandy hill on which they occur to photograph the plants will seriously erode and further damage their fragile habitat'' (E. Guerrant, *in litt.* 2000). Dr. Sheryl McDevitt, a local wildflower enthusiast, stated that the ''designation of critical habitat might be the most deleterious thing we could do. Aside from the possibility of rare plant collectors trudging up to grab their prize, a few amateur wildflower enthusiasts scrambling up the hill could do immeasurable damage to the existing plants and their habitat'' (Sheryl McDevitt, *in litt.* 2000). Other commenters having experience with *H. venusta* habitat were concerned that any activity occurring on the species' habitat would adversely impact the fragile, highly erodible, steep slope where the plants are found (Jane Wentworth, WDNR, *in litt.* 2001; T. Lillybridge, *in litt.* 2001; L. Malmquist, *in litt.* 2001).

Our Response: We agree with the commenters that the site is fragile and easily eroded. Just walking on the slope where the plants are found dislodges small rocks and boulders that can dislodge plants, crush or bury them by movement of the substrate. Any increased visitation would likely lead to increased disturbance of the habitat and trampling of the plants. Therefore, we have determined that designating critical habitat for *Hackelia venusta* is not prudent.

Issue 3: Four commenters expressed concern for public safety along the highway, which is highly constrained in this narrow and dangerous stretch of Tumwater Canyon (C. Antieau, *in litt.* 2000). Their major concern was that designating critical habitat would increase public interest in the species, thereby promoting increased pedestrian traffic to visit the site, causing safety issues for pedestrians and motorists, in addition to the increased threat of collection. WDOT also strongly opposes designation of critical habitat for *Hackelia venusta*, especially because of their concern that as more people walk on the steep, unstable slope, it will increase the probability that rocks and other debris will be dislodged and fall down the slope onto the highway, endangering auto traffic and their occupants or pedestrians on the roadway (F. Caplow, *in litt.* 2001).

Our Response: Public safety is not a factor in the evaluation of whether or not designation of critical habitat is prudent. However, we are concerned about public safety, and recognize the issues associated with this narrow stretch of highway. We have cooperated with WDOT on developing their ''Management Plan for Rare Plant Species in Tumwater Canyon'' (WDOT 2000).

WDOT constructed a small asphalt roadside turnout directly below and on the same side of the highway as the *Hackelia venusta* population during the spring of 2000. This turnout was constructed to provide a safe place for highway crews to park their vehicles in the narrow canyon when conducting road maintenance. However, because this turnout gave people greater access to the *H. venusta* population, the Forest Service coordinated with WDOT to remove the turnout in order to protect the plant species and its habitat (L. Malmquist, *in litt.* 2001). By removing the turnout, it also removed some of the danger to pedestrians who would stop to photograph the scenery or collect the plant.

Issue 4: Many commenters mentioned that because the species is found entirely on Federal land in an area under special management designation as the Tumwater Botanical Area, where the conservation and protection of *Hackelia venusta* and other rare plants is the primary management goal, it would be a redundant effort to designate critical habitat for the species. Consensus among these commenters was that the greatest benefit afforded to this species would be to determine that the designation of critical habitat is not prudent. Several of these commenters felt that the most effective use of funds would be for us to continue to cooperate with the Forest Service, WDOT, and WDNR on research and habitat restoration actions that would benefit the species and its habitat (R. Crawford, *in litt.* 2001; F. Caplow, *in litt.* 2001).

Our Response: We have determined that designation of critical habitat for *Hackelia venusta* is not prudent (see responses to Issue 1 and 2). Consideration of whether ongoing special management is sufficient to exempt a critical habitat designation is not necessary unless we determine that critical habitat is prudent. We do, however, encourage the cooperative endeavors of State and Federal agencies in their management of *H. venusta* and its habitat.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we have sought the expert opinions of at least three appropriate and independent specialists regarding our proposal to list *Hackelia venusta*. The purpose of these reviews is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We sent these peer reviewers copies of the

proposed rule immediately following its publication in the **Federal Register**. All the peer reviewers who responded agreed with listing, supported our determination that collection pressure is a serious threat, and opposed designation of critical habitat. We have incorporated their comments into this final determination (many are in the ''Summary of Comments'' section).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hackelia venusta* (showy stickseed) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The range of *Hackelia venusta* has been reduced to a scattered distribution occupying less than 1 ha (2.5 ac) in Tumwater Canyon, entirely on Federal lands of the Wenatchee National Forest. This restricted population consisted of approximately 500 plants in 2001 (L. Malmquist, pers. comm., 2001) and constitutes the sole population of *Hackelia venusta*.

The primary loss of habitat for *Hackelia venusta* has resulted from changes in habitat due to plant succession in the absence of fire. Fire suppression has been a factor in reducing the extent of the Tumwater Canyon population (Gamon 1988a; Gamon 1988b; D. Werntz, *in litt.* 2000). Wildfires play a role in maintaining open, sparsely vegetated sites as suitable habitat for *H. venusta*, a requirement of this shade-intolerant plant (R. Carr, pers. comm., 1998, *in litt.* 2000). The species prefers habitat that has been burned, has little competing vegetation (D. Werntz, *in litt.* 2000), and likely has soil low in organic matter (R. Carr, pers. comm., 1998). The species has expanded its distribution into canopy openings created by a wildfire in 1994, where it was not previously found (T. Thomas, pers. obs. 1998; P. Wagner, *in litt.* 2000). These plants are all found in close proximity to the original population and are probably offspring of the existing population. Seeds were likely carried to the open substrate by wind or gravity, and germination was aided by the increase in light and moisture within these canopy gaps where there is reduced competition from native trees and shrubs and noxious weeds.

Two nonnative, Washington State-listed noxious weeds (Ch. 16, WAC and Ch. 17.10 RWC 1997) occur within the habitat of *Hackelia venusta* in Tumwater Canyon. *Linaria dalmatica* (dalmatian toadflax) and *Centaurea diffusa* (diffuse knapweed) are present along the roadside, and have increased in their numbers and distribution during the 1990s, and have encroached into the population of *H. venusta* (J. Wentworth, *in litt.*, 2001). During visits to the *H. venusta* population in 1995, 1996, 1997, and 1998, the Service (T. Thomas, pers. obs.) noted that the cover and distribution of the noxious weeds had increased over this 1995–1998 time period. Without intervention, these species have the ability to completely outcompete *H. venusta* and replace native vegetation, and eventually dominate the site (J. Wentworth, *in litt.* 2001).

Highway maintenance activities are an ongoing threat. The highway is sanded during winter months, and occasionally a mixture of sand and salt is applied, affecting the immediate roadside habitat where *Hackelia venusta* is found. Highway maintenance activities involving the clearing of landslide material from the highway ROW resulted in the destruction of approximately 50 *H. venusta* individuals several years ago (R. Harrod, pers. comm., 1997, 2001). Although the roadsides have not been sprayed with herbicides in recent years by WDOT, spraying did occur for a considerable period of time prior to 1980. The residual effect of herbicide spraying on *H. venusta* is unknown. Some herbicides are known to be resident in the soil for long periods of time, affecting the plants that persist there. In 1999 and 2000, the application of herbicides by Forest Service personnel was used as a method for reducing the amount and distribution of nonnative, noxious weeds. Although they were used with great caution by Forest Service staff with knowledge of *H. venusta's* presence, the threat from herbicide drift and residue remains.

Small surface erosion events and large landslides of the unstable slope where the *Hackelia venusta* population is located are also a threat to the species. The steepness of the slope exceeds 100 percent (45 degree) inclination in many places, and the slope's instability constitutes a significant threat as a major landslide could bury the entire population (Gamon 1997). The threat of soil being dislodged and the burying, trampling, or dislodging of plants below these soil releases has been witnessed as more people visit the habitat to photograph or collect the plant (Pam Camp, *in litt.* 2000; Susan Ballinger, *in litt.* 2000; Joan Frazee, Washington Native Plant Society, *in litt.* 2000; F. Caplow, *in litt.* 2000; K. Robson, *in litt.* 2001). The potential for slumping (deep-seated mass movement) has increased since 1994, when wildfires burned through the forest in Tumwater Canyon where *H. venusta* is located. The reason for a higher potential for landslides is that water uptake by trees and other vegetation that were killed by the 1994 fire is reduced plus there is no transpiration from the vegetation, therefore there is more soil water. This is a case where the response to fire may have negative consequences. Another contributing factor is that when tree roots decompose, their ability to bind soil particles and water is decreased. When this happens, the potential for landslides increases. A large landslide in the location of the Tumwater Canyon population of *H. venusta* would severely degrade the habitat and reduce the plant population.

Although there are no data regarding the effects of automobile emissions on this species, such emissions should be considered a potential threat, given the proximity of the road to the population. The highway is heavily used, with 3,900 to 5,200 automobiles traveling daily through Tumwater Canyon, which is very narrow (WDOT 1996). According to population projections, 100,000 people will move into the State of Washington each year (Washington Office of Financial Management 1995). Trends for Chelan County indicate an increase from the current human population of 52,250 (1995) to more than 86,000 people in the year 2020, a 39 percent increase (Washington Office of Financial Management 1995). A larger human population will increase the demands for recreational activities and bring more people to central Washington. Automobile emissions are likely to increase along this heavily traveled corridor. These emissions, containing ozone and sulphur and nitrate oxides, negatively affect photosynthesis of coniferous and herbaceous plants (Forest Service 1979).

B. Overutilization for Commercial, Scientific, or Educational Purposes

The remaining known population is at risk of extirpation due to a variety of threats. The greatest threat to *Hackelia venusta* is the long history of collection pressure (R. Carr, *in litt.* 2000; Rex Crawford, Washington Department of Natural Resources (WDNR), *in litt.* 2001; L. Malmquist, *in litt.* 2000; Jennifer Brickey, University of Washington

graduate student, *in litt.* 2001; Kali Robson, Cowlitz County Soil and Water Conservation District, *in litt.* 2001; Ed Guerrant, Berry Botanic Garden, *in litt.* 2001) and associated physical disturbance to the habitat and the individual plants from people trampling the slope to monitor the population and photograph the plants (Clayton Antieau, WDOT, *in litt.* 2000). Regional and local botanical professionals and wildflower enthusiasts who are interested in observing the plant in its natural habitat visit the site, as well as curious individuals who have requested directions and information about the plant in response to numerous references about the rarity of the species, either in the local newspaper or broadcasts on the local radio station (L. Malmquist, *in litt.* 2001). The radio broadcast, which featured local rare plants, gave a lot of notoriety to *H. venusta*, and the local Forest Service district office experienced an increase in the number of people coming in to ask where they could find the species (L. Malmquist, pers. comm., 2001).

Wildflower collecting poses a serious threat, and future collecting could increase, especially if the *Hackelia venusta* site becomes known to the general public by the publication of maps or from media exposure (L. Malmquist, *in litt.* 2001). *H. venusta* has been collected by scientists, amateur wildflower enthusiasts, and random visitors to the population for more than 30 years (R. Carr, *in litt.* 2000; R. Harrod, *in litt.* 2000; F. Caplow, *in litt.* 2000; L. Malmquist, *in litt.* 2001; R. Crawford, *in litt.* 2001). The Tumwater Canyon population is easily accessible to the public because it is located near a heavily used highway with a turnout directly across the road. Amateur and professional botanists know of the location of the *H. venusta* population, and their collecting activities likely have reduced the number of plants in the population and have degraded the habitat (Gamon 1997; R. Carr, *in litt.* 2000; Glenn Hoffman, Forest Service, *in litt.* 2000; R. Harrod, *in litt.* 2000; R. Crawford, *in litt.* 2000, 2001, F. Caplow, *in litt.* 2001).

In May 1998, representatives from the Service, the Forest Service, and Eastern Washington University witnessed a person collecting the plant as they inspected the *Hackelia venusta* site (T. Thomas, pers. obs., 1998; Jon Gilstrom, *in litt.* 2000; R. Harrod, *in litt.* 2000). The species was also witnessed being collected while Forest Service personnel monitored the plant population in the spring of 2000 (L. Malmquist, pers. comm., 2000, *in litt.* 2001). Both incidents, and the large number of comments we received about collection of the plant, indicate that the species, when in bloom, is eye-catching and sufficiently attractive to cause someone to stop and remove the plant, presumably for personal use. Not only does the removal of plants cause a loss of reproductive potential, but trampling the site to access the plants could have a devastating effect on the remaining plants.

C. Disease or Predation

Disease is not currently known to be a threat to this species. No livestock or wildlife are known to graze on *Hackelia venusta.*

D. Inadequacy of Existing Regulatory Mechanisms

Although the known population of *Hackelia venusta* is located in an area designated as a special management area, the species remains vulnerable to threats. The Tumwater Canyon Botanical Area was designated by the Wenatchee National Forest in 1938 because of the occurrence of *Lewisia tweedyi. Lewisia tweedyi* has since been found to be more widespread than previously known and is no longer a species of concern for the area. The Wenatchee National Forest has maintained the Botanical Area designation and has implemented special management specifically targeted to conserve rare species, such as *H. venusta* and *Silene seelyi.* Both species are listed on the Forest Service Regional Forester's Sensitive Species List, which requires the Forest Service to maintain or enhance the viability of these species by considering the species in their project biological evaluations, and to mitigate actions that may adversely affect the species. The Forest Service also prohibits the collection of native plants without a permit, although this regulation has been difficult to enforce (R. Harrod, pers. comm., 1998). *Silene seelyi* grows in rock outcrop crevices near where *H. venusta* is located, but it does not occupy the talus habitat where *H. venusta* is found.

Management activities in the Botanical Area have emphasized botanical values (T. Lillybridge, pers. comm., 1998). In 2000, the Forest Service developed a habitat restoration plan in which they conducted an environmental analysis, conferenced with us, and implemented restoration activities to improve and restore *Hackelia venusta* and *Silene seelyi* habitat. The Botanical Area is also managed as a designated Late-Successional Reserve (LSR) under the Northwest Forest Plan, which permits some silvicultural and fire hazard reduction treatments (Forest Service and Bureau of Land Management 1994).

WDOT developed a management plan, ''Final Management Plan for Rare Plant Species in Tumwater Canyon, Wenatchee National Forest with associated Best Management Practices'' (BMPs) (WDOT 2000). This plan provides guidance and BMPs for road crews conducting maintenance activities that are undertaken along the stretch of the highway in Tumwater Canyon that *Hackelia venusta* occupies (WDOT 2000). Funding for maintenance activities is covered through base allocations to keep the highway cleared of snow, debris, and overhanging vegetation, the guidelines outlined in the plan are implemented during the course of routine maintenance operations. The management practices outlined in the plan enable WDOT crews to accomplish maintenance goals without harming the plant or its habitat. The plan was developed in coordination with the Forest Service, WDNR, and the Service. Funding for implementation of this plan cannot be assured on an annual basis.

The Washington Natural Heritage Program, in coordination with the Wenatchee National Forest, also developed management guidelines for *Hackelia venusta* in 1988 (Gamon 1988b). The plan contained recommendations that specific actions be taken to protect the plant on National Forest land. These guidelines included the recommendation that the Wenatchee National Forest develop a species management guide to provide management direction for the habitat of this species. The Wenatchee National Forest developed a draft management guide several years ago, but has not yet finalized it (T. Lillybridge, pers. comm., 1997).

The WDNR designated *Hackelia venusta* as endangered in 1981 (Washington Natural Heritage Program 1981), and the species designation has been retained in subsequent updates of the State's endangered species list. However, this listing does not provide any regulatory protection for the plant.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Low seed production, as well as low genetic variation, are factors in the decline of *Hackelia venusta.* At the Tumwater Canyon site, an estimated high proportion (60 to 70 percent) of *H. venusta* seeds did not develop in 1984 (Barrett *et al.* 1985). Fruit development was poor on many plants; only a few individuals exhibited mature fruit development. It is unknown why this occurred, but low genetic variation may

have contributed to poor reproduction success (R. Carr, *in litt.* 2000; D. Werntz, *in litt.* 2000). This reduced reproductive potential may be a major factor in the reduction of plants at the type locality. The age structure of the extant population at Tumwater Canyon, poor seed production and germination of new seedlings, and historical estimates of population size indicate that the population is declining (Barrett *et al.* 1985; Gamon 1997), although recent Forest Service monitoring of the population has shown that the population has increased during the period from 1995 to 2001 (L. Malmquist, pers. comm., 2000; *in litt.* 2001; P. Wagner, *in litt.* 2000). The increase in population size can likely be attributed to the improved habitat conditions brought on by restoration activities and the effects of a wildfire that burned through Tumwater Canyon in 1994 (see our response for Issue 4 in the (''Summary of Comments and Recommendations'')).

The small size of the *Hackelia venusta* population is a major problem. Seedling establishment is most critical, and trampling may significantly affect the germination of seedlings (R. Carr, pers. comm., 1998, *in litt.* 2000; K. Robson, *in litt.* 2001). Human activities along the roadside turnout at the Tumwater Canyon site represent a significant threat to plants nearest the turnout. Motorists use the area to view the Wenatchee River, often venturing over the guardrail and along the bank below the road. Plants on this bank are damaged by trampling, burial by loose rock, and root exposure as a result of human traffic on the unstable slopes (Gamon 1997).

Fire suppression during this century is likely a factor in the reduced spatial distribution of the Tumwater Canyon population. Historically, fuels in the forest type where *Hackelia venusta* is found were rarely at high levels because of the frequent fires that consumed forest floor fuels and pruned residual trees (Agee 1991). In the past, fires suppressed the encroachment of woody vegetation and maintained open areas more conducive to *H. venusta* reproduction and growth. Continued suppression of fires in this forest type could bring about additional losses to suitable habitat (Barrett *et al.* 1985; Gamon 1997; D. Werntz, *in litt.* 2000).

Competition from *Linaria dalmatica* (dalmatian toadflax) and *Centaurea diffusa* (diffuse knapweed) is a threat to *Hackelia venusta* (J. Wentworth, *in litt.* 2001). Both of these noxious weeds outcompete many native plant species through uptake of water and nutrients, interference with photosynthesis and respiration of associated species, and production of compounds that can directly affect seed germination and seedling growth and development. These noxious weeds co-occur with *H. venusta* at the Tumwater Canyon site and have become more widespread on the available habitat (J. Wentworth, *in litt.* 2001).

The species' habitat is threatened by plant succession in the absence of fire (D. Werntz, Northwest Ecosystem Alliance, *in litt.* 2000) and by competition with nonnative plants (R. Harrod, pers. comm., 1996, 2001; Ted Thomas, Service, pers. obs., 1995 through 1998), as well as from native trees and shrubs that have become established on the site. Other threats include the mass-wasting or erosion of soil that occurs on these unstable slopes and from highway maintenance activities. These erosion events (either small-scale surface erosion or large landslides) are not predictable in timing, frequency, or magnitude. However, large landslides have occurred within Tumwater Canyon in close proximity to the Hackelia venusta population. The last time a large landslide occurred, which was in 1992, the road was closed for emergency repairs by WDOT. The repairs undercut the slope and up to 50 *Hackelia venusta* plants were destroyed and removed from the habitat of Tumwater Canyon (R. Harrod, pers. comm., 2001).

The species previously occurred in the road ROW which, although maintained by WDOT, is Federal land. In the past, road salting and herbicide spraying were probable factors in reducing the vigor and number of *Hackelia venusta* in the ROW. Currently, WDOT maintenance crews rarely apply road salt and, when they do, they apply it in a diluted, 20:1 ratio with road sand (Luther Beaty, WDOT, pers. comm., 1995). Since 1998, however, WDOT has been using de-icers on the roadway during winter months. The disappearance of *H. venusta* along the roadcut and ROW corresponds to the WDOT's use of de-icers starting in 1998. We believe that the de-icers may be associated with the decline of individual plants in the ROW and we now consider it a threat to the species. The de-icer used by WDOT is called CalBan, a formulation of calcium chloride, which is a salt. Residue from the salts build up in the soil and are retained on soil particles. When plants emerge in the spring, the concentration of salt is greater in the soil than found in the plant, so any moisture that is in the plant or soil surrounding the plant is drawn to the calcium chloride crystals, which causes the plant to wilt and die (J. Brickey, pers. comm., 2002).

Herbicides have also been applied in the past by WDOT, which sprayed the roadside vegetation. Overspray and splatter of herbicides may have contributed to the reduced number of *Hackelia venusta* plants in the population. WDOT has discontinued the use of herbicides in Tumwater Canyon (L. Beaty, pers. comm., 1995).

In the narrow confines of Tumwater Canyon, automobile emissions may continue to be a cause for reduced vigor to the *Hackelia venusta* population because ozone and oxides of sulphur and nitrate emitted from vehicle tailpipes negatively affect photosynthesis of plants (Forest Service 1979). In addition, several individual plants occur on level ground near the roadside turnoff and are threatened with trampling and collecting.

The small number of individuals (about 500 plants) remaining in the sole population located in Tumwater Canyon makes *Hackelia venusta* vulnerable to extinction due to random events such as slope failure (mass-wasting or surface erosion) or drought. A single random environmental event could extirpate a substantial portion or all of the remaining individuals of this species and cause its extinction. Also, changes in gene frequencies within small, isolated populations can lead to a loss of genetic variability and a reduced likelihood of long-term viability (Franklin 1980; Soulé 1980; Lande and Barrowclough 1987; R. Carr, *in litt.* 2000).

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by *Hackelia venusta* in developing this final rule. Currently, only one known population of *H. venusta* exists. The plant is threatened by a long history of plant collection and the physical degradation of the habitat associated with people walking on the steep, easily eroded substrate where the species is found. Habitat modification associated with fire suppression, competition and shade from native shrubs and trees and nonnative noxious weeds, maintenance of the highway located near the population, poor seed development, low reproductive capacity, and incidental loss from human trampling, threaten the continued existence of this species. Also, the single, small population of this species is particularly susceptible to extinction from random environmental events such as rock slides. This species is in danger of extinction ''throughout all or a significant portion of its range'' (section 3(6) of the Act) and, therefore,

meets the Act's definition of endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as-(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not prudent for *Hackelia venusta.*

We are mindful that several court decisions have overturned determinations for a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). However, based on the standards provided in those judicial decisions, a not prudent critical habitat finding for *Hackelia venusta* is warranted.

Hackelia venusta consists of only one population made up of approximately 500 individual plants and cannot recolonize habitat quickly. Because this species occupies such a limited area, even a single person walking on the talus habitat where it occurs could cause significant damage to the species and its habitat that could lead to the extirpation of the entire population. Increased visits to the population location, stimulated by critical habitat designation and related maps and publicity, even without deliberate collecting, could adversely affect the species due to the associated increase in trampling of its fragile habitat. We believe that the designation of critical habitat, and the required public dissemination of maps and descriptions of the population site, would significantly increase the degree of threat to this species. Publicity could generate an increased demand and intensify collecting pressure or facilitate opportunities for vandalism. This species has already been subjected to excessive collecting by collectors. Increased publicity and a provision of specific location information associated with critical habitat designation could result in increased collection from the population. Although the taking and reduction to possession of endangered plants from land under Federal jurisdiction is prohibited by the Act, the taking prohibitions are difficult to enforce. We believe the publication of critical habitat descriptions would make *H. venusta* more vulnerable to collectors and curiosity-seekers and would increase enforcement problems for the Forest Service, and we have documented evidence that collecting and other human disturbance have already detrimentally affected this species.

Our concerns of increased human threats to the species from the publication of maps of the population site are based on specific experience. Another federally listed mountain plant (*Hudsonia montana*) for which critical habitat was designated was severely impacted by collectors immediately after the maps were published. This collection happened even though this plant was not previously known to be desired by rare plant collectors and had never been offered for sale in commercial trade. Some of the collectors appeared in the local Forest Service district offices, with the critical habitat map from the local newspaper in their hands, asking directions to the site (Nora Murdock, Service, pers. comm., 2000). Such incidents are extremely difficult to document. The only reason we were able to do so in this case was because, for this very rare and restricted plant, every individual was mapped. When plants vanished from our permanent plots, we were able to find the carefully covered excavations where they had been removed. Otherwise, we would have only observed a precipitous crash in the populations without knowing that the cause was directly attributable to collection, apparently stimulated by the publication of specific critical habitat maps. In the case of *Hackelia venusta,* a local radio station interviewed a professor from the University of Washington, Center for Urban Horticulture, which was fire bombed in spring, 2001. Apparently the professor repeated several times in the interview that propagated *H. venusta* plants were lost in the fire bombing. After this announcement, the local Forest Service Ranger District received requests to know the location of the plant (L. Malmquist, pers. comm., 2001). Also, a Tacoma newsreporter made several inquiries to our Western Washington Fish and Wildlife Office about visiting the plant population during the spring of 2001. We declined the request with the concern that additional news coverage would be detrimental to the species or its habitat.

It is our finding that the designation of critical habitat would increase threats to *Hackelia venusta,* and that a critical habitat designation would exacerbate these threats and possibly lead to extinction of the species; therefore a not prudent finding is warranted.

Because of the precarious status of the species, the small size of the only surviving population, the restricted range of the species, and the limited amount of suitable habitat available to the species, a Federal action subject to consultation under section 7 of the Act that triggers the standard for destruction or adverse modification of critical habitat for *H. venusta* would very likely also jeopardize the species' continued existence. Therefore, it is doubtful that additional protection would be provided to this species through the designation of critical habitat that would not already be provided through the jeopardy standard. We recognize that critical habitat designation in some situations may provide additional value to a species, for example, by identifying areas important for conservation. However, for *H. venusta,* we have weighed the potential benefits of designating critical habitat against the significant risks of doing so and find that the minor benefits of designating critical habitat do not outweigh the potential increased threats from collection and inadvertent habitat degradation caused by curiosity-seekers. Therefore, we have determined that the designation of critical habitat for *H. venusta* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions,

requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that the Service carry out recovery actions for all listed species. The protection required of Federal agencies, and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agencies whose actions may require consultation include the Forest Service, Federal Highway Administration, and U.S. Army Corps of Engineers (Corps). State highway activity, implemented by the State and partly funded by the Federal Government, includes highway maintenance activities such as roadside vegetation control, and may be subject to consultation under the Act. Forest Service activities that may require consultation under section 7 of the Act would include fire suppression, activities associated with fire suppression, timber harvest, and habitat restoration activities. The Corps may be required to consult with us on proposed actions planned on the Wenatchee River, which is adjacent and directly below the highway ROW. The distance from the base of the *Hackelia venusta* population to the Wenatchee River is less than 30 m (100 ft).

Listing *Hackelia venusta* as endangered will provide for the development of a recovery plan. Such a plan would bring together Federal, State, and local efforts for the conservation of the species. The plan will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities, assign responsibilities, and estimate costs of various tasks necessary to achieve conservation and survival of this species. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to the State of Washington for management actions promoting the protection and recovery of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction in areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such endangered plants in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, activities that likely would or would not be contrary to section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

With respect to *Hackelia venusta,* based upon the best available information, the following actions would not be likely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, and pipeline or utility line construction crossing suitable habitat), when such activity is conducted in accordance with any biological opinion issued by us under section 7 of the Act;

(2) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide or herbicide application when consistent with label restrictions;

(3) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break; and

(4) Casual, dispersed human activities (e.g., bird watching, sightseeing, photography, camping, hiking) in the habitat of the species.

With respect to *Hackelia venusta,* the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of *Hackelia venusta* on Federal lands;

(2) Application of pesticides/herbicides in violation of label restrictions;

(3) Interstate or foreign commerce, import, or export of this species without a valid permit; and

(4) Removal or destruction of the species on Federal land, or on non-Federal land if done in knowing violation of Washington State law or regulations, or in the course of any violation of a Washington State criminal trespass law.

Questions regarding whether specific activities risk violating section 9 should be directed to our Western Washington Fish and Wildlife Office (see **ADDRESSES** section). The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. Requests for copies of the regulations regarding listed species and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the

National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

A complete list of all references cited in this document, as well as others, may be requested from our Western Washington Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Ted Thomas, Western Washington Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, § 17.12 of part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations is amended, as set forth below.

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Hackelia venusta ...	Showy stickseed	U.S.A. (WA)	Boraginaceae-borage.	E	722	NA	NA
*	*	*	*	*	*	*	

Dated: January 30, 2002.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–2760 Filed 2–5–02; 8:45 am]

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Rules and Regulations

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Vol. 67, No. 25
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV01–927–1 FR]

Winter Pears Grown in Oregon and Washington; The Establishment of a Supplemental Rate of Assessment for the Beurre d'Anjou Variety of Pears and of a Definition for Organically Produced Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a supplemental rate of assessment of $0.03 per standard box of the Beurre d'Anjou variety of pears (d'Anjou pears) handled, excluding organically produced pears, during the 2001–2002 and subsequent fiscal periods under the marketing order regulating the handling of winter pears grown in Oregon and Washington. The marketing order is administered locally by the Winter Pear Control Committee (Committee). To properly implement the supplemental rate of assessment, which will be used for the purpose of funding data collection for Ethoxyquin residue on stored d'Anjou pears, this rule also establishes a definition for organically produced pears. The fiscal period began July 1 and ends June 30. The supplemental rate of assessment will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 7, 2002.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Oregon and Washington winter pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the supplemental rate of assessment as issued herein will be applicable to all assessable d'Anjou pears, excluding organically produced pears, beginning on July 1, 2001, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes a supplemental rate of assessment of $0.03 per standard box of d'Anjou pears handled, excluding organically produced pears, for the 2001–2002 and subsequent fiscal periods. The $0.03 supplemental rate of assessment on conventionally produced and handled d'Anjou pears is in addition to the continuing rate of assessment of $0.49 per standard box established at 63 FR 39037 for the 1998–1999 and subsequent fiscal periods, which pertains to all pears handled under the order. This rule also establishes a definition for organically produced pears. The Committee unanimously recommended this rule at its meeting held on June 1, 2001.

Section 927.41 of the order provides authority for USDA, upon a recommendation of the Committee, to fix the rate of assessment that handlers shall pay on all pears handled during each fiscal period, and may also fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 927.47. Section 927.47 provides authority for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears.

Authority for the Committee to recommend the establishment of a definition for organically produced pears is provided in § 927.4, which defines ''pears'' for purposes of this order, and in § 927.31(b), which provides the Committee with the power to recommend administrative rules and regulations to effectuate the terms and provisions of the order.

The winter pear order provides authority for the Committee, with USDA's approval, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Oregon and Washington winter pears. They are familiar with the Committee's

needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The rate of assessment, both basic and supplemental, is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on June 1, 2001, and unanimously recommended 2001–2002 expenditures of $8,127,777. The Committee also recommended continuation of the rate of assessment of $0.49 per standard box of winter pears established for the 1998–1999 and subsequent fiscal periods. In addition to this continuing, basic rate of assessment, the Committee unanimously recommended the establishment of a supplemental rate of assessment of $0.03 per standard box of d'Anjou pears handled, excluding organically produced pears. Both the basic rate of $0.49 per standard box of winter pears and the supplemental rate of $0.03 per standard box of conventionally produced and handled d'Anjou pears will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Under authority of this final rule, conventionally produced and handled d'Anjou pears (pears that are not organically produced) will be assessed at a total rate of $0.52 per standard box, while all other varieties of winter pears, including organically produced and handled d'Anjou pears, will be assessed at the currently established rate of $0.49 per standard box. The Committee estimates that of the 15.8 million boxes of winter pears projected for utilization during the 2001–2002 fiscal period, 12.4 million boxes will be conventionally produced pears of the d'Anjou variety. While the income derived from the basic rate of assessment will continue to fund the Committee's administrative and promotional activities, income derived from the supplemental rate of assessment will be used exclusively to fund the collection of data on Ethoxyquin residue on stored d'Anjou pears. Ethoxyquin is an antioxidant that is registered for use on pears in the control of superficial scald, a physiological disease affecting the appearance of certain varieties of stored pears. The supplemental rate will not be applicable to d'Anjou pears that are organically produced, as Ethoxyquin is not used in their handling and storage.

Since the d'Anjou variety of pear is of major importance to the Oregon and Washington winter pear industry, the Committee has embarked on a research project that will fund the collection of data pertaining to Ethoxyquin residue to satisfy requirements of the Environmental Protection Agency pertaining to U.S. pesticide tolerance and registration. In addition, the data collection will be used in conjunction with the Codex Alimentarius system that establishes maximum residue limits used as tolerances in many nations receiving shipments of Oregon and Washington d'Anjou pears.

The major expenditures recommended by the Committee for the 2001–2002 year include $6,952,000 for market development projects including paid advertising, $688,000 for research including $372,000 for Ethoxyquin data research (funded by the supplemental rate of assessment), and operational expenses of $474,000, including $241,401 for salaries and employee benefits. Budgeted expenses for these items in 2000–2001 were $7,342,500, $330,000, and $412,500 (including $269,658 for salaries and benefits), respectively. Collection of data on the use of Ethoxyquin was not a funded research project during the 2000–2001 fiscal period.

Assessment income for the 2001–2002 fiscal period is expected to total $8,114,000 based on estimated shipments of 15,800,000 standard boxes at the current rate of $0.49 per standard box. This includes 12,400,000 standard boxes of conventionally produced d'Anjou pears at the proposed supplemental rate of $0.03 per standard box. Income from the additional $0.03 rate of assessment is estimated at $372,000. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $304,181) will be kept within the maximum permitted by the order of approximately one fiscal period's expenses (§ 927.42).

Although both the basic rate of assessment and the supplemental rate of assessment will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of both. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA will evaluate Committee recommendations and other available information to determine whether modification of either rate of assessment is needed. Further rulemaking will be undertaken as necessary. The Committee's 2001–2002 budget has been reviewed and approved by USDA. Those for subsequent fiscal periods will also be reviewed, and as appropriate, approved.

This final rule includes the establishment of a definition for organically produced pears. The establishment of this definition facilitates the implementation of the organically produced pear exclusion from the supplemental rate of assessment. The Committee recommended that the definition be established as follows: ''*Organically produced pears* means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.'' Although the Committee recommended that this definition be established primarily so that it could properly administer the proposed supplemental rate of assessment, the definition could prove useful to both the Committee and the Department in a variety of ways in the administration of the order. With the increasing interest and emphasis being put on organic food production in the United States, this definition for organically produced pears provides the northwest pear industry with an important tool.

Final Regulatory Flexibility Analysis

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

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

There are approximately 70 handlers of winter pears who are subject to regulation under the marketing order and approximately 1,700 winter pear producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having

annual receipts less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

The Committee estimates, based upon handler shipment totals and an average F.O.B price of $14 per standard box, that about 93 percent of winter pear handlers could be considered small businesses under SBA's definition. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of winter pear producers, the average annual producer receipts are approximately $69,635. In view of the foregoing, it can be concluded that the majority of producers of winter pears may be classified as small entities.

This rule establishes a supplemental rate of assessment of $0.03 per standard box of d'Anjou pears handled, excluding organically produced pears, for the 2001–2002 and subsequent fiscal periods. The $0.03 supplemental rate of assessment on conventionally produced and handled d'Anjou pears is in addition to the continuing rate of assessment of $0.49 per standard box of pears handled established at 63 FR 39037 for the 1998–1999 and subsequent fiscal periods. This rule also establishes a definition for organically produced pears. The Committee unanimously recommended this action at its meeting held on June 1, 2001.

The major expenditures recommended by the Committee for the 2001–2002 year include $6,952,000 for market development including paid advertising, $688,000 for research including $372,000 for Ethoxyquin data collection, and operational expenses of $474,000, including $241,401 for salaries and employee benefits. Budgeted expenses for these items in 2000–2001 were $7,342,500, $330,000, and $412,500 ($269,658 for salaries and benefits), respectively. Ethoxyquin data research was not a budgeted item during the 2000–2001 fiscal period.

Assessment income for the 2001–2002 fiscal period may total $8,114,000 based on estimated winter pear shipments of 15,800,000 standard boxes at the current rate of $0.49 per standard box, and 12,400,000 standard boxes of conventionally produced d'Anjou pears at the supplemental rate of $0.03 per standard box. The supplemental assessment income, estimated at $372,000, will be used to fund Ethoxyquin data research. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The operating reserve is within the maximum permitted by the order of approximately one fiscal period's expenses.

The Committee reviewed and unanimously recommended 2001–2002 expenditures of $8,127,777. This compares to last year's approved budget of $8,199,694. Prior to arriving at this budget, alternative expenditure and assessment levels were discussed by the Committee. Based upon the relative value of the Ethoxyquin research to the industry, a supplemental rate of assessment was recommended on d'Anjou pears. Ethoxyquin is not used in the handling and storage of organically produced d'Anjou pears, thus they were excluded from the Committee's supplemental assessment recommendation. This fact, however, is the main reason the Committee recommended the establishment of a definition for organically produced pears in the order's rules and regulations.

A review of historical information, as well as preliminary information pertaining to the upcoming fiscal period, indicates that the producer price for the 2001–2002 season could range between $5.87 and $10.34 per standard box of winter pears. Therefore, the estimated assessment revenue for the 2001–2002 fiscal period, inclusive of revenue from both the basic $0.49 rate and the $0.03 supplemental rate of assessment, as a percentage of total grower revenue could range between 5 and 9 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are generally offset by the benefits derived by the operation of the order. The Committee's meeting was widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 1, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Furthermore, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on September 21, 2001 (66 FR 48623). A copy of the proposed ruled was provided to the Committee office which in turn made copies available to producers and handlers. Furthermore, the Office of the Federal Register and USDA made a copy available on the Internet. A 30-day comment period ending October 22, 2001, was provided for interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2001–2002 fiscal period pears from producers; (2) the 2001–2002 fiscal period began on July 1, 2001, and the supplemental rate of assessment should apply to all assessable, non-organic, d'Anjou pears handled during such fiscal period; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting. Furthermore, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Subpart—Control Committee Rules and Regulations, under the undesignated center heading ''Definitions'', a new § 927.103 is added as follows:

§ 927.103 Organically produced pears.

Organically produced pears means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.

3. Section 927.236 is revised to read as follows:

§ 927.236 Assessment rate.

On and after July 1, 2001, an assessment rate of $0.49 per standard box of conventionally and organically produced pears and, in addition, a supplemental assessment rate of $0.03 per standard box of Beurre d'Anjou variety pears, excluding organically produced pears, is established for the Winter Pear Control Committee.

Dated: January 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2849 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV02–932–1 IFR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (Committee) for the 2002 and subsequent fiscal years from $27.90 to $10.09 per ton of olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1, 2002, and ends December 31, 2002. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective: February 7, 2002. Comments received by April 8, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning January 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2002 and subsequent fiscal years from $27.90 per ton to $10.09 per ton of olives.

The California olive marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 11, 2001, and unanimously recommended fiscal year 2002 expenditures of $1,428,585 and an assessment rate of $10.09 per ton of olives. In comparison, last year's budgeted expenditures were $1,348,242 and the assessment rate was $27.90. The assessment rate of $10.09 is

$17.81 lower than the rate currently in effect.

Expenditures recommended by the Committee for the 2002 fiscal year include $811,935 for marketing development, $339,650 for administration, $250,000 for research, and $27,000 for capital expenditures. Budgeted expenses for these items in 2001 were $596,415, $343,490, $408,337, and $0, respectively.

Last year's assessable tonnage was 46,374 tons, and this year's assessable tonnage is 123,439 tons. Although the Committee increased 2002 marketing development and capital expenditures, the significant increase in assessable tonnage makes possible the lower assessment rate.

Funds budgeted for research activities are reduced due to completion of the mechanical harvester project. The reduced research expenditures will fund scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly higher as the Committee's website will be redesigned and outreach programs will be implemented for students and teachers. Capital expenditures are higher as the Committee will purchase a vehicle for Committee staff.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual tonnage, and additional pertinent factors. As mentioned earlier olive shipments for the year are estimated at 123,439 for fiscal year 2002. This compares to an assessable tonnage of 46,374 for fiscal year 2001. The significant tonnage increase in fiscal year 2002, due in part to the alternate-bearing nature of olives, has made it possible for the Committee to decrease the assessment rate from $27.90 to $10.09 per ton. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order—approximately one fiscal periods' expenses, or $1,428,585 (§ 932.40).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 1,200 producers of olives in the production area and approximately 3 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

The majority of olive producers may be classified as small entities. One of the handlers may be classified as a small entity. Thus, the majority of handlers may be classified as large entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2002 and subsequent fiscal years from $27.90 to $10.09 per ton of olives. The Committee unanimously recommended 2002 expenditures of $1,428,585 and an assessment rate of $10.09 per ton. The assessment rate of $10.09 is $17.81 lower than the 2001 rate. The quantity of assessable olives for the 2002 fiscal year is estimated at 123,439 tons. Thus, the $10.09 rate should provide $1,245,500 in assessment income and should be adequate, when combined with funds from the authorized reserve and interest income to meet this year's expenses.

The expenditures recommended by the Committee for the 2002 fiscal year include $811,935 for marketing development, $339,650 for administration, $250,000 for research, and $27,000 for capital expenditures. Budgeted expenses for these items in 2001 were $596,415, $343,490, $408,337, and $0, respectively.

Last year's assessable tonnage was 46,374 tons, and this year's assessable tonnage is 123,439 tons. Although the Committee increased 2002 marketing development and capital expenditures, the significant increase in tonnage makes the lower assessment rate possible.

Funds budgeted for research activities are reduced due to completion of the mechanical harvester project. The reduced research expenditures will fund scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly higher as the Committee's website will be redesigned and outreach programs will be implemented for students and teachers. Capital expenditures are higher as the Committee will purchase a vehicle for Committee staff.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, and Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry. The assessment rate of $10.09 per ton of assessable olives was derived by considering anticipated expenses, the Committee's estimate of assessable olives, and additional pertinent factors.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2002 season is estimated to be approximately $502.27 per ton of olives. Therefore, the estimated assessment revenue for the 2002 fiscal year as a percentage of total grower revenue will be approximately 2 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce

the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 11, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002 fiscal year began on January 1, 2002, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) the action decreases the assessment rate for assessable olives beginning with the 2002 fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January, 1, 2002, an assessment rate of $10.09 per ton is established for California olives.

Dated: January 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2847 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV01–948–2 FIR]

Irish Potatoes Grown in Colorado; Suspension of Continuing Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, without change, an interim final rule which continues to suspend the assessment rate established for the Colorado Potato Administrative Committee, Area III (Committee) for the 2001–02 and subsequent fiscal periods. The Committee, which locally administers the marketing order regulating the handling of potatoes grown in Northern Colorado, made this recommendation for the purpose of lowering the monetary reserve to a level consistent with program requirements. The fiscal period began July 1, 2001, and ends June 30, 2002. The assessment rate will remain suspended until an appropriate rate is reinstated.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. For the 1999–00 fiscal period, an assessment rate of $0.02 per hundredweight of potatoes handled was fixed by USDA to continue in effect indefinitely unless modified, suspended, or terminated. This action continues to suspend the assessment rate for the 2001–02 fiscal period, which began on July 1, 2001, and will continue in effect until reinstated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to suspend § 948.215 of the order's rules and regulations. Section 948.215 established an assessment rate of $0.02 per hundredweight of potatoes handled for 1999–00 and subsequent fiscal periods. Continuous assessment rates remain in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA. This rule continues to suspend the $0.02 assessment rate for 2001–02, and will continue to suspend such assessment rate during subsequent fiscal periods until reinstated by USDA upon recommendation of the Committee.

Sections 948.75 through 948.77 of the Colorado potato order provide authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and to collect assessments from handlers to administer the program. In addition, § 948.78 of the order authorizes the use of monetary reserve funds to cover program expenses. The members of the Committee are producers and handlers of Colorado Area III potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. Recommendations concerning the budget and assessment rate are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on May 10, 2001, to discuss the proposed 2001–02 budget and assessment rate and to take appropriate action. However, with only three out of nine voting members in attendance at the meeting, the quorum necessary for the Committee to take action was not present. To ensure that the Committee would have a recommendation for the 2001–02 fiscal period budget, the Committee's manager subsequently polled all Committee members by U.S. mail, as provided for in § 948.61 of the order. The resultant unanimous recommendation by all nine members favored the establishment of a budget with expenditures of $18,200 and an assessment rate of $0.005 (½ cent) per hundredweight of potatoes handled during the 2001–02 fiscal period.

However, § 948.78(a)(2) of the order specifies that the Committee, with USDA's approval, may carry over excess funds into subsequent fiscal periods as a reserve, provided that funds already in the reserve are less than approximately two fiscal periods' expenses. After reviewing the Committee's initial recommendation for a $0.005 rate of assessment, USDA requested that the Committee consider suspension of the assessment rate until the reserve is lowered to a level consistent with the order. Consequently, at its meeting of July 19, 2001, the Committee unanimously recommended suspension of the continuing assessment rate of $0.02 for the 2001–02 and subsequent fiscal periods. The Committee concluded that an assessment rate will not be necessary for operation during the 2001–02 fiscal period as funds in the reserve, combined with interest and rental income, are adequate to meet expenses.

As of July 1, 2001, the Committee had $59,579 in its reserve fund. With the 2001–02 budget set at $18,200, the current maximum reserve permitted by the order is approximately $36,400 (approximately two fiscal periods' expenses). To meet its 2001–02 expenses the Committee plans on drawing approximately $14,700 from its reserve, and may additionally earn approximately $3,500 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2001–02 fiscal period could be reduced to approximately $44,879. Projecting a similar level of expenses in 2002–03 and continuation of the assessment rate suspension, the Committee's reserve on July 1, 2003, could be about $30,179. This amount would be consistent with the order's requirements.

The major expenditures recommended by the Committee for the 2001–02 fiscal period include $7,000 for salary, $6,300 for office expense (which includes equipment, telephone, and utilities), and $3,000 for rent. Minor expenses total $1,900. Budgeted expenses for these items in the 2000–01 fiscal period were $4,250, $6,800, and $3,000, respectively. Minor expenses totaled $3,600 that year.

The Committee foresees a need for the assessment rate suspension to continue in effect for approximately two fiscal periods. The assessment rate will remain suspended, however, until reinstated by USDA upon recommendation and information submitted by the Committee or other available information.

Since the suspension of the assessment rate will continue for such subsequent fiscal periods as necessary to ensure that the monetary reserve is lowered to a level consistent with the order, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for reinstatement of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA will evaluate Committee recommendations and other available information such as the level of the budget and the monetary reserve to determine whether assessment rate reinstatement is needed, and at what level. Further rulemaking will be undertaken as necessary. The Committee's 2001–02 budget has been reviewed and approved by USDA and budgets for subsequent fiscal periods will also be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 26 producers of Colorado Area III potatoes in the production area and approximately 11 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Information for the most recent season in which statistics are available, as reported by the National Agricultural Statistics Service, was considered in

determining the number of large and small producers by acreage, production, and producer prices. According to the information provided, the average yield per acre was 340 hundredweight, the average farm size was 53 acres, and the season average producer price was $5.95 per hundredweight. This equates to average gross receipts to producers of approximately $107,200. Furthermore, based upon information provided by the Committee, all handlers of Area III potatoes have shipped under $5,000,000 worth of potatoes during the most recent season for which numbers are available. Based on the foregoing, it can be concluded that a majority of producers and handlers of Area III potatoes may be classified as small entities.

This rule continues to suspend § 948.215 of the order's rules and regulations, which established an assessment rate of $0.02 per hundredweight of potatoes handled beginning with the 1999–00 fiscal period. This assessment rate suspension is effective for the 2001–02 fiscal period and subsequent fiscal periods until reinstated.

Without assessment income to offset its 2001–02 budget of $18,200, the Committee plans on drawing approximately $14,700 from its reserve, and may additionally earn approximately $3,500 from interest and other income.

The major expenditures recommended by the Committee in the 2001–02 fiscal period budget include $7,000 for salary, $6,300 for office expenses, and $3,000 for rent. Minor expenses total $1,900. In comparison, the Committee's 2000–01 fiscal period budget of $17,650 included major expenses of $4,250, $6,800, and $3,000, respectively. Minor expenses totaled $3,600.

The Committee recommended that assessment collection be suspended until such time as the monetary reserve reaches a level consistent with the order requirement of less than approximately two fiscal periods' expenses. The Committee believes that by suspending the assessment rate for at least the next two fiscal periods, the operating reserve should be lowered to an amount consistent with the program. Based on Committee projections, the current reserve of $59,579 will be reduced to about $44,879 by the end of the 2001–02 fiscal period, and to about $30,179 by the end of the 2002–03 fiscal period.

Prior to recommending the suspension of the continuing assessment rate, the Committee discussed alternatives, including its earlier recommended assessment rate of $0.005 per hundredweight. However, the Committee concurred with USD's position that a suspension of the assessment rate is viable since it could rely on its reserve and other income to meet budgeted expenses, and that such a suspension would expedite the reduction of the reserve. Another alternative considered by the Committee was to refund the portion of the reserve that is over that permitted by the order directly to handlers of record. However, because many of the handlers assessed in prior years are no longer in business, the Committee concluded this would not be equitable.

This action will reduce handler costs by almost $9,000 (448,750 hundredweight of assessable potatoes × the current rate of assessment of $0.02) during the 2001–02 fiscal period, as no assessment will be collected. Suspension of the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meetings were widely publicized throughout the Colorado Area III potato industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 10 and July 19, 2001, meetings were open to the public and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area III potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

An interim final rule regarding this action was published in the **Federal Register** on September 25, 2001 (66 FR 48951). A copy of that rule was sent to the Committee's manager, who in turn provided copies to Committee members, handlers, and other interested persons. The interim final rule was also made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on November 26, 2001. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (66 FR 48951, September 25, 2001) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule amending 7 CFR part 948 which was published at 66 FR 48951 on September 25, 2001, is adopted as a final rule without change.

Dated: January 31, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2846 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV01–982–3 FR]

Hazelnuts Grown in Oregon and Washington; Establishment of Reporting Requirements for Imported Hazelnuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes reporting requirements for hazelnuts imported by handlers of hazelnuts grown in Oregon and Washington. It requires handlers to report the receipt and disposition of hazelnuts grown outside of the United States. This rule was recommended by the Hazelnut Marketing Board (Board), the agency responsible for local administration of the marketing order regulating the handling of hazelnuts grown in Oregon and Washington. Requiring handlers to report the receipt and disposition of imported hazelnuts will provide the Board with more

accurate information on the total supply of hazelnuts being handled in Oregon and Washington. This information will facilitate the Board's preparation of its annual marketing policy and will help in its ability to track both domestic and foreign product.

EFFECTIVE DATE: February 7, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 115 and Order No. 982 both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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 USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes reporting requirements for hazelnuts imported by handlers of hazelnuts grown in Oregon and Washington. The rule requires handlers to report the receipt and disposition of hazelnuts grown outside of the United States. Requiring handlers to report the receipt and disposition of imported hazelnuts will provide the Board with more accurate information on the total supply of hazelnuts being handled in Oregon and Washington.

At its November 14, 2000, meeting, the Board passed a general recommendation to require handlers to report imported hazelnuts. After developing procedures and a form necessary for implementation, the Board submitted its recommendation to the Department in May 2001.

Sections 982.64 through 982.67 of the order authorize the Board to require certain specific reports from handlers, including creditable promotion and advertising reports, carryover reports, shipment reports, and reports on the disposition of restricted hazelnuts. Section 982.68 of the order provides additional authority for the Board, with the approval of USDA, to require such other reports as the Board may require to perform its duties under the order.

The Board believes that more accurate information on the total supply of hazelnuts moving in and out of Oregon and Washington—both foreign and domestic product—will facilitate the administration of the order. The Board will use this information to more efficiently track the receipt and disposition of hazelnuts by handlers in Oregon and Washington. Furthermore, the Board will use this information in its marketing policy deliberations each fall when it reviews the crop estimate, handler carryover, and other factors to determine whether volume regulation would be appropriate. In addition, the Board is concerned that imported hazelnuts might be included in handler inventory reports of Oregon and Washington hazelnuts.

In addition to the domestic crop, of which 100 percent is produced in Oregon and Washington, hazelnuts are imported into the United States from Canada and Turkey, and occasionally from Italy. Hazelnuts produced in Oregon and Washington generally represent from 3 to 5 percent of the world crop. According to USDA statistics, the majority of hazelnuts imported into the United States are in kernel form, of which about 96 percent are from Turkey. A small percentage of imports are inshell hazelnuts and generally are from British Columbia, Canada, and enter the U.S. through Washington State. Although information pertaining to the quantity of imported hazelnuts has long been available, information specific to the receipt and disposition by Oregon and Washington hazelnut handlers prior to this final rule was lacking.

A major concern of the Board has been the inshell hazelnuts imported from Canada by Oregon and Washington handlers. As production in Canada has increased, there has been an increase in Canadian hazelnuts imported into Oregon and Washington. These hazelnuts are generally the same variety (Barcelona) as are produced in Oregon and Washington. If these hazelnuts are placed in the domestic inshell market without its knowledge, the Board's marketing policy calculations could be inaccurate. This rule will enable the Board to collect import hazelnut data to see how much is being imported and disposed of by domestic handlers.

According to the National Agricultural Statistics Service, the 10-year average annual production of hazelnuts grown in Oregon and Washington is 29,800 inshell tons. Of that total, an average of 4,253 tons was sold in the domestic market. Furthermore, according to the Foreign Agricultural Service, imports during the same 10-year period averaged 316 tons. The five-year average for imports is 534 tons, however, indicating that the increase may well be significant enough to impact the inshell domestic market.

The report, *F/H Form 1f,* will be submitted to the Board monthly when imported hazelnuts are received and shipped by the handler to a buyer in the United States or exported inshell or shelled. The Board estimates that these reports will be submitted about five times per year by each importing handler. The report will include the quantity of such hazelnuts received, country of origin, inspection certificate number, whether such hazelnuts were inshell or kernels, the disposition outlet (domestic, export, inshell, or shelled, etc.), and the shipment date of such hazelnuts.

The Board also recommended that, with each report, the handler submit a copy of the inspection certificate issued by the Federal-State Inspection Service (FSIS) for compliance purposes. The inspection certificate will indicate the

name of the person from whom the hazelnuts were received, the date the hazelnuts were received by the handler, the number of tons and U.S. Custom Service entry number, whether the product is inshell or shelled, the quantity of hazelnuts, country of origin, the name of the FSIS inspector who issued the certificate, and the date such certificate was issued. The Board believes inspection certificates are necessary to verify handler receipt and disposition reports for imported hazelnuts.

Final Regulatory Flexibility Analysis and Paperwork Reduction Act

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

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

There are approximately 800 growers of hazelnuts in the production area and approximately 19 handlers subject to regulation under the order. Small agricultural growers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the SBA definition, the Board estimates that the majority of the handlers and all of the growers are small entities. Board records show that in the 1999–2000 marketing year approximately 9 percent of the handlers shipped over 7,692,308 pounds of hazelnuts, and 91 percent of the handlers shipped under 7,692,308 pounds of hazelnuts. Thus, based on an average price of $0.65 per pound at the point of first sale, it can be concluded that the majority of hazelnut handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

This rule adds a new § 982.467 to the order's administrative rules and regulations which requires handlers to report to the Board the receipt and disposition of hazelnuts grown outside of the United States. This report will provide the Board with more accurate information on the total available supply of hazelnuts—foreign and domestic product—and will help facilitate program administration. Authority for requiring handlers to submit this information to the Board is provided in § 982.68 of the order.

Regarding the impact of the action on affected entities, this rule should impose minimal additional costs. The Board estimates that about five handlers have imported hazelnuts over the past few years. Such handlers will be required to submit an additional monthly report to the Board when imported hazelnuts are received and shipped, along with inspection certificates or other information required by the Board for verification purposes. The Board estimates that each affected handler will submit about five of these reports annually.

An alternative to this action would have been to continue the practice of not collecting information from handlers on the receipt and disposition of imported hazelnuts. However, as previously mentioned, the Board believes it will be able to better administer the order by obtaining more accurate information on the total available supply of hazelnuts being received and disposed of by Oregon and Washington handlers, including foreign and domestic product. The only way this information can be obtained by the Board is to directly collect it from handlers. This information will facilitate program administration by improving the Board's base of information from which to make decisions.

Another alternative the Board considered was whether it would be useful to collect information on hazelnuts grown outside of Oregon and Washington, but within the United States. However, Board members agreed that the quantity of domestic hazelnuts grown outside the production area and handled by regulated handlers is insignificant commercially, and, therefore, not needed.

This action imposes some additional reporting and recordkeeping burden on handlers that receive hazelnuts from outside of the United States. As stated earlier, the Board has estimated that five handlers may import hazelnuts during the marketing year. Such handlers will be required to submit a receipt and disposition report (*F/H Form 1f*) to the Board monthly when imported hazelnuts are received and shipped. The Board estimates that these reports will be submitted about five times per year per handler, and will require that each handler spend about five minutes to complete each report. Thus, the annual burden associated with this information collection should total no more than two hours for the industry. The information will be collected on *F/H Form 1f.* The form has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

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 USDA has identified one relevant Federal rule regarding requirements for hazelnuts grown outside of the United States. Under section 608e of the Act, whenever certain specified commodities are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestic commodity. Hazelnuts are included under section 608e of the Act. Thus, importers of hazelnuts are required to have such hazelnuts inspected by the Federal-State inspection service. Importers whose hazelnuts meet section 608e requirements do not have to submit any paperwork to USDA. However, importers whose hazelnuts fail section 608e requirements, or whose hazelnuts are being sent to designated outlets (animal feed, processing, or charity) have to submit paperwork to USDA. Only a small amount of information required by USDA in these instances or by the Board through this rule will be duplicative.

In addition, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the November 14, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 22, 2001 (66 FR 44086). Copies of the rule were mailed to all Board members. The rule was also

made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period ending October 22, 2001, was provided to allow interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers are already shipping hazelnuts from the 2001–2002 crop; (2) the Board would like to begin receiving this report as soon as possible to have better information on the total supply of hazelnuts within Oregon and Washington; (3) handlers are aware of this rule which was recommended at a public meeting; and (4) a 60-day comment period was provided in the proposed rule; no comments were received.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 982.467 is added to read as follows:

§ 982.467 Report of receipts and dispositions of hazelnuts grown outside the United States.

Each handler who receives hazelnuts grown outside the United States shall report to the Board monthly on *F/H Form 1f* the receipt and disposition of such hazelnuts. All reports submitted shall include transactions through the end of each month, or other reporting periods established by the Board, and are due in the Board office on the tenth day following the end of the reporting period. The report shall include the quantity of such hazelnuts received, the country of origin for such hazelnuts, inspection certificate number, whether such hazelnuts are inshell or kernels, the disposition outlet, and shipment date of such hazelnuts. With each report, the handler shall submit copies of the applicable inspection certificates.

Dated: January 31, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2848 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 106

[Notice 2002–1]

Interpretation of Allocation of Candidate Travel Expenses

AGENCY: Federal Election Commission.

ACTION: Interpretation.

SUMMARY: This notice expresses the view of the Commission that the travel allocation and reporting requirements of 11 CFR 106.3(b) are not applicable to the extent that a candidate pays for certain travel expenses using funds authorized and appropriated by the Federal Government.

DATES: February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Tina H. VanBrakle, Director, Congressional Affairs 999 E Street, NW., Washington, DC 20463, (202) 694–1006 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Contributions and expenditures made for the purpose of influencing Federal elections are subject to various prohibitions and limitations under the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, as amended [''FECA'' or ''the Act'']. These prohibitions and limitations apply to a contribution or expenditure by a ''person,'' as defined by 2 U.S.C. 431(11) and 11 CFR 100.10.[1] The statutory definition of the term ''person'' expressly excludes the Federal Government and any authority thereof.[2]

Commission regulations at 11 CFR 106.3 require candidates for Federal office, other than Presidential and Vice-Presidential candidates who receive federal funds pursuant to 11 CFR part 9005 or 9036, to report expenditures for campaign-related travel. Specifically, section 106.3(b) states that ''(1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related. (2) Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign -related stop and ending at the point of origin. (3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.''

Questions have arisen as to whether the allocation and reporting requirements in 11 CFR 106.3(b) are applicable to travel expenses paid for with funds authorized and appropriated by the Federal Government. Thus, the Commission is announcing its interpretation of the scope of 11 CFR 106.3(b) in that circumstance.

Because 2 U.S.C. 431(11) specifically excludes the Federal Government from its definition of a ''person,'' the Commission acknowledges that a candidate's travel expenses that are paid for using funds authorized and appropriated by the Federal Government are not paid for by a ''person'' for the purposes of the Act. Therefore, the Commission believes that the allocation and reporting requirements of 11 CFR 106.3(b) are not applicable to the extent that a candidate pays for travel expenses using funds authorized and appropriated by the Federal Government. The Commission notes that this interpretation of 11 CFR 106.3(b) is in harmony with 11 CFR 106.3(d), which states that a candidate need not report ''travel between Washington, DC and the state or district in which he or she is a candidate * * * unless the costs are paid by a candidate's authorized committee(s), or by any other political committee(s).''

Please note that this announcement represents the Commission's interpretation of an existing regulation and is not intended to create or remove any rights or duties, nor is it intended to affect any other aspect of 11 CFR 106.3, the Act, or the Commission's

[1] The terms ''contribution'' and ''expenditure'' are likewise defined at 2 U.S.C. 431(8)(A) and 11 CFR 100.7, and 2 U.S.C. 431(9)(A) and 11 CFR 100.8, respectively.

[2] 2 U.S.C. 431(11) provides: ''The term 'person' includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.''

regulations. Furthermore, this interpretation does not apply to presidential or vice presidential campaigns that are covered by the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.* (general elections) or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.*[3] Finally, the Commission notes that the use of Federal funds is governed by general appropriations law and is subject to Congressional oversight.[4]

Dated: February 1, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–2858 Filed 2–5–02; 8:45 am]

BILLING CODE 6715–01–P

[3] The Commission's regulations governing travel by presidential and vice presidential candidates who receive federal funds are found at 11 CFR 9034.7 and 9004.7, respectively. These regulations differ from 11 CFR 106.3 in several ways. See, for example, 11 CFR 9004.7(b)(5) and 11 CFR 9034.7(b)(5), which address reimbursement requirements for use of a government airplane to travel to or from a campaign-related stop.

[4] Both the Senate and the House of Representatives have provided specific guidance to their members regarding mixed-purpose travel. *See* page 118 of the *Senate Ethics Manual* (September 2000) and page 95 of the *Rules of the House of Representatives on Gifts and Travel* (April 2000).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 900

[Docket No. 99N–4578]

RIN 0910–AB98

State Certification of Mammography Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing mammography. The amendments implement the ''States as Certifiers'' (SAC) provisions of the Mammography Quality Standards Act of 1992 (MQSA). These amendments permit FDA to authorize individual States to certify mammography facilities, conduct facility inspections, enforce the MQSA quality standards, and administer other related functions. The amendments establish the standards to be met by States receiving this authority. They also establish procedures for application, approval, evaluation, and withdrawal of approval of States as certification agencies. FDA retains oversight responsibility for the activities of the States to which this authority is given. Mammography facilities certified by those States must continue to meet the quality standards established by FDA for mammography facilities nationwide.

DATES: This rule is effective May 7, 2002. Submit written comments on the information collection requirements by March 8, 2002.

ADDRESSES: Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy A. Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Kaye F. Chesemore, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, FAX 301–594–3306.

SUPPLEMENTARY INFORMATION:

I. Background

MQSA (Public Law 102–539) was enacted on October 27, 1992. The purpose of the legislation was to establish minimum national quality standards for mammography. To provide mammography services legally after October 1, 1994, MQSA requires all mammography facilities, except facilities of the Department of Veterans Affairs, to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated by the Secretary to FDA. MQSA replaced a patchwork of Federal, State, and private standards with uniform minimum Federal standards designed to ensure that all women nationwide receive adequate quality mammography services. On October 9, 1998, the Mammography Quality Standards Reauthorization Act (MQSRA) (Public Law 105–248) was enacted to extend MQSA through fiscal year (FY) 2002.

A. Provisions of MQSA

In order to receive and maintain FDA certification, facilities must meet key requirements of MQSA, which include:

1. Compliance with quality standards for personnel, equipment, quality assurance programs, and reporting and recordkeeping procedures.

2. Accreditation by private, nonprofit organizations or State agencies that have been approved by FDA as meeting MQSA standards for accreditation bodies and that continue to pass annual FDA performance evaluations of their activities. As part of the accreditation process, the accreditation body must evaluate actual clinical mammograms from each unit in the facility for quality. The accreditation body determines whether or not the facility quality standards have been met.

3. Demonstration of continued compliance with the facility quality standards through annual inspections performed by FDA-certified Federal or State inspectors.

B. Accomplishments to Date

Interim facility quality standards were published in the **Federal Register** of December 21, 1993 (58 FR 67558), and used as the basis for the initial certification of mammography facilities under MQSA beginning October 1, 1994. By that date, mammography facilities had to have a FDA certificate in order to continue to lawfully provide mammography services. In the **Federal Register** of October 28, 1997 (62 FR 55852), more comprehensive facility quality standards and accreditation body requirements were published and became effective on April 28, 1999. FDA has approved five accreditation bodies: American College of Radiology (ACR) and the States of Arkansas, California, Iowa, and Texas. The number of certified mammography facilities varies with time but typically is about 10,000. FDA has trained and certified Federal and State inspectors to conduct MQSA inspections, and the sixth year of inspections is underway.

C. Standards for Certification Agencies

State agencies have played a very important role in the development and implementation of the MQSA program. As already noted, four of the five accreditation bodies are States, thus providing an alternative to the ACR for accreditation of facilities within those four States. Most of the FDA-certified inspectors are State personnel who, under contract with FDA, have conducted the great majority of MQSA inspections. FDA currently has contracts for the performance of inspections with 47 States, the District of Columbia, Puerto Rico, and New York City. Mammography facilities in States without inspection contracts and all Federal facilities are generally inspected by FDA.

MQSA also provides for an even more significant State role in the MQSA program. Section 354(q) of the Public Health Service Act (the PHS Act) (42 U.S.C. 263b(q)) permits FDA to authorize qualified States to: (1) Issue, renew, suspend, and revoke certificates;

(2) conduct annual facility inspections and followup inspections; and (3) implement and enforce the MQSA quality standards for mammography facilities operating within the qualified State. This rule puts into effect 42 U.S.C. 263b(q) by establishing the requirements that must be met by the States acting as certification agencies (commonly known as SACs) and the procedures for the application, approval, evaluation, and withdrawal of approval of SACs.

To be approved as a certification agency, a State must: (1) Have enacted laws and issued regulations at least as stringent as the MQSA standards and regulations, (2) have the legal authority and qualified personnel to enforce those laws and regulations, (3) devote adequate funds to the administration and enforcement of those laws and regulations, and (4) provide FDA with information and reports, as required.

By statute, FDA and SAC States each have authority in the areas of compliance and the suspension or revocation of certificates. Should there ever be a need, FDA is able to take administrative, judicial, or other actions against facilities within an approved State, regardless of whether a State takes such action. FDA retains exclusive responsibility for: (1) Establishing quality standards, (2) approving and withdrawing approval of accreditation bodies, (3) approving and withdrawing approval of State certification agencies, and (4) maintaining oversight of State certification programs.

D. Development of the SAC Proposed Rule

In the **Federal Register** of March 30, 2000 (65 FR 16847), FDA published a proposed rule for the implementation of the SAC provisions of MQSA and sought public comment. FDA's National Mammography Quality Assurance Advisory Committee (NMQAAC) and a SAC working group aided in the development of the proposed rule.

NMQAAC is a committee of health professionals and representatives of consumer groups and State agencies with responsibility for advising FDA on regulatory requirements implemented under MQSA. NMQAAC provided advice about the direction of the SAC program and the content of the proposed rule at meetings held in September 1994 and July 1996.

FDA's partnership with the States will be an essential key to the future success of the SAC program. To begin building that partnership, FDA formed a working group in accordance with 21 CFR 20.88(e). Working group participants have included regional and headquarters FDA staff, representatives of the States of Arkansas, California, Florida, Illinois, Iowa, Massachusetts, Nevada, New Hampshire, New Jersey, and Texas, and the American College of Radiology. FDA chose the State participants with the goal of obtaining input from all regions of the country and from States that are MQSA accreditation bodies. Since its first meeting in June 1996, the working group has contributed greatly to the development of the proposed rules.

The agency has also utilized knowledge gained from its experience in working with the accreditation bodies over the past several years and from a SAC Demonstration Project. Experience with the accreditation bodies has greatly influenced the proposed rule because of the similarity to the: (1) Objectives targeted, (2) problems to be solved, and (3) agency oversight needed.

The SAC Demonstration Project, established by FDA in August 1998, gave certification authority to approved States for a 1-year trial period that was later extended for a second and third year. The States of Illinois and Iowa applied for and received approval from FDA to participate in the SAC Demonstration Project. The experience proved valuable in the development of the national regulatory SAC program.

The proposed rule's 90-day comment period ended on June 28, 2000. FDA analyzed the comments received and responds to them in sections III, V, and VI of this document. As noted, FDA made some changes to the proposed rule in response to those comments.

II. Provisions of the Final Rule

FDA is adding subpart C, entitled ''States as Certifiers,'' to part 900 (21 CFR part 900—Mammography). This subpart contains sections defining: (1) The requirements for a State to apply to become a certification agency, (2) the requirements to be met by and the responsibilities of the States that receive certification authority, (3) the processes to be used by FDA in evaluating the performance of each certification agency, (4) the criteria for and the process to be followed to withdraw approval of a certification agency, and (5) the opportunities for hearings and appeals related to adverse actions taken by FDA with respect to certification agencies. FDA is also amending § 16.1(b)(2) (21 CFR 16.1(b)(2)), which addresses hearing procedures, and § 900.2 (Definitions) to bring the regulations into conformance with subpart C.

The intent of MQSA, which is to assure high quality mammography services for all women in the United States, led FDA to add subpart C. FDA believes that these amendments will provide women, in States with certification authority, with the same assurance of high quality mammography as women in States for which FDA retains that authority. There are also potential cost savings to the facilities and the public through a reduction in the facility inspection fees in SAC States. This will occur in SAC States whose inspection costs are lower than the national average that is used to calculate the present national inspection fee.

A. Scope

Section 900.20 describes the scope of subpart C. The new subpart establishes procedures for a State to apply to become a FDA-approved certification agency for mammography facilities. It further defines the responsibilities to be met by certification agencies and the oversight procedures that FDA will use to ensure that these responsibilities are met.

B. Application for Approval as a Certification Agency

Section 900.21 summarizes the information to be provided by the State to enable FDA to make an informed decision about the State's ability to adequately carry out certification responsibilities. The application must include a detailed description of the mammography quality standards the applicant will require facilities to meet. If these standards are different from FDA's quality standards, the application must include information to show that they are at least as stringent as FDA standards. The application also must include information about the applicant's decisionmaking process for issuing, suspending, and revoking a facility's certificate as well as its procedures for notifying facilities of inspection deficiencies and the monitoring of the correction of those deficiencies. Finally, the State must provide information about the resources it can devote to the program, including the: (1) Qualifications of the State's professional staff; (2) adequacy of the State's staffing, finances, and other resources; (3) ability of the State to provide data and reports in an electronic format compatible with FDA data systems; and (4) adequacy of the State's enforcement authority and compliance mechanisms.

Section 900.21(c) provides a general description of the process that FDA will follow to decide whether or not to accept a State as a certification agency. Section 900.21(d) notes that FDA may limit the types of facilities for which

FDA is granting certification authority; for example, FDA does not expect to grant certification authority to States for Federal facilities. It should be noted also that 42 U.S.C. 263b(q) does not permit FDA to grant a State authority to certify facilities outside of the State's borders.

C. Standards for Certification Agencies

Section 900.22 establishes the requirements and responsibilities to be met by States that have been approved as certification agencies.

Section 900.22(a) requires the certification agency to have FDA-approved measures to reduce the possibility of conflict of interest or facility bias on the part of individuals acting on the agency's behalf.

Section 900.22(b) requires that the statutory and regulatory requirements used by the certification agencies for the certification and inspection of mammography facilities be those established by FDA in part 900 or other appropriate, but at least as stringent, requirements.

Section 900.22(c) requires that the scope, timeliness, disposition, and technical accuracy of completed inspections and related enforcement activities conducted by the certification agencies be adequate to ensure compliance with the MQSA quality standards.

Section 900.22(d) requires that the certification agencies have appropriate criteria and processes for the suspension and revocation of certificates and that the certification agencies promptly investigate and take regulatory action against facilities that operate without a certificate.

Section 900.22(e) requires that there be means by which facilities can appeal adverse certification decisions made by a certification agency.

Section 900.22(f) requires that approved certification agencies have processes for requesting additional mammography review from accreditation bodies for issues related to mammography image quality and clinical practice.

Section 900.22(g) requires that the certification agencies have procedures for patient and physician notification in situations where the certification agency has determined that mammography quality has been compromised to the extent that there may be a serious risk to human health.

Section 900.22(h) requires that certification agencies have processes to ensure the timeliness and accuracy of electronic transmission of inspection data and facility certification information in a format and timeframe determined by FDA.

Section 900.22(i) requires FDA authorization for any changes a certification agency proposes to make in any standards that FDA previously accepted under § 900.21 or § 900.22. FDA believes that this process is necessary to assure that standards for certification agencies remain at least as stringent as the FDA standards.

D. Evaluation

Section 900.23 establishes standards for the annual performance evaluation of each certification agency. The evaluation will be based on indicators related to the adequacy of the certification agency's performance in the areas of certification, inspection, and compliance.

During the evaluation, FDA will consider the timeliness and effectiveness with which the certification agencies meet their various responsibilities. The evaluation also will include a review of any changes in the standards or procedures that the certification agency has made in the areas listed in §§ 900.21(b) and 900.22. The evaluation will include a determination of whether there are major deficiencies in the certification agency's performance that, if not corrected, would warrant FDA withdrawal of the State agency's approval. The evaluation will also include identification of any minor deficiencies that require corrective action.

E. Withdrawal of Approval

Section 900.24 provides for the actions to be taken if evaluations carried out under § 900.23, or other information, leads FDA to determine that a State certification agency is not adequately carrying out its responsibilities. If FDA determines that there are major deficiencies in the certification agency's performance, FDA may withdraw its approval. Examples of major deficiencies include: (1) Commission of fraud, (2) willful disregard for the public health, (3) failure to provide adequate resources for the program, (4) performing or failing to perform a delegated function in a manner that may cause serious risk to the public health, or (5) the submission of material false statements to FDA.

For minor or less serious deficiencies, FDA will establish a definite time period for the certification agency to take corrective measures as directed by FDA or to submit the State's own plan of corrective action for FDA approval. FDA may place the certification agency on probationary status while the agency is addressing the minor deficiencies. The agency would utilize probationary status in situations where the certification agency is not implementing the corrective action satisfactorily or within the established schedule. FDA also may withdraw approval from the certification agency if: (1) Corrective action is not taken or (2) the identified minor deficiencies have not been eliminated within the established timeframe.

While a certification agency is developing and carrying out its corrective action plan, even if on probationary status, it will retain its certification authority. If a certification agency loses its approval, it must notify all facilities certified or seeking certification by it. In addition, the certification agency must notify the appropriate accreditation bodies with jurisdiction in the State of its change in status. These requirements, however, would not preclude FDA notification. A certification agency that has lost its approval must also transfer facility records and other information required by FDA to a location and according to a schedule approved by FDA.

F. Hearings/Appeals

Under § 900.25, FDA provides an opportunity for a certification agency to challenge in an informal hearing an adverse action taken by FDA with respect to approval or withdrawal of approval. The agency provides the opportunity for a hearing in accordance with part 16 (21 CFR part 16). Certification agencies also are required to provide facilities that have been denied certification with the opportunity to appeal that decision. Each certification agency shall specify in writing its appeals process for approval by FDA in accordance with § 900.21.

G. Conforming Amendments

A conforming amendment to § 16.1 adds § 900.25 to the list of provisions under which regulatory hearings are available.

Conforming amendments to § 900.2 state that the definitions in that section apply to subpart C, as well as to subparts A and B of part 900. Three definitions, ''§ 900.2 (zz) Certification agency,'' ''(aaa) Performance indicator,'' and ''(bbb) Authorization'' are added to the definition list. In adding these definitions, FDA departs from its earlier practice of placing the definitions in alphabetical order to add the new definitions to the end of the list. This placement was done to avoid the necessity of making numerous changes in the citations of the definitions in subparts A and B and to avoid the potential for confusion and error. A

change has also been made in the definition of ''Certification'' to recognize the role of States as certification agencies. A similar conforming amendment was made to § 900.11(a).

III. Public Comments on Provisions of the Final Rule

FDA received eight responses to the request for comments on the proposed regulations for State certification of mammography facilities. They were from representatives of a mammography facility, the ACR, the Conference of Radiation Control Program Directors, Inc. (CRCPD), and five representatives of individual State radiation control programs. Each response contained a number of individual comments. A large number of these comments were related to the cost analysis and will be addressed in section V of this document (Analysis of Impacts). A few of the comments dealt with paperwork issues and will be discussed in section VIII of this document (Paperwork Reduction Act of 1995). The remaining comments addressed: (1) The general concept of SAC, (2) individual provisions of the proposed regulations, and (3) possible additions to the regulations. FDA responds to these comments as follows.

A. General Comments

General comments were those that raised issues or concerns that were broader in scope than any specific provisions.

(Comment 1) One comment reminded FDA that ''MQSA was established to create and maintain a minimum national quality standard in mammography.'' The authors went on to laud the ''strict requirements'' and the procedures of the agency for their effectiveness in achieving this goal. However, they expressed concerns about continuing to meet the intent of MQSA in a consistent fashion without undue burdens on facilities if certification authority was given to a number of agencies (States). Although the authors did not appear to be opposed in principle to the concept of certification authority being given to the States, they made it clear that their support was contingent on the resolution of these concerns. Another comment expressed confidence that States could manage certification responsibilities efficiently and effectively.

The agency agrees that the basic intent of MQSA is to ensure that the performance of mammography meets uniform minimum national standards of quality. FDA believes that the proposed regulations and the associated agency oversight actions provide adequate assurance that this intent will continue to be met after certification authority is given to individual States. In response to the first comment, however, the agency has made changes in the regulations to further strengthen this assurance.

FDA made five changes in §§ 900.21 and 900.22 to make it easier for FDA to determine if an applicant's standards of quality meet or exceed the uniform minimum national standards. The first, in § 900.21(a), replaced the words ''substantially equivalent to'' with ''at least as stringent as.'' The second, in § 900.21(b)(3)(ii), replaced the words ''their equivalence to'' with ''that they are at least as stringent as.'' The third, in § 900.21(c), replaced the words ''substantially equivalent'' with ''at least as stringent as.'' A similar change in § 900.22(b) replaced the words ''equivalent to'' with ''at least as stringent as.'' These four changes were intended to clarify the nature of the information that the agency is seeking. The fifth change adds a new § 900.21(b)(3)(iii)(O) to ensure that the SAC State will make it clear to FDA and to the affected facility when an action taken against a facility is based upon more stringent State standards. This addition was made to clarify that a State may only impose the more stringent requirements under State law.

In addition, two changes were made to emphasize that after approval as a certification agency, a State must continue to ensure that the intent of MQSA is met. The words ''regulations or'' have been inserted in § 900.23 to emphasize that the annual evaluation of certification agencies will include a review of the certification agency's regulations to ensure that they remain adequate for MQSA purposes. Also, the words ''has failed to achieve the MQSA goals of quality mammography and access'' were added to § 900.24(a) to make it clear that FDA can withdraw approval of a certification agency should a SAC State fail to achieve the MQSA goals.

FDA will cover the oversight actions, which FDA believes help ensure that uniform national minimum standards of quality will be met, in more detail with the discussion of the comments on specific provisions of the regulations. In addition, comment 14 of this document discusses a change made in § 900.24(b) in order to minimize a potential burden on facilities.

(Comment 2) One person noted that his present understanding of FDA's intent regarding data transmission between accreditation bodies and State certifying agencies is that the accreditation bodies would provide data to FDA and FDA would then pass it on to the State certifying agencies. The comment approved of this planned flow and urged that it be specified in the regulations.

The comment does correctly describe FDA's intent with respect to electronic transmission of data. The agency believes that this pathway is much more efficient and cost effective than if multiple pathways had to be developed between accreditation bodies and certifying States. It is also the most effective way of maintaining the national database required for MQSA activities. However, FDA does not believe that it is necessary to specify this intent in the regulations and so rejects this comment.

(Comment 3) One comment noted that there are very minimal differences between the content of the proposed regulations for State certification of mammography facilities and the existing requirements met by accreditation bodies.

This similarity was intentional on the agency's part. FDA recognized that the information needed to determine if FDA could approve a State as a certification agency was similar in many respects to that required to determine if FDA could approve an accreditation body. Furthermore, the responsibilities of, the procedures to be followed by, and the resources needed by SAC States and accreditation bodies show many similarities. It seems most efficient for both FDA and the States, especially States that might wish to be both an accreditation body and a certification agency, to pattern the requirements for certification agencies on those for accreditation bodies. In addition, patterning the proposed SAC requirements on those for accreditation bodies permitted the SAC effort to benefit from the experience gained from the agency's work with the accreditation bodies. The accreditation body requirements have been able to ensure uniform accreditation standards, even though five accreditation bodies are presently involved. Similar certification requirements will help achieve continued assurance that all mammography facilities will meet a uniform minimum national standard of quality with multiple certification agencies.

(Comment 4) One comment noted that State radiation control agencies have requested implementation of MQSA (42 U.S.C. 263b(q)) which provides for certification authority to be given to the States, almost since the implementation of MQSA in 1994. It went on to say, ''We feel it is important to note the fact that the proposed regulations are neither

complex nor sufficiently voluminous to require more than five years to achieve publication in the **Federal Register**.''

FDA has been aware since the early days of the program that some States have been very interested in seeing 42 U.S.C. 263b(q) implemented. At a Dallas, TX meeting convened by FDA and the CRCPD in January 1994 to obtain comments from the State radiation control programs on the agency's plans to implement MQSA, representatives of some States urged FDA to make the implementation of 42 U.S.C. 263b(q) its highest priority.

In establishing its priorities for the implementation of MQSA, the agency had to first focus on those actions required by law. These actions included: (1) Developing quality standards, (2) approving accreditation bodies, (3) certifying facilities, and (4) establishing an inspection program. Other permitted actions, including the transfer of certification authority to interested States, had to be given a lower priority in order to accomplish these mandates. Had FDA focused its attention on implementing 42 U.S.C. 263b(q) rather than on its mandates, access to mammography could have been seriously compromised.

After October 1, 1994, FDA had other legislative mandates to meet that would have a more immediate impact in ensuring quality mammography and were viewed by Congress to be of greater urgency than implementing 42 U.S.C. 263b(q). One of the mandates included the establishment of the annual inspection program, which involved developing criteria and training and equipping a corps of 250 inspectors. Also, in granting FDA special authority for interim regulations, Congress sent a clear message as to the importance it attached to quickly replacing the interim regulations with more comprehensive final regulations. Again, FDA focused its resources toward meeting these mandated requirements. In August 1998, with the final regulations published, FDA increased its efforts to implement 42 U.S.C. 263b(q) by establishing a SAC Demonstration Project based upon valuable information provided by a SAC working group of State, Federal, and professional personnel assembled in June 1996.

The agency believes that its order of priorities was also advantageous for future SAC certification agencies. If the agency had first implemented 42 U.S.C. 263b(q) and then developed its inspection program and the final regulations, State certification agencies would have had to constantly adjust their programs as the FDA efforts unfolded. The agency also believes that the information gained from preliminary activities in the Demonstration Project will, in the long run, save both time and effort for the SAC States and the facilities under the regulatory program. In addition, FDA believes that its implementation priorities will help ensure that the SAC program will be immediately effective in maintaining uniform minimum national standards of quality for mammography.

B. Comments on Application for Approval as a Certification Agency (§ 900.21)

Section 900.21 defines State eligibility for becoming a certification agency, outlines the required content of the application, and provides details on the general framework for the processing of the application. Some of the comments received on this section were related to the paperwork burden and FDA will discuss them under section VIII of this document. FDA's response to the other comments follows.

(Comment 5) One respondent suggested that § 900.21(a) be reworded to indicate that States must have the authority to enter into an agreement with FDA, as this implied more than simply saying that the State is capable of entering into an agreement. A second comment stated that FDA should clarify this section.

FDA agrees that clarification is needed. However, the agency believes that the rewording suggested by the first respondent is too limited in that it focuses only on the State having the authority to enter into a legal agreement. The phrase ''capable of meeting the requirements'' was also intended to mean that the State must have the resources needed to carry out the agreement. Therefore, FDA has revised this provision to read: ''(a) *Eligibility*. State agencies may apply for approval as a certification agency if they have standards at least as stringent as those of § 900.12 of subpart B of this part, qualified personnel, adequate resources to carry out the States as Certifiers' responsibilities, and the authority to enter into a legal agreement with FDA to accept these responsibilities.''

(Comment 6) One comment noted that § 900.21(b)(3)(iii)(F) requires an applicant to submit to FDA information on the qualifications of the applicant's professional and supervisory staff but does not specify the minimum criteria for these qualifications. The author asked how applicants would know if members of their staff were qualified.

FDA agrees that an interested State might need more information on qualification criteria. However, the agency believes it would be preferable to provide this information through guidance and direct consultation instead of codifying a set of minimum criteria in the regulations. Position categories differ greatly from State to State in their requirements and descriptions. Also, individuals with a variety of backgrounds can perform some of the tasks required of a certification agency. In light of these differences, FDA believes that it needs flexibility in handling the issue of personnel qualifications that would not be available if minimum criteria were established by regulation.

To improve clarity, FDA also made minor editorial changes in some of the provisions of § 900.21.

C. Comments on Standards for Certification Agencies (§ 900.22)

Section 900.22 outlines the responsibilities of the SAC States and requires them to implement FDA-approved measures to ensure that there will be no conflict of interest or facility bias in carrying out these responsibilities.

(Comment 7) Two comments urged FDA to delete or modify § 900.22(c) so that the certifying agency would not have the responsibility of ensuring that facilities are in compliance with the quality standards. One author went further and made the conflicting statement that ''Given that Section 900.23 will ensure that a certifying State meets its responsibilities, subsection (c) is unnecessary.'' It was not explained how § 900.23 would ensure that the SAC State would carry out its compliance responsibilities if the author's previous suggestion were followed that such responsibilities should not be given.

FDA was surprised to receive these comments from representatives of State radiation control programs. Compliance with the quality standards by the facilities is the key factor in achieving the MQSA goal of quality mammography nationwide. Ensuring that the facilities they certify are in compliance with the quality standards is by far the most significant of the activities that the agency is proposing to give to the SAC States. If FDA does not give this authority, it would have to remove not only § 900.22(c) but also § 900.22(d), (e), (f), and (g), which are activities to ensure compliance with the quality standards. This would limit the new responsibilities given to the SAC States to the point that there would be little incentive for States to join the program. From the information supplied by the working group and informal contacts with State personnel, FDA

believes that most of the States interested in becoming certification agencies want the responsibility for ensuring that the facilities they certify are in compliance with the quality standards. The agency also notes that 42 U.S.C. 263b(q) specifically references the compliance activities as one of the responsibilities that may be given to States. FDA believes that compliance activities by SAC States are appropriate and therefore did not accept these comments.

(Comment 8) One comment expressed concern about how appeals of any adverse accreditation decisions based on failure of clinical images would be handled by certifying States. The authors recommended that § 900.22(e) should in some way ensure that such appeals do not result in less qualified personnel in a SAC State overruling the ''highly qualified'' ACR personnel who made the original decision.

FDA agrees that interpreting physicians participating in the appeals process or in decisions about additional mammography review or patient notification should be adequately qualified for those duties. However, FDA believes that it is more appropriate for the agency to ensure that the SAC State has adequately qualified review interpreting physicians through FDA's application review and oversight functions rather than through regulations.

(Comment 9) One comment expressed concern about the criteria being used to initiate additional mammography review (AMR). The authors stated that they believed that requests for AMR were increasing. They recommend that, as stated in the current MQSA regulations, such reviews should be limited to cases where ''mammography quality at a facility has been compromised and may present a serious risk to human health * * *.''

FDA agrees that the above statement is the criterion in § 900.12(j) for the initiation of an AMR. The agency believes that, in accordance with the goal of ensuring uniform minimum standards for quality mammography nationwide, this criterion should continue to apply within the SAC States as well as in the non-SAC States. To ensure that there is no misunderstanding on this point, FDA is modifying § 900.22(f) to the following:

There shall be a process for the certification agency to request additional mammography review from accreditation bodies for issues related to mammography image quality and clinical practice. The certification agency should request additional mammography review only when it believes that mammography quality at a facility has been compromised and may present a serious risk to human health.

(Comment 10) One comment stated that § 900.22(g) should require patient notification to take place whenever an uncertified facility is found to be operating, regardless of the clinical image review determination of pass or fail. A second comment went further in arguing that if a facility has performed mammography without certification, ''additional clinical image review is irrelevant.'' The author of that comment urged that the ''underlying assumption should be that if a facility has not complied with the fundamental legal requirement of obtaining a certificate prior to performing mammography, there is no assurance that the facility has met any of the applicable standards for certification.'' The author went on to say ''if standards were not met in obtaining images, additional image review is not going to rectify the problem. Delaying notification of affected patients until additional clinical image review is conducted unnecessarily puts those patients at risk.''

FDA believes that the ''underlying assumption'' of the author of the second comment is not necessarily correct, especially when a facility has been previously certified, passed its inspections, and the time of operation without a certificate was short. On the other hand, the agency understands the concern about possible risk to patient health if notification is delayed in cases where the facility not only operated without a certificate, but also failed to meet other quality standards, thus resulting in poor quality mammography. This concern, however, must be balanced against the unnecessary stress and alarm that could be caused if patients are notified of the lack of certification when an AMR would have shown that the quality of mammography was acceptable. Furthermore, if this alarm caused patients to undergo unnecessary repeat examinations, additional radiation exposure and expense would result.

Because of the need to balance these two concerns, FDA and the State certification agencies need to have the flexibility to deal with such situations on a case-by-case basis. For this reason, the agency has rejected the suggestion for mandatory patient notification in every case where a facility has operated without a certificate.

(Comment 11) One comment suggested a change in § 900.22(i), which requires certification agencies to obtain FDA authorization ''for any changes it proposes to make in any standards that FDA has previously accepted under § 900.21 of this section.'' The comment urged that the words ''obtain FDA authorization'' be changed to ''coordinate with FDA to ensure comparability with MQSA requirements.'' The reason given was that they did not feel that FDA could ''authorize'' a State to make changes in its regulations. A second comment expressed a similar concern. The author noted that it would be prudent for a certification agency to discuss contemplated changes in State standards with FDA. FDA then had the right to make it known to the certification agency if it found the changes inconsistent with MQSA. The author also acknowledged that if the certification agency did not cooperate in removing the inconsistency, ''FDA can take appropriate action.'' The comment concluded with the statement that it would be ''inappropriate and unacceptable'' for FDA to require formal authorization for changes a State agency may want to make in its standards.

FDA notes that 42 U.S.C. 263b(q) gives the agency the authority to ''authorize'' a State to ''implement the standards'' established by FDA. The agency believes that to ensure that these minimum standards are implemented uniformly nationwide, in both SAC States and non-SAC States, the SAC States must have standards in their regulations that are at least as stringent as the MQSA quality standards. This stringency level must exist at the time the State receives certification authority. Therefore, as part of its application, prospective certification agencies must submit their facility mammography standards for review. The State standards must also remain as stringent as the MQSA quality standards for as long as the State is a certification agency. However, this cannot be guaranteed if the State is free to change its standards after only ''discussion'' or ''consultation'' with FDA. Therefore, the agency believes that it is not only appropriate, but also required under 42 U.S.C.263b(q), that FDA authorize changes in State standards before they are put into use by the State in its activities as a certification agency.

At the same time, the agency recognizes that the term ''authorize,'' used in the statute and repeated in the regulations, may be contributing to the concerns of those making the comments because they may be interpreting it as meaning more than is intended. FDA does not intend to say that a State needs ''authorization'' from the agency to make changes in its regulations. The agency does intend to say, for the reason just discussed, that a SAC State needs FDA approval of its changed regulations

before it can use them in the exercise of its SAC authority. To clarify this point, FDA has added a definition of ''authorization'' as a new § 900.2(bbb).

As further clarification of what was intended with this requirement, the words ''before requiring facilities to comply with the changes'' have been added at the end of § 900.22(i). This further clarification was prompted by the second comment, which seems to suggest that FDA take action to correct inappropriate State regulation changes, which would affect a State's SAC role, after they are put into effect, instead of requiring agency authorization before they are put into effect. FDA does recognize that, as suggested by the comment, there are actions available to it, including withdraw the certification agency's authority to certify, if ''discussion'' and ''coordination'' are not effective in maintaining consistency between the State's standards and the MQSA standards. However, to take such action after the State standards are put into use would be very disruptive to the facilities certified within the State. In most States, it would require some time for the State regulations to be amended to remove the inconsistencies so that the State could become a SAC State again. FDA believes it would be preferable to prevent such problems from occurring rather than to correct them afterward. The most effective way of doing this is to require States to obtain FDA ''authorization,'' to use the terminology in MQSA, for changes in State standards before using them in their certification activities.

(Comment 12) Two comments urged that inspector training be delegated to the SAC States as a cost saving measure. Although these comments are outside the scope of the regulations, FDA has provided the following answer. As previously stated, the goal of the MQSA program is to ensure that all mammography facilities nationwide meet uniform minimum quality standards. A key factor in achieving this assurance is the uniform application of the MQSA quality standards during inspections. To achieve this uniform application, it is crucial that all inspectors have a uniform training experience. FDA doubts that uniformity of training can be achieved if multiple independent training centers are used in the place of a single center.

The agency also questions whether States can provide training of the same quality and quantity as the FDA training at less cost. FDA provides 6 weeks of specialized training for prospective inspectors. By the completion of their training, the inspectors have benefitted from contact with over a dozen instructors and received about the same number of hours of instruction as given in a typical year of graduate school. In addition, they are required to complete mentored inspections in the field before FDA certifies them as MQSA inspectors. Because the States are already providing the field training, there would be no increase or decrease in cost for that component if the SAC States were given full responsibility for training their inspectors. Any possibility of cost savings by the States would have to come in providing the basic classroom training.

Now that FDA has completed the initial buildup of approximately 250 inspectors, a single series of classes per year, graduating approximately 20 inspectors, is generally sufficient for replacement purposes. Individual States rarely find it necessary to have more than one inspector trained a year. It is unlikely that State training programs would be able to provide comparable training to that described above at a per inspector cost less than that of FDA, because such programs would lose the benefit of economy of scale.

Neither of the comments advocating training of inspectors by States provided any details on the nature of the training they envisioned. Only one provided a cost figure but it contained no details on how it was estimated. The two comments failed to provide a basis for concluding either that State training of inspectors would be less costly than the FDA training or that training at multiple independent centers can be conducted in such a way as to ensure uniform training of inspectors. Therefore, FDA concludes that, for the present, the agency should retain responsibility for training as well as certifying inspectors. However, FDA will re-evaluate this position after the SAC program expands and additional experience is gained.

(Comment 13) One comment noted that in the list of the authorities to be delegated to the States in the preamble to the proposed regulations, the authority for certification is included but a short while later it is stated that ''FDA retains authority to suspend or revoke the certificate of facilities within an approved State.'' The authors believed that this was in conflict with the law and noted that no reason was given for this decision. The comment asked ''What if a State has been given that authority by State law?''

The MQSA statute has provisions for both States and the agency to suspend or revoke certificates in SAC States. States may be approved to carry out the certification program requirements under 42 U.S.C. 263b(q)(1)(A), which includes the suspension and revocation of certificates. As a condition for becoming a State certification agency, an agency must have authority under State statute to accept and carry out the SAC responsibilities. However, 42 U.S.C. 263b(q)(3)(B) specifically states that, in a State given certification authority, FDA may take action under 42 U.S.C. 263b(i), which is the part of 42 U.S.C. 263b giving authority to suspend and revoke certificates. Consequently, there is no conflict with the law.

FDA has written and spoken about dual authority in many public forums. The agency has always asserted that it does not intend to exercise its certification authority in SAC States except in rare circumstances. Thus far, the agency has not used this authority during the SAC Demonstration Project. FDA would also like to make it clear that should it suspend or revoke a certificate in a SAC State on its own authority, the implications of that action are limited to the facility losing its certificate. FDA's action should not be construed as meaning that it is ''taking back'' the general authority of the SAC State to suspend or revoke certificates of facilities within its borders. Such a general resumption of authority would occur only if the agency withdraws its approval of the SAC State as a certification agency.

To improve clarity, FDA also made minor editorial changes in some of the provisions of § 900.22.

D. Comments on Evaluation (§ 900.23)

Section 900.23 of the proposed regulations provides for annual evaluation of the certification agencies by FDA and describes some of the details of the evaluation.

(Comment 14) One comment warned that, to ensure consistency, continuity, and the quality of mammography, FDA would have to impose an extensive and active review of the State certification authorities. The authors believed that the extent of this evaluation was not made clear in the regulations and asked questions about: (1) Whether FDA would conduct followup inspections to validate the certification agency inspections, (2) how frequent the followup inspections would be, and (3) how discrepancies between the State inspections and followup inspections would be handled. The comment also included an expression of concern about the possibility that the cost of an adequate evaluation program might be unreasonable.

FDA notes that FDA auditors accompany State inspectors on selected inspections to observe and, if necessary, correct their performance. In this way,

the agency increases the probability that the quality standards are enforced correctly and uniformly throughout the country. Currently one audit inspection is conducted for each State inspector annually. FDA may do additional reviews of specific inspections if there are questions about an inspector's performance. These audit inspections have been conducted in the SAC States as well as the non-SAC States. Because such inspections are already being performed, there will be no new costs for their performance in SAC States.

The agency also expects to evaluate the performance of the certification agencies through mechanisms similar to those currently used for accreditation bodies. These include reviews of annual reports and other documents provided by the certification agencies. An FDA evaluation team will conduct periodic site visits to the certification agency. At present, quarterly performance reports are required from the SAC States participating in the Demonstration Project. If FDA determines that performance of the certification agency is unsatisfactory, § 900.24 provides the agency with the authority to take appropriate action.

(Comment 15) One comment urged that ''The mentioned performance indicators should be delineated in the rule or developed as guidance and available for review and comment and not developed at a further date. Guidance on complying with these indicators could be developed at a later date, but the indicators themselves should be contained within the rule.''

FDA notes that performance indicators were developed for use in the SAC Demonstration Project with the aid of review and comments from the SAC working group. As FDA gained experience from that project, the indicators were modified to make them more appropriate. Further modification may be necessary as the program grows. Consequently, FDA believes that it is premature to codify the performance indicators in regulation. Greater flexibility is available through the guidance process to make adjustments to the indicators more rapidly, should that be necessary.

To improve clarity, FDA also made minor editorial changes in some of the provisions of § 900.23.

E. Comments on Withdrawal of Approval (§ 900.24)

Section 900.24 makes a range of actions available to FDA for use when a certification agency is not in substantial compliance with the regulations.

The words ''after providing notice and opportunity for corrective action'' have been added in the first sentence of § 900.24(a) in order to incorporate a requirement from the statute itself. This requirement was mistakenly left out of the proposed regulation.

(Comment 16) One comment supported implementation of the SAC program providing that it can be carried out ''without incurring an undue financial, compliance, or legal burden on the mammography facilities or public.'' Under § 900.24(a), FDA may withdraw approval of a certification agency if it fails to correct major deficiencies. Under § 900.24(b), FDA may place a certification agency on probation while it corrects minor deficiencies in the performance of its responsibilities. If a certification agency fails to correct these deficiencies while under probation, FDA may withdraw its approval of the agency. If FDA withdraws approval of a certification agency under either of these circumstances, the facilities certified by the agency would again have to become certified by FDA. There would be some burden on the facilities in making such transfers. FDA will develop administrative procedures for the transfer to minimize the burden to the extent possible. In addition, FDA believes that giving the facilities advanced notice that such a transfer may be necessary, so that the facility may be prepared for the possibility will further minimize the burden. Therefore, a sentence has been added to § 900.24(a) requiring a certification agency that has been ordered to carry out corrective actions for major deficiencies to notify all facilities certified or seeking certification by it of this order. Similarly, a new paragraph (b)(1) has been added to § 900.24 requiring a certification agency to notify all facilities certified or seeking certification by it during the probation period if the agency is placed on probation.

(Comment 17) The introduction to this section states that if ''a certification agency is not in substantial compliance with this subpart, FDA may initiate the following action * * *.'' One comment urged that the agency define ''substantial compliance'' or delete the word ''substantial.''

FDA believes that to make either of these changes would remove the flexibility that it needs to respond appropriately to a wide variety of conditions. Deleting the word ''substantial'' would mean that any deviation from the requirements, no matter how minor, would require action against the certification agency. On the other hand, because it would be impossible to foresee all possible situations in which action might have to be considered, any definition of ''substantial compliance'' would inevitably be incomplete. In order to retain the flexibility to evaluate each individual situation and to arrive at the course of action most appropriate for it, FDA rejects this comment.

F. Suggestions for Additions to the Regulations

(Comment 18) One comment urged FDA to address the use of ''interim notices'' in the regulations instead of in guidance, as it is at present. The authors noted that their State planned on promulgating regulations to include criteria and processes for issuing interim notices and stated the opinion that most State administrative procedure statutes would require similar regulations for their certification agencies. They urged FDA to include the interim notice process in its own rules to serve as a model for the State rules. A second comment suggested clarifying the term ''interim notice'' by terming it ''interim notice of certification.'' A third comment urged FDA to differentiate between the issuance of interim notices to new facilities under a provisional status and existing facilities that receive interim notices due to delays or failure in the accreditation process.

Interim notices are issued by FDA or a certification agency to a facility in a variety of situations, including accreditation delays, nonreceipt of a certificate, and to bridge the gap of time between certificate issuance and facility receipt of a certificate. The notice permits a facility to perform mammography while waiting for the certificate to arrive by mail. FDA devised this process as a way to handle the immense task of completing the accreditation and certification of thousands of facilities in a relatively short period of time during the early days of the MQSA program. FDA retained the process after those early years as the accreditation bodies continued to make adjustments to their fluctuating workload. Situations sometimes arose where without such a mechanism, a facility would have to cease operating for a period of time, even though its staff had carried out their responsibilities properly and promptly.

FDA notes that it is reconsidering the future use of interim notices separately from the development of the SAC regulations. Therefore, it is premature to respond to this issue. However, in its examination of the interim notice issue,

FDA will consider the specific comments made.

The agency also notes that interim notices are not presently mentioned in the SAC regulations. The interim notice process could not be added to the regulations without giving the public the opportunity to comment. If such regulations were incorporated into the SAC regulations, they would have to be reproposed. Thus, the publication of the final SAC regulations would be delayed for at least 6 months to 1 year, which many States would find unacceptable. If FDA determines that there is a need to add regulations on interim notices, the agency will publish a proposal and give the public an opportunity to comment. With respect to the plans of one State to issue regulations of its own with respect to interim notices, the agency notes that the mammography regulations of a State acting as a certification agency must continue to be at least as stringent than those of FDA. If a State proceeds with its own interim notice regulations, it may have to amend those regulations after FDA makes its decision on the future of interim notices or may find that its regulations do not satisfy MQSA's SAC requirements because they are less stringent than the MQSA regulations. With these considerations in mind, States interested in such regulations may wish to wait until FDA makes a final decision on this issue.

IV. Environmental Impact

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

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612 (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). FDA published an impact analysis in association with the proposed regulations. After a thorough analysis of the comments received on the impact analysis as described below, FDA concluded that none of the comments made a convincing case for changing either the methods used in the cost analysis or the conclusions drawn from it. Therefore, FDA has concluded that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. A full discussion of the comments FDA received on the analysis follows.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The final rule will have no significant economic impact on a substantial number of small entities because it applies only to States wishing to become certification agencies. However, as part of its Regulatory Impact Study, FDA did analyze the potential for changes in costs to facilities. As will be discussed later in the worst case revealed by the analysis, some mammography facilities may experience a small increase in cost. However, because States are not likely to enter the program unless their entry will be of benefit to the facilities within their borders, a cost savings to the public as a whole and to mammography facilities is more likely to occur. Therefore, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

A. Scenarios Used

FDA realized that the cost impact of these regulations would be heavily dependent upon the number and characteristics of the States that choose to participate in the SAC program. However, because participation is entirely voluntary on the part of the States, FDA could not determine in advance which States would decide to become SAC States. The first assumptions made, therefore, were related to which States might become SAC States. FDA used three scenarios to establish the possible range of the impact of these regulations.

Scenario 1—FDA assumed only the States of Iowa and Illinois, the current participants in the SAC Demonstration Project, would choose to participate in the program.

Scenario 2—FDA assumed that six additional States, which have in the past indicated significant interest in becoming SAC States, would join Iowa and Illinois in the SAC program.

Scenario 3—FDA assumed that seven additional States would join the eight States included in the scenario 2 analysis. These additional States have indicated some interest in becoming SAC States when the program is fully implemented.

The selection of the States for these scenarios does not indicate either a commitment by the States to participate or a commitment by FDA to accept their participation in a future SAC program. Both the six States added in scenario 2 and the seven added in scenario 3 have a wide geographic distribution and the number of mammography facilities within their borders ranges from relatively large to relatively small. Although the basis of selection was FDA's perception of States' interest, the resulting groups are representative of the country as a whole.

B. Pre-SAC and Post-SAC Funding of MQSA Activities

Funding to support the MQSA activities pre-SAC comes from two sources: Inspection fees and federally appropriated funds. By statute, FDA must pay for all inspection costs by collecting fees from the mammography facilities. The present inspection fee is $1,549 per facility plus an additional $204 per mammography unit for each unit beyond the first at the facility. Appropriated funds support all activities other than those that are covered by this fee. In addition, an amount equal to the inspection fee for each governmental entity is allotted from appropriated funds to support the inspection program for those facilities. These sources of funding will continue to be relied upon for support of MQSA activities in States that choose notto enter the SAC program.

If a State becomes a SAC State, the nongovernmental facilities within that State will pay an inspection support fee to FDA to reimburse the agency, as required by statute, for the inspection support services that the agency will continue to provide. This inspection support fee has been initially set at $509 per facility, regardless of the number of mammography units in the facility. As with the inspection fees in non-SAC States, this fee will be collected in a given year only from those facilities in SAC States that were actually inspected during that year. The same amount will also be provided from appropriated funds for each governmental entity inspection within the SAC States.

The SAC State will determine how the responsibilities that it has assumed will be funded. For example, the

funding could come from State appropriations, a certification fee charged by a SAC State, registration fees, or a combination of sources.

C. Phases of the Analysis

FDA carried out the cost impact analysis in several phases. In phase 1, the costs or savings from the SAC program to the public as a whole were estimated by comparing FDA's pre-SAC costs (for performing various functions that would be given to the States) with the post-SAC costs for FDA and SAC States in each of the three scenarios. In this initial analysis, the agency assumed that the inspection fee would remain unchanged from the present value. The results of this phase are shown in tables 1 through 3 of this document.

The second phase of the analysis looked at the impact that would result on the costs or savings to the public as a whole if inspection fees had to be changed. As States enter the SAC program, their facilities will be paying FDA the lower inspection support fee instead of the inspection fee. The funds available for the FDA inspection program thus will decrease as more States become SAC States. On the other hand, the cost of the FDA inspection program will also decrease because it will no longer include the cost of contracting with the States for inspecting facilities in the SAC States. The relative amounts of the decreases in funds available and inspection costs will be highly dependent upon which States enter the SAC program. If a State with a low inspection cost per facility becomes a SAC State, the decrease of funds available to FDA will be more than the decrease in program costs. As a result, the inspection fee in the non-SAC States will have to increase in order to provide sufficient funds to FDA to fulfill its MQSA inspection responsibilities. If a State with a high inspection cost per facility enters the SAC program, the reverse will be true. Table 4 of this document shows the estimated change in the funds needed from inspection fees in each of the three scenarios, and the impact this would have on the savings or cost to the public as a whole.

In the third phase of the analysis, attention turned from the economic impact of the SAC regulations on the public as a whole to the impact on that portion of the public represented by small entities, as required by the Regulatory Flexibility Act. The agency considered all of the approximately 10,000 mammography facilities in the country to be small entities for the purposes of the analysis. In the case of facilities in the non-SAC States, this impact would manifest itself as an increase or decrease in the inspection fee, depending upon whether the second phase of the analysis showed that more or less money was needed to support the FDA inspection program.

In the case of facilities in the SAC States, the analysis first involved determining the difference between the savings to facilities from no longer having to pay the FDA MQSA inspection fee to the costs to the facilities for the inspection support fee and the State costs. The difference was then divided by the number of SAC State facilities. Table 5 of this document shows the savings or costs to the small facilities in the non-SAC and SAC States under each of the three scenarios.

The third phase of the analysis estimated the average impact on the SAC State facilities. The fourth phase showed that depending upon the State in which it was located, the actual impact upon an individual facility could vary widely. The amount of this impact was again highly dependent upon the cost of inspections within each State. The range of the impact was determined by comparing the situations for the lowest and highest inspection cost States among the 15 States included in scenario 3.

The fifth phase of the analysis recognized the fact that although all mammography facilities are assumed to be small entities, they actually vary greatly in size. To further evaluate the impact on the smallest of the mammography facilities, the increase or decrease in per facility costs under the SAC program were compared to the facility revenues derived from mammography for a low volume mammography facility. For this comparison, a model developed by the Eastern Research Group was used. This model estimated that the lowest volume mammography facility (performing less than 300 mammograms annually) would have approximately $24,000 in annual revenues from mammography.

The projected reporting and recordkeeping for SAC States is discussed in detail in the Paperwork Reduction Act (the PRA) of 1995 section. The rule imposes no new reporting and recordkeeping requirements on mammography facilities, and, thus, no additional professional skills are necessary.

D. Discussion of Results

Tables 1 through 3 of this document give the results from the first phase of the analysis. These results support the initial statement that the potential net savings or cost to the public from the SAC program is heavily dependent upon the number and characteristics of the States that choose to become SAC States. All three of the scenarios show that there is the potential for savings to the public from the SAC program. However, the estimated amount of the savings is not proportional to either the number of States in the program or the number of facilities.

TABLE 1.—COST TO THE PUBLIC OF MQSA FUNCTIONS IN NON-SAC[1] STATES

Scenario	Non-SAC States Facilities (Percent of National Total)	Non-SAC States Cost
Baseline	100	$16,067,499
1	94.1	$15,140,562
2	73.8	$11,841,663
3	46.0	$7,394,421

[1] SAC means States as Certifiers.

TABLE 2.—COST TO THE PUBLIC OF MQSA FUNCTIONS IN SAC[1] STATES

Scenario	Facilities (Percent of National Total)	SAC States Cost
Baseline	0	$0
1	5.9	$709,870
2	26.2	$3,650,563

TABLE 2.—COST TO THE PUBLIC OF MQSA FUNCTIONS IN SAC[1] STATES—Continued

Scenario	Facilities (Percent of National Total)	SAC States Cost
3	54.0	$8,180,723

[1] SAC means States as Certifiers.

TABLE 3.—SAVINGS TO THE PUBLIC—FIRST PHASE ANALYSIS

Scenario	Non-SAC[1] State Cost	SAC State Cost	Total Costs	Savings to Public
Baseline	$16,067,499	$0	$16,067,499	$0
1	$15,140,562	$709,870	$15,850,432	$217,067
2	$11,481,663	$3,650,563	$15,492,226	$575,273
3	$7,394,421	$8,180,723	$15,575,444	$492,055

[1] SAC means States as Certifiers.

Whether the SAC program will save (or cost) the public more money than the pre-SAC program depends upon whether SAC States can carry out their SAC functions more or less economically than these functions were carried out within their borders pre-SAC. The biggest component of the cost to the public pre-SAC is the inspection fee. This fee is a national average fee that is the same for all facilities no matter where they are located. On the other hand, the actual cost of performing the inspection varies widely from State to State. If a State whose inspection cost is significantly lower than the national average becomes a SAC State, there is an increased probability that the total cost per facility for inspections, the other State functions, and the inspection support fee will be less than the inspection fee that the facility paid pre-SAC. If so, there will be net savings to the public from that State becoming a SAC State. On the other hand, in States with high inspection costs, the combined cost per facility of the inspections, the other functions, and the inspection support fee may exceed the inspection fee, in which case there will be a net cost to the public arising from that State being in the SAC program.

The bulk of the SAC facilities in scenario 1 are in a State with an inspection cost below the national average. It is not surprising then to find net savings in scenario 1. The inspection costs in the States added in scenario 2 range from slightly lower than to a little higher than the average. Again, it is not surprising to find that there is a net savings and, because the number of facilities in SAC States is greatly increased, it is also not surprising to find that the total net savings is significantly increased over scenario 1. On the other hand, in scenario 3, three of the States added have per facility inspection costs that are well above the national average. Thus, there is an increase in cost to the public arising from these States being in the program. The impact of their participation is magnified because these three States include over two thirds of the facilities added in scenario 3. As a result, there are lower net savings in scenario 3 than in scenario 2.

The agency based the savings estimated in the first phase of the analysis upon the assumption that the inspection fee would not increase with the implementation of the SAC program. In the second phase of the analysis, however, FDA estimated additional amounts of $127,593, $563,710, and $605,208, in scenarios 1, 2, and 3, respectively, would have to be raised by increasing fees in order to provide sufficient funds for the FDA inspection program. Table 4 of this document shows the effect of applying these corrections to the previously estimated savings to the public as a whole. The savings to the public in scenario 1 are reduced but still significant, those in scenario 2 virtually disappear, and in scenario 3 there would be an increase in cost.

TABLE 4.—IMPACT OF INSPECTION FEE INCREASE ON THE PUBLIC AS A WHOLE[1]

Scenario	Savings Before Fee Change	Savings/(Cost) After Fee Change
1	$217,067	$89,474
2	$575,273	$11,563
3	$492,055	($113,173)

[1] SAC means States as Certifiers.

Beginning with phase 3 of this analysis, the agency turned its attention from the economic impact on the public as a whole to the impact on that portion of the public represented by the mammography facilities. Table 5 of this document shows the estimated per facility savings or increased costs for facilities in both SAC and non-SAC States under the three scenarios.

TABLE 5.—ESTIMATED PER FACILITY SAVINGS OR (COSTS) RESULTING FROM THE SAC[1] PROGRAM

Scenario	Non-SAC State Facility Savings (Cost)	SAC State Facility Savings (Cost)
1	($16.52)	$150.45
2	($93.16)	$.03
3	($160.23)	($128.67)

[1] SAC means States as Certifiers.

In all three scenarios, estimated costs increased for the non-SAC State facilities due to the need to increase the inspection fee to raise the necessary funds to support the FDA inspection program. However, even the largest of estimated increases was only about 10 percent of the present fee.

In the case of the facilities in the SAC States, there is an estimated per facility savings in scenario 1 but an estimated increased cost in scenario 3. The average cost per facility in scenario 2 is essentially unchanged. Again, this variation in impact from scenario to scenario is primarily due to the difference in inspection costs among the included States.

As previously noted, however, the actual impact on an individual facility varies widely with the State. Phase 4 of the analysis illustrates the extremes of this variation among the States by comparing the situation in the State with the highest inspection contract cost per facility from among the 15 States to the situation in the State with the lowest inspection contract cost per facility. The facilities in the State with the lowest inspection cost would save, on the average, an estimated $200 per facility per year, which is a decrease of over 10 percent of the FDA inspection fee, if that State became a SAC State. Facilities in the State with the highest inspection cost, however, would have to pay an average of over $507 additional per year, an increase of one-third over the FDA inspection fee, if their State became a SAC State. Interestingly, both of the States joined the SAC program in scenario 3, where the second and third phases of the analysis showed that there was an overall increase in the cost to both the public as a whole and to the part of the public represented by the mammography facilities. Thus, even under scenarios where there is an overall cost increase, there may be savings in individual States.

This great variation is a major reason why the nearly $700,000 cost to facilities in scenario 3 is a ''worst case'' situation that will probably never be reached. The States included in this analysis were States that had shown some level of interest in becoming a SAC State. The primary basis of this interest was a belief that by becoming a SAC State they could provide a service to the facilities and mammography patients within their borders. They expected to be able to provide an assurance of quality mammography at least equal to that under the national program but at a lower cost. If such a belief proves to be too optimistic in a particular State, due to high inspection costs or any other reason, it is unlikely that they will apply to become SAC States.The fifth and final phase of the analysis considers the potential impact of the SAC program on the smallest of the small entity mammography facilities (those with approximately $24,000 in annual revenues from mammography). Tables 6 and 7 of this document present the average facility costs in both non-SAC and SAC States as a percentage of low volume facility revenues in situations where there is an increased cost (all 3 scenarios for facilities in non-SAC States and scenario 3 for facilities in SAC States).

TABLE 6.—COST/SAVINGS PER FACILITY IN NON-SAC[1] STATES

Scenario	Per Facility Increase in Inspection Fee	Inspection Fee Increase as Percentage of Facility Revenue
1	$16.52	0.1%<
2	$93.16	0.5%<
3	$160.23	1.0%<

[1] SAC means States as Certifiers.

TABLE 7.—COST/SAVINGS PER FACILITY IN SAC STATES

Scenario	Net (Cost)/Savings to SAC[1] Small Entities	Average per Facility Net (Cost)/ Savings	Cost as a Percentage of Facility Revenues[2]
1	$87,710	$150.45	NA
2	$838	$0.33	NA
3	($691,595)	($128.69)	1.0%<

[1] SAC means States as Certifiers.
[2] Revenues for a facility performing less than 300 mammograms annually with revenues of approximately $24,000.

Even the largest of the estimated increased costs represented less than 1 percent of the facility's revenue from mammography.

E. Unfunded Mandates

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure of $100 million or more in any one year by State, local, and tribal governments in the aggregate or by the private sector. Because participation in the SAC program is entirely voluntary on the part of the State and not mandated, and because the costs of those who choose to participate will be far less than $100 million, FDA concluded that the proposed SAC regulation is consistent with the principles of the Unfunded Mandates Reform Act without the need for further analysis.

F. Alternative Regulatory Approaches

In addition to the impact analyses discussed above, Executive Order 12866 requires agencies to select regulatory approaches that maximize net benefits. To fulfill these obligations, FDA considered and rejected the following three alternatives:

1. Not Implementing Section 354(q) of the PHS Act

Section 354(q) of the PHS Act states that FDA (with authority delegated from the Secretary of the Department of Health and Human Services) ''may'' authorize a State to carry out the certification and other functions listed above. FDA thus had the option of not implementing section 354(q) of the PHS Act and instead retaining the present centralized certification program. However, many States have indicated a strong interest in increasing their participation in the MQSA program to improve the quality of mammography. The analysis discussed above illustrates that such increased State participation

has the potential for economic savings to the public as a whole. In some States, there are also the potential economic savings for that portion of the public represented by the mammography facilities. In view of these factors, not implementing section 354(q) of the PHS Act could be justified only if its implementation would impede the basic objective of MQSA, the improvement of the quality of mammography. FDA has no evidence to indicate that this would be the case. On the contrary, increased State participation appears to have the potential of accelerating the improvement in the quality of mammography. Because of these considerations, FDA rejected this alternative.

2. Recognizing Existing State Certification Programs

Several States already have programs in place for the certification of mammography facilities. FDA considered recognizing such existing and possible future programs in lieu of the approach taken in the proposed regulations, which is to require a State to establish a program as stringent as the national program in order to be authorized as a SAC. This alternative would have the advantage of lessening the effort the State would have to invest in meeting the requirements to be a SAC and would eliminate the need for facilities to have both MQSA and State certification. However, the existing State certifications vary in nature and extent and it would be expected that such a variation would increase if future State programs are created without the establishment of a consistent set of national standards for such programs. MQSA was designed to replace the existing patchwork of private and government efforts to improve the quality of mammography with a nationwide program that would ensure patients that the mammography they receive meets the same standards of quality, no matter where in the country they receive it. FDA concluded that this could not be guaranteed if existing and future State certification programs were simply recognized without the need to meet national standards.

3. Implementing Section 354(q) of the PHS Act Through the Issuance of More Detailed Regulations

The approach taken in the proposed regulations is to seek to ensure that State certification programs that receive the delegated authority provide guarantees of quality mammography that are as stringent as those provided by FDA's national program but to allow the State programs some flexibility in the means used to achieve this goal. An alternative to this approach would be to impose more detailed requirements that would have to be met for a State to receive certification authority. FDA rejected this approach because it was believed that this would sacrifice the advantages to be gained by giving the State programs the flexibility to tailor their program to best fit the local conditions in the State.

G. Comments Received on the Impact Analysis

FDA published a preliminary impact analysis in association with the proposed SAC regulations on March 30, 2000 (65 FR 16847). The following public comments were received on the methodology and projections included in that analysis.

General Comments

(Comment 19) One comment asked, ''Will FDA proceed with SAC if a cost savings cannot be achieved?'' The authors added, ''The cost passed on to the public may be beneficial if the FDA approved mammography sites had distinct advantage and endorsement from the FDA. This would serve to enhance and improve quality.''

Although 42 U.S.C. 263b(q) only states that FDA ''may'' authorize States to carry out certification functions and not that it is required to do so, the agency has decided to make this option available to interested States. This will not change even if it turns out that the costs savings estimated under some scenarios in the cost analysis are actually cost increases or if the minor cost increases estimated in other scenarios are more than expected.

The agency would like to point out again, however, that participation in the SAC program is voluntary on the part of the States. The States that have expressed interest in becoming certification agencies have in general done so because they believe that they can affect cost savings for their facilities while continuing to ensure that national standards for mammography are met. If they find that they are unable to achieve these cost savings, FDA believes that they will not apply to become SAC States or, if they are already SAC States under the Demonstration Program, they will withdraw from the program.

Use of Nationwide Average Inspection Fees

(Comment 20) One comment noted that the use of the nationwide average per facility cost as the basis for the inspection fee has resulted in States with lower costs supporting States with higher costs and facilities in the lower cost States shouldering an unfair proportion of the fees. A second comment expressed the author's fear that this disproportionate financial burden would become greater for small States who did not become certifiers as the pool of non-certifying States becomes smaller.

FDA agrees that the use of the nationwide inspection fee has resulted in the consequences noted in the first comment. The inspection support component of the inspection fee (for activities such as training and equipping inspectors) is the same for each facility no matter where it is located. The direct cost of the inspections, however, which is by far the single biggest component of the national inspection fee, does vary greatly from State to State. The use of the nationwide average fee has resulted in facilities in low inspection cost States bearing a disproportionate part of the costs. FDA was aware from the beginning of the MQSA program that this situation would be the case. However, uncertainties and variables associated with the cost of inspection make it difficult to establish a single national fee that would, as required by the law, cover the inspection costs without overcharging the facilities in the aggregate. To establish a separate fee for each State would have vastly magnified the difficulty of this task.

FDA disagrees with the comment that initiation of the SAC program, along with the resultant decrease in the pool of non-certifying States, will increase the disproportionate financial burden of facilities in small States. The agency does recognize that the facilities in the remaining non-certifying States, large or small, may have to pay a higher inspection fee. As part of the cost analysis, FDA estimated increases in the facility inspection fee of approximately $16.52, $93.16, and $160.23 would be needed under the conditions of scenarios 1, 2, and 3, respectively. However, any such increase would actually reduce the ''disproportionate'' burden that facilities in some States pay as a result of the use of a nationwide inspection fee.

The reason for this is that, as noted in the cost analysis and in the previous answer, the States that are most likely to become SAC States are those who by doing so will be able to save their facilities money. Thus the States, large or small, with the lower inspection fees will most likely be the ones to become SAC States while those with the higher inspection fees will likely not. This means that while the burden may increase in non-SAC States, its disproportionality will decrease.

Perceived Errors in the Cost Analysis

(Comment 21) One comment stated that the inspection-related functions that FDA provides are the same, regardless of whether the facility is located in a SAC or non-SAC State. Therefore, the cost associated with these functions and the fee charged should be the same regardless of SAC status.

FDA notes that this is indeed the case. In the SAC States, facilities reimburse FDA only for inspection support services through the $509 inspection support fee. In the non-SAC States, facilities pay an inspection fee of $1,549 per facility plus $204 for each additional unit. The inspection fee includes the $509 for the services covered by the inspection support fee plus an additional amount to cover the average national direct cost of the inspections. Thus, the amount charged for inspection support functions is the same whether the facility is in a SAC or non-SAC State.

(Comment 22) One comment stated that FDA did not account for the reduction of some of its costs for activities such as issuing certificates and performing enforcement activities and, similarly, did not account for increased State costs for taking on these functions.

FDA disagrees. As explained in the preamble to the proposed SAC regulations and in more detail in the Regulatory Impact Study, FDA estimates in each scenario the reduced costs to FDA of conducting functions transferred to the SAC States on a proportional basis. Pre-SAC, the FDA cost for certification, enforcement, and public information was $2,192,000. In scenario 1, for example, FDA would be responsible for only 94.1 percent of the pre-SAC facilities, a 5.9 percent reduction. FDA assumed that its post-SAC costs of these activities would be 94.1 percent of the pre-SAC cost or $2,063,143. Scenarios 2 and 3 made similar proportional reductions, based upon the number of facilities that would be in SAC States. FDA used these reduced costs in estimating the savings or increased costs from the SAC program. Thus, the statement that FDA did not account for reduced costs due to a reduction in its activities is incorrect.

FDA also took the increased State costs into account. In scenario 1, where the SAC States were those in the Demonstration Project, the agency assumed that the fees charged by the two States involved equaled their exact costs for performing the inspections and for handling the SAC activities and, therefore, covered their increased costs. FDA queried the States that were added in scenarios 2 and 3 to determine if they had estimates of what it would cost them to perform SAC activities. Unfortunately, although those States were selected on the basis of having indicated some interest in becoming certification agencies, their planning had not reached the point where they felt comfortable providing a cost estimate. Therefore, it was again necessary to fall back on proportional costs. If a possible SAC State contained 3.6 percent of the nation's mammography facilities, FDA assumed as a first estimate that the State could perform its new activities, such as issuing certificates, for 3.6 percent of FDA's pre-SAC baseline costs. FDA further refined this first estimate in each State by adjusting the personnel component of the costs to account for the difference between the cost of a full time equivalent (FTE) in that State and the cost of a FDA FTE.

The agency acknowledged in its Regulatory Impact Study, that this estimation process did not take into account the loss of economy of scale that would result from spreading these functions from one large entity to several smaller ones. However, there was no valid basis available for estimating the impact of the loss of economy of scale.

(Comment 23) One comment stated that the cost analysis did not consider that a State might have costs associated with the performance of the MQSA inspections that are not currently being recovered from the contract with FDA; if the State became a SAC State, it might want to recover these added costs from the facilities. Therefore the potential savings to the facilities were overestimated in the cost analysis.

FDA agrees that this point is a potential source of error but again would mention that the agency queried the States for cost information and did not get any, except that available for the two States in the Demonstration Project from their fee structure. Even in this comment, the author gave no indication of how much more reimbursement the States might seek from facilities. Without such information, FDA had no basis for including a value for the costs mentioned in the comment.

Suggestions for Reducing Costs

Besides the comment suggesting that training of the inspectors be turned over to the SAC States, which we addressed earlier, respondents made the following cost saving suggestions.

(Comment 24) One comment suggested that FDA should review its nationwide database and software systems to determine whether such elaborate and costly systems are really necessary.

FDA notes that such reviews have been carried out and will be repeated periodically in the future. However, the agency also points out that the requirements of MQSA put limitations upon possible reductions in its software system. For example, the Senate report accompanying the original act indicates that the intent of 42 U.S.C. 263b(d)(1)(B) is that the agency should avoid, where possible, requiring facilities to provide duplicate information to their accreditation body and to FDA. This means that the agency's information management system must permit electronic transfer of information between the accreditation bodies and FDA, because the mechanical transfer and organization of such information for 10,000 facilities would be extremely cumbersome and expensive. With the accreditation bodies, SAC States, and FDA directly connecting to the centralized database, interoperability among data systems is increased considerably.

Another advantage to the centralized database is the ability of the software system to interface with the Centers for Medicare and Medicaid Services' (CMS') data system, which allows facilities to be reimbursed under Medicare. FDA also interacts with the National Cancer Institute's Cancer Hotline to help women find facilities located near them. The agency believes that a centralized database is more effective and efficient in carrying out these important functions.

(Comment 25) One comment noted that FDA should reduce the cost, scope, and time of the inspection, recognizing the role of the accreditation bodies and medical physicists, and the number and types of inspection deficiencies currently being cited.

FDA believes that there is a misunderstanding on the part of the author of this comment as to the intent of Congress in establishing both accreditation and inspection functions. The two systems are not duplicative but rather complementary. Accreditation bodies are responsible for the initial review of mammography facilities, and they repeat these evaluations every 3 years for compliance with the quality standards established by FDA. They also have unique responsibility for conducting reviews of clinical images from the facilities to determine if the images meet the image quality standards established by the accreditation body.

Accreditation agencies base their evaluations on material sent to them by the facilities. Inspectors, on the other hand, visit the facilities and are able to

check more closely for compliance with these standards. In addition, while the accreditation bodies evaluate the facilities every 3 years, the inspections are conducted on an annual basis.

FDA believes that there is great value in having the inspection act as an independent check upon the work of the physicist. It is not necessary for the inspector to completely duplicate the work of the physicist. In fact, the inspection only involves measuring the more general indicators of quality, such as phantom image quality and dose. These general measurements are sufficient to give an indication if there are problems with the equipment performance that had been overlooked during the physicist survey or had developed since that survey. This permits a more prompt correction of the problems than would occur if they were not detected until the next physicist survey.

FDA does not believe shifting additional responsibilities to the accreditation body or physicist will provide the same assurance that facilities are meeting uniform minimum national quality standards for mammography as does the present division of responsibilities. Moreover, the cost reductions from such shifts would be limited since some of the larger components of the inspection costs, such as travel to and from the facility, will not change even if the inspection is shortened.

The agency does note, however, that in accordance with MQSA, planning is under way for a Demonstration Project to examine the question of whether the frequency of the inspections can be reduced without compromising mammography quality. Should the study show that it is possible to reduce inspection frequency, the cost of inspections would be reduced proportionally.

Comments Related to the Inspection Support Fee

(Comment 26) One comment stated the belief that FDA did not have the statutory authority to charge an inspection support fee. The author added further that he knew of no other case where a Federal program has been delegated to the States where the Federal program still assesses the fee to the facilities in the State.

FDA notes that 42 U.S.C. 263b(r) requires that the agency ''assess and collect'' fees to cover the ''costs of inspections * * *'' FDA reviewed the question of what costs could be included in the costs of inspections at the time the initial inspection fees were established in 1995 and, most recently, when FDA revised them in 1998 (63 FR 2245, January 14, 1998). FDA may seek reimbursement through fees for the costs of the actual performance of the inspection (travel costs, personnel time, etc.), as well as other inspection costs. These other costs include: (1) Overhead costs (on both the State and Federal levels); (2) costs of equipping inspectors with measuring instruments; (3) calibration and maintenance of those instruments; (4) design, programming, and maintenance of data systems for inspection tracking and data collection during inspections; (5) training and certification of inspectors; and (6) costs of billing facilities for the fees. Inspection fees include all of these costs.

The largest component of the ''costs of inspection,'' the actual performance of the inspections and the State overhead related to them, will not be FDA expenses in the SAC States. Therefore, it would not be lawful for the agency to bill the facilities for them. However, the remaining activities included in the ''costs of inspections'' remain FDA's responsibility and, by law, facilities must reimburse the agency for them. To fulfill this legal requirement, FDA has established the inspection support fee.

FDA conducted research on three major Federal-State programs that were similar in scope to the SAC program: Nuclear Regulatory Commission, Occupational Safety and Health Administration, and Environmental Protection Agency. FDA did not conduct an exhaustive study of other Federal agencies that have delegated functions to the States. Therefore, FDA is unable to confirm or reject the statement that no other Federal agency charges such a fee. The agency notes, however, that the activities of each Federal agency are governed by its own legislation. Federal agencies that delegate authority must do so in accordance with the legislation governing that delegation and FDA is no exception. Because MQSA (42 U.S.C. 263b(q)) requires FDA to seek reimbursement for all costs of inspections from the facilities, it has done so for facilities in SAC States by establishing the inspection support fee.

(Comment 27) Two comments asked for a justification/explanation of how the figure of $509 was arrived at for the inspection support fee.

In October of 1999, FDA sent a letter to all of the State Program Directors explaining how FDA determined this fee, including the State program that submitted these comments. The starting point for the determination was the inspection fee, which had been increased to $1,549 per facility (plus $204 for each mammography unit beyond the first) in January 1998. FDA explained the basis of that fee in a notice published in the **Federal Register** of January 14, 1998 (63 FR 2245). FDA then determined the aggregate costs attributable to the State inspection contracts and to the FDA field inspection costs and found them to account for $1,040 of the basic fee. The remainder of the $1,549, or $509 was thus attributable to FDA's inspection-related activities described above (training and equipping of inspectors, etc.). Just as FDA periodically re-evaluates its inspection fee in light of changing circumstances and costs, it will periodically re-evaluate its inspection support fee with the result that it may go up or down in the future.

(Comment 28) One comment stated that ''the $509 assessment by FDA will result in no cost reduction and as stated could and probably will result in higher costs. This is contrary to the statement in the Analysis of Impact section that their proposal complies with Executive Order 12866 and the Regulatory Flexibility Act.'' A second comment likewise stated that the inspection support fee would result in higher facility costs. The author pointed out that the cost per inspection in his State was $1,421.25; thus, if facilities in his State had to pay a $509 inspection support fee, their total costs would have to go up from the present inspection fee of $1,549 per facility plus $204 for each unit beyond the first.

FDA disagrees with the first comment's contention that the agency's analysis was not in accordance with Executive Order 12866 and the Regulatory Flexibility Act. The author of the comment did not provide an explanation of why he believed this to be so. The agency thus is unable to address any specific concerns on his part but will review its analysis process in general.

Executive Order 12866 directs agencies to prepare an assessment of all anticipated costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. The Regulatory Flexibility Act requires determination of whether a proposed regulation may have a significant effect on small entities. As summarized in the preamble to the proposed SAC regulations, FDA did carry out the required analysis. The agency first looked at the cost impact on the public as a whole and then at the impact on that portion of the public represented by the mammography facilities, all of which the agency deemed to be small entities.

The Regulatory Impact Study contains this detailed analysis, which was summarized in the preamble to the proposed regulations and within this present preamble. Its principal findings were that on a nationwide basis there was a potential for reduced costs for mammography facilities and the public as a whole from the SAC program. However, the agency warned that the potential for savings varies greatly from State to State. The reason for the variation was not due to the inspection support fee. That fee is the same for all facilities, whether located in a SAC State or a non-SAC State where it is a component of the inspection fee. The reason for the variation is that the costs of doing the inspections themselves vary greatly from State to State.

In particular, the agency found that while facilities in States with low inspection costs would see savings, States with high inspection costs would probably see a cost increase for their facilities. This conclusion is borne out by the second comment, whose author is correct in saying that if his State were to become a SAC State, the costs to the facilities in that State would most likely go up. But again, the reason for this increase is not the inspection support fee but instead is the above average cost of inspections in his State. Presently, the facilities in his State benefit from the fact that a nationwide inspection fee is charged to facilities in non-SAC States. As other comments previously noted, this benefit means that facilities in States with lower than average inspections costs pay more than their share of the inspections costs while facilities in States with higher than average inspection costs pay less than their share. If the State referred to in the second comment entered the SAC program, the facilities in that State would have to pay the actual inspection costs in their State, not the reduced figure made possible by the use of an average national fee. Unless that State could find a way to trim its inspection costs, the cost to the facility would likely increase.

In its analysis, FDA also noted that States are not required to become certification agencies either by law or the proposed regulations. The agency further noted that it is unlikely that a State will become a certification agency unless such an action would lead to cost savings to its facilities. The author of the second comment also supported this belief by stating that if there were an increase in cost to their facilities, his State would be unlikely to become a SAC State. Again, participation in the SAC program is voluntary.

In addition, as required by Executive Order 12866, FDA examined possible alternatives to the approach laid out in the proposed regulations. For reasons given in detail in the Regulatory Impact Study, the agency rejected these alternatives. The author of the comment did not indicate disagreement with the rejection of the alternatives.

FDA believes that the above information, provided in more detail in both the Regulatory Impact Analysis and the preamble to the proposed regulations, illustrates that the agency did fulfill its obligations under Executive Order 12866 and the Regulatory Flexibility Act.

(Comment 29) One comment urged that training of the inspectors be delegated to the States as a way of reducing the inspection support fee. A second comment stated that information transfer was not related to inspections but to the maintenance of a national database, therefore its costs should not be included in the inspection support fee. A third comment disagreed with a FDA statement that a lack of rapid transfer of data to FDA from the certification agencies could put the public at risk. A fourth comment charged that the costs included in the inspection support fee are overestimates, because they were based on the start-up costs of training and equipping the initial corps of inspectors and initial software development. The comment added that the maintenance costs will be much less.

The agency has previously addressed the first comment in detail. A summary of that previous response is that the agency does not believe that, given the loss of economies of scale, an individual State can provide training of equal quality and breadth but at less cost than the FDA program. If more information had been provided on the proposed State training program, FDA might have come to a different conclusion, but the comment provided no details to support the author's belief that money could be saved in this way. In addition, inspector training was one of the major topics discussed at a 1998 SAC working group meeting in Louisville, KY. The majority of States expressed their desire for continued FDA training. FDA remains open to training alternatives after the SAC program has been implemented.

Regarding the second comment, FDA notes that the information transfer includes such important components as notifying the State inspection programs that a particular facility is certified and thus should be inspected. In addition, the uploading of the inspector report to the database is the indicator that the facility has been inspected. FDA again notes that MQSA seeks to minimize facilities' obligation to submit duplicate information; that is, facilities should not be required to provide the same information to both the accreditation body and the certification agency that is responsible for the inspection program. For this reason, the inspection program's only source for information on the location, contact person, and other characteristics that were provided by the facility to the accreditation body and by that body to FDA is from FDA. Therefore, the transfer of that information to the certifying State for use in its inspection program is another way in which information transfer and inspections are related. A third, and perhaps the most important, connection between information transfer and the inspection program is the transfer of inspection results from an inspector to FDA and the transfer of those results back to the inspectors who inspect the facility in following years. This last transfer avoids the need to repeat components of the inspection, such as review of initial qualifications of personnel that would not have changed in the intervening year, and thus permits a more streamlined inspection. The information transferred back to the inspectors also alerts them to problems that the facility has had in the past so that they may determine if the problems have been adequately corrected. These examples show that information transfer is closely related to the inspections; it, therefore, is appropriate to include it in the inspection support fee. SAC States could develop their own data systems also, but that would mean increased costs as well as problems of interoperability with MQSA's largest accreditation body.

In answer to the third comment, FDA would first mention one important example to show that the speed of data transmission is important to the public health. Mammography facilities can not be reimbursed for examinations under Medicare unless FDA has informed CMS that the facility has been given a certificate as an indication that it meets the standards. Similarly, if a facility's certificate is suspended or revoked or is not renewed, FDA must inform CMS of this before reimbursement of the facility under Medicare can be stopped. If information from the certification agency concerning the facility's certification is delayed in transmission to FDA, unsatisfactory facilities may continue to be reimbursed and thus continue to provide unsatisfactory examinations. Conversely, facilities that meet the standards may be delayed in being cleared for reimbursement, thus

reducing the availability of adequate mammography.

Delayed transfer of inspection data also would inhibit FDA's effort to ensure that uniform minimum national quality standards are met. It would make the national inspection database less effective as a tool for speedy identification of undesirable trends related to compliance with the quality standards. If an inspection in one State finds a problem with personnel or mobile facilities that operate in more than one State, delays in transmitting that data to FDA will delay notifying the other States of the problem. Finally, it should be mentioned again that FDA has an obligation to protect the public health by ensuring through its oversight activities that the same uniform minimum national quality standards are met in the SAC States as in the non-SAC States. Delay in the transmission of inspection data from the SAC States would hamper these oversight efforts.

FDA disagrees with the fourth comment as it applies to training costs. The initial task of training approximately 250 inspectors was completed in FY 97. As noted in the analysis, the inspection support fee was based on FY 98 costs, by which time the training program was in the maintenance stage. FDA does agree that the information transfer software is still under development and that the costs of the information transfer system will decrease when this task is completed. There are likely to be other changes as well with the passage of time and so FDA does and will continue to periodically reassess the inspection support fee, as it does the inspection fee, to see if the amount should be adjusted.

(Comment 30) One comment asked whether certain specific costs related to training were included in the training component of the inspection support fee. These were: (1) Initial training, (2) continuing education and travel for continuing education, (3) travel that is currently included under the contract, and (4) annual evaluation of the certifying body.

FDA notes that those initial training costs for new inspectors that are related to the actual instruction process are included in the inspection support fee. These costs included the expense of the contract with a university to provide the first segment of the training. These costs also include the cost of providing a training facility, mammography units for practice surveys, equipment, and other supplies for the last two segments of the training as well as the instructor's salaries for those segments.

The inspection support fee does not include student travel and per diem expenses for the training. In addition, it does not include the continuing education costs for all inspectors, which is currently limited to $1,300 per 3-year period per inspector. The agency is not certain what the authors of the comment meant by item 3. If they are referring to the costs of the inspector traveling to and from inspection sites, the inspection support fee does not cover these expenses. All of these costs are, and will continue to be, covered under the inspection contracts in the non-SAC States; thus, they are not part of the inspection support services. Since State certification agencies will not have inspection contracts, they would need to cover these costs from fees to facilities or from State appropriations.

The fourth item asks about FDA's exercise of its oversight function through annual evaluations. To date, the cost of oversight functions has been covered by Federal appropriations. In order to assure the quality and consistency of inspections nationwide, FDA currently conducts oversight of all MQSA-certified inspectors and their inspections whether they are in an inspection contract State or a SAC State. While FDA recovers its inspection oversight costs by fees in inspection contract States, FDA presently does not recover them in SAC States. In the future, FDA may consider the possibility of transferring inspection oversight costs from the inspection fee to the inspection support fee.

H. Summary

The analysis described above shows that the SAC program's economic impact on the public and the small entities will vary with how many and which States become SAC States. However, even in the scenario with the greatest adverse impact, the increased cost to the public was estimated to be less than 1 percent of the present cost of the MQSA activities that would be transferred to SAC States. The situation with respect to the cost to individual mammography facilities was more complicated. For facilities in non-SAC States, it appears that the SAC program might lead to an increase in their inspection fee. The estimated amount of the increase ranges from about 1 percent of the present fee (scenario 1) up to approximately 10 percent of the present fee (scenario 3). For facilities in the SAC States, the estimated impact ranged from the total of their inspection support fee and any fee paid to the State being about 10 percent less than the present inspection fee (scenario 1) to being about 8 percent greater (scenario 3). When the average cost increase for either SAC or non-SAC facilities in the various scenarios was compared to the revenues of a very small mammography facility, it never exceeded 1 percent of the facility revenues.

Although the estimated average savings or increases for facilities in both the non-SAC and SAC States vary with the scenario, they all represent small changes in the pre-SAC costs to the facilities from the inspection fee. However, these averages mask much greater State by State variations in savings or added costs. As discussed above, FDA believes that a State is unlikely to apply to become a SAC State if the costs to its facilities will be significantly increased by that action. The facilities in the States that do become SAC States are likely to experience a more favorable economic impact than that estimated in this analysis. FDA also believes that both quality mammography and the reduction of breast cancer mortality will be no less after these proposed regulations are implemented than before. Facilities in SAC States will have to meet at least the same quality standards as facilities in non-SAC States. They will be accredited by the same FDA-approved accreditation bodies and they will be inspected by the same MQSA-certified inspectors whether in the SAC program or not. Implementing these regulations will bring the administration of the delegated MQSA functions closer to the facilities and the public. With their closer proximity, State agencies may be able to respond more rapidly to help mammography facilities to improve the quality of their services or take enforcement actions against the few facilities that present serious public health threats.

After thorough analysis of the comments received on the impact estimates, as described above in comments 19 through 30, FDA concluded that none of the comments made a convincing case for changing either the methods used in the cost analysis or the conclusions drawn from it.

Therefore, FDA determines that this rule is consistent with the principles set forth in Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Act. The economic impact on the public represented by the mammography facilities will depend upon which States choose to enter the program. In the worst case revealed by the analysis, a small increase in costs may be experienced. However, because States are not likely to enter the program unless such entry will be of benefit to

the facilities within their borders, a cost savings to the public as a whole and to mammography facilities is more likely to occur. Finally, because participation in this program is voluntary on the part of the States and costs incurred by the SAC States can be recouped through user fees, there are no unfunded mandates.

VII. Executive Order 13132—Federalism

Executive Order 13132, dated August 4, 1999, establishes the procedures that Federal agencies must follow when formulating and implementing policies that have federalism implications. Federalism is described as the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people. Regulations have federalism implications whenever they 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. Whenever a regulation has this result, the agency must prepare a federalism assessment.

The Executive order directs Federal agencies to:

1. Encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States;
2. Where possible, defer to the States to establish standards;
3. In determining whether to establish uniform national standards, consult with the appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and
4. Where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.

As noted above, the purpose of the legislation was to establish minimum national quality standards for mammography. The MQSA replaced a patchwork of Federal, State, and private standards with uniform Federal standards designed to ensure that all women nationwide receive adequate quality mammography services. FDA has worked very closely with State officials in developing the national standards for the MQSA program, and has sought and obtained input from States at every step of the process.

As noted above, section 354(q) of the PHS Act permits FDA to authorize qualified States to: (1) Issue, renew, suspend, and revoke certificates; (2) conduct annual facility inspections; and (3) enforce the MQSA quality standards for mammography facilities within the jurisdiction of the qualified State. FDA retains responsibility for: (1) Establishing quality standards, (2) approving accreditation bodies, (3) approving and withdrawing approval of State certification agencies, and (4) maintaining oversight of State certification programs.

FDA believes that this division of responsibilities provides for necessary uniformity of minimum national standards and, at the same time, provides States with maximum flexibility in administering the SAC program within their State.

Also, as previously noted, interested States have had several opportunities to participate in the development of this program through NMQAAC, the SAC working group, the SAC Demonstration Project and as accreditation bodies. States had an additional opportunity to participate by submitting comments on the proposed rule. FDA directed a mailing of the proposed rule to State health officials to encourage their comments on the proposed rule. Comments from the States were generally supportive of the rule. As discussed above, where appropriate, FDA has revised the final rule to accommodate State concerns.

Participation in the SAC program is voluntary on the part of each State but subject to approval by FDA. The Federal Government will perform all the necessary functions for implementation of MQSA in States that choose not to serve as certification agencies. If a State becomes a SAC State, the facilities within its borders will pay only the inspection support fee. Further, federally appropriated funds will not be used by the SAC State to support the inspection of governmental facilities within that State. Facilities will pay an inspection support fee to FDA to reimburse the agency, as required by statute, for the inspection-related functions that FDA has retained. A State that becomes a certification agency will determine how to fund the SAC responsibilities. The funding could come from State appropriations, a certification fee charged by a SAC State, registration fees or from some combination of those sources.

For the reasons discussed above, FDA believes that this final rule is consistent with the federalism principles expressed in Executive Order 13132.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Requirements for States As Certification Agencies.

Description: These information collection requirements apply to State certification agencies. In order to be an approved certification agency, State agencies must submit an application to FDA and must establish procedures that give adequate assurance that the mammography facilities they certify will meet minimum national standards for mammography quality. The certifying agency also must provide information about its electronic data management system as well as any other information needed by FDA to carry out its ongoing responsibility to ensure that the certification agency is complying with the requirements. These actions are being taken to ensure the continued availability of safe, accurate, and reliable mammography on a nationwide basis.

Respondent Description: State Governments.

In the proposed rule of March 30, 2000 (65 FR 16847), FDA invited comments on the proposed collection of information provisions of the SAC regulations. FDA received two public comments addressing these provisions. In addition, on May 3, 2000, OMB filed comment.

One comment recommended that the information collection burden be lessened by reducing the amount of information required by § 900.21(b)(iii) in the application of a State applying to be a certification agency. OMB likewise stated that FDA should consider ways to reduce burdens to the States when submitting information for this collection. The authors of the public comment suggested that the requirements be reduced to:

(A) Requiring rules and regulations equivalent to subpart B of FDA's part 900;

(B) Information on the education, experience, and training requirements of the applicant's professional staff;

(C) Statement of policies to avoid conflict of interest;

(D) Description of the applicant's mechanism for handling facility inquiries and complaints; and

(E) Any other information FDA identifies as necessary to make a

determination on the approval of a State as a certifying agency.

The authors added that such a change would help correct what they perceived to be an undue emphasis on paperwork in the proposed regulations at the expense of adequate concern for the health and safety of the public.

A second comment noted that additional mammography review and patient notification are two processes for which FDA should not require written policies and procedures. The comment also suggested that FDA allow State agencies to attest to having adequate staffing, finances, and other resources to implement and maintain a mammography certification program.

FDA again notes that the purpose of MQSA is to ensure that uniform minimum national standards of quality are met for mammography. Comments discussed earlier in the preamble of this final rule expressed concerns about whether this goal would continue to be achieved if multiple agencies were allowed to carry out the SAC activities. If the goal is no longer achieved when a State is authorized as a SAC, then the public health and safety would suffer.

In responding to these comments earlier in this final rule, FDA emphasized the importance of its oversight activities in assuring that uniform minimum national standards of quality continue to be met for mammography. The agency further stressed that this oversight began with the review of the original application for approval as a certification agency. FDA believes that if there are problems that could hamper the State agency from functioning effectively as a certification agency, to the extent possible, those problems should be detected and corrected before, not after, a State is authorized to be a SAC.

FDA has been conscious of the paperwork burden from the start and has worked to reduce it for States applying to become certification agencies under MQSA. At the present time, FDA allows attestation for several areas of the SAC application including: (1) Availability of sufficient funding and resources to carry out certification activities, (2) maintenance of sufficient staffing levels, and (3) several inspection and compliance-related provisions. Experience with the MQSA accreditation bodies has shown that initial attestation to adequate staffing can be problematic. There have been occasions when the accreditation body's attestation that it had sufficient staffing later proved to be incorrect, perhaps due to insufficient prior analysis of its needs. As a result, the accreditation body's efforts to effectively carry out its functions were hampered for a period of time until it could obtain adequate resources. Learning from its experience with accreditation bodies, FDA is seeking assurance that a certification agency has adequate staff in place at the time of approval, not several months or 1 year later.

FDA also disagrees with the comment suggesting that FDA reduce the information it required to the few categories listed. Under such an approach, FDA would have to base a decision on whether to approve the State agency as a certification agency without any information about the agency's application review and decisionmaking process for facility certification. FDA would have no information on whether the State agency had policies and procedures governing the notification of facilities of certificate denials and expirations or for suspending or revoking a facility certificate. The agency would have no information on how the State agency planned to ensure that certificates are processed within a reasonable timeframe or whether the State had any timeframe at all for such actions. FDA would have no information on what process, if any, was available for a facility to utilize in appealing adverse accreditation decisions.

Furthermore, the agency would have to make its decision without any information about the State agency's plans to inspect facilities according to the statutory requirements. There would be no information available on how the State agency planned to ensure that deficiencies discovered during inspections were corrected. There would be no information available on the State agency plans, if any, to apply such enforcement actions as additional mammography review or patient notification; issues that, as earlier comments showed, are of increasing concern. On the support side, there would be no information available to FDA to determine if the State's electronic data management and analysis system is adequate. FDA's experience with accreditation bodies shows that this is an area where there can be major problems that can hamper the entire program. In short, if the application were reduced to the extent recommended by the comments, FDA would have to make its decision on the acceptability of the State agency as a certification agency based upon inadequate information. Even the most basic information about how the State proposes to conduct its major activities (certification, inspection, and compliance) would be missing completely.

FDA further notes that the estimated amount of time to provide the information requested was minimal, a one time investment of 50 hours per State. Even if the comments were accepted, the potential time saving is small and certainly not sufficient to justify the potential risk to the public should inadequate information lead the agency to approve an applicant that could not carry out its responsibilities. The agency concludes, after consideration of the possible options, that it has achieved the best possible compromise between the desire to minimize the information collection burden and the need to have adequate information to carry out its public health responsibilities. After considering ways to reduce the burden to the States, FDA has concluded that, without the information included in the proposal, the agency will be unable to make a valid assessment of the State agency's capability to adequately perform the functions outlined above. If the agency approves a certification agency that is unable to effectively perform these functions, the public health and safety will be adversely impacted within that State, perhaps significantly.

TABLE 8.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING INITIAL YEAR

(Estimated Annual Reporting Burden)[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
900.21(b)	13	1.0	13	50	650	$130.00
900.21(c)(2)	13	1.0	13	25	325	$65.00
900.22(i)	2.0	0.1	0.2	5	1.0	$2.00
900.23	2.0	1.0	2.0	20	40.0	$20.00
900.24(a)	2.0	0.05	0.1	62	6.2	$22.00

TABLE 8.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING INITIAL YEAR—Continued

(Estimated Annual Reporting Burden)[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
900.24(a)(2)	2.0	0.025	0.05	52	2.6	$10.00
900.24(b)	2.0	0.2	0.4	20	8.0	$4.00
900.24(b)(1)	2.0	0.05	0.1	52	5.2	$22.00
900.24(b)(3)	2.0	0.05	0.1	52	5.2	$20.00
900.25(a)	2.0	0.25	0.5	5	2.5	$5.00
Total					1,045.7	$300.00

[1] There are no capital costs associated with this collection of information.

TABLE 9.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING INITIAL YEAR

(Estimated Annual Recordkeeping Burden)[1]

21 CFR Section	No. of Recordkeepers	Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating & Maintenance Costs
900.22(a)	2.0	1.0	2.0	1.0	2.0	$5.00
900.22(d) through (h)	2.0	1.0	2.0	1.0	2.0	$5.00
900.25(b)	2.0	1.0	2.0	1.0	2.0	$5.00
Total					6.0	$15.00

[1] There are no capital costs associated with this collection of information.

TABLE 10.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING SECOND AND LATER YEARS

(Estimated Annual Reporting Burden)[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
900.21(i)	15.0	1.0	1.5	5	7.5	$15.00
900.23	15.0	1.0	15.0	20	300.0	$150.00
900.24(a)	15.0	0.05	0.75	62	46.5	$157.50
900.24(a)(2)	15.0	0.025	0.375	52	19.5	$75.00
900.24(b)	15.0	0.2	3.0	20	60.0	$30.00
900.24(b)(1)	15.0	0.05	0.75	52	39.0	$150.00
900.24(b)(3)	15.0	0.05	0.75	52	39.0	$150.00
900.25(a)	15.0	0.25	3.75	5	18.75	$60.00
Total					530.25	$787.50

[1] There are no capital costs associated with this collection of information.

TABLE 11.—REQUIREMENTS FOR STATES AS CERTIFIERS DURING SECOND AND LATER YEARS

(Estimated Annual Recordkeeping Burden)[1]

21 CFR Section	No. of Recordkeepers	Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Operating & Maintenance Costs
900.22(a)	15	1.0	15.0	1.0	15.0	$37.50
900.22(d) through (h)	15	1.0	15.0	1.0	15.0	$37.50
900.25(b)	15	1.0	15.0	1.0	15.0	$37.50
Total					45	$112.50

[1] There are no capital costs associated with this collection of information.

In contrast to the situation with the economic impact analysis, the additional reporting and recordkeeping burden will fall to the State Governments that choose to become certification agencies and not the approximately 10,000 mammography facilities in the country (all of whom are considered to be small entities). The mammography facilities will continue to provide the same reports that they are presently providing. The bulk of these reports will continue to go to the accreditation bodies that are currently receiving them. The occasional report (for example, if a facility appeals an adverse decision) that presently goes to FDA will, in SAC States, go to the State. The facility recordkeeping requirements also are unchanged.

The total additional reporting and recordkeeping burden on State Governments from these regulations depends on the States that choose to become certification agencies. Since this choice is voluntary on the part of the States, it is impossible to say with certainty how many will seek these responsibilities. However, to estimate the possible maximum impact, FDA

assumes that the 15 States used in scenario 3 of the economic impact analysis will become certification agencies. This number included the 2 States currently participating in the SAC Demonstration Project (Iowa and Illinois) and 13 additional States.

Because of the different nature and time, two sets of tables are provided. Tables 8 and 9 of this document provide estimates of the burden during the first year of the program. During this year, the agency assumed that the 13 new States will apply for and obtain approval as certification agencies. During that year they will bear the initial one time burden associated with application and approval process under § 900.21. FDA assumed that the 13 new States will not be approved in time to be subject to the ongoing burden associated with the evaluation process of § 900.23 during the first year of the program. In contrast, Iowa and Illinois, having already received approval during the Demonstration Project, will not have to provide materials previously submitted, so will not have to bear the initial burden associated with § 900.21. However, during the first year, they will have the ongoing burdens of the evaluation process (§ 900.23).

Tables 10 and 11 of this document provide estimates of the recordkeeping and reporting burden in succeeding years. As it was assumed that all 15 States will have completed the application and approval process by the end of the first year, no State will have the initial burden associated with § 900.21 in the succeeding years. All will experience the burden associated with the evaluation process (§ 900.23) and some are expected to have additional burdens associated with actions under §§ 900.22, 900.24, and 900.25.

With respect to the ongoing burden, based upon FDA's experience with accreditation bodies, which must meet a similar requirement, the agency estimated that a SAC State would seek approval for a change in previously approved standards once every 10 years. The frequency per response for reporting under § 900.22(i) thus would be 0.1. Each SAC State will be evaluated annually so the frequency per response under § 900.23 will be 1.0.

The agency estimated that each State will have to respond to major deficiencies under § 900.24(a) only once every 20 years and minor deficiencies under § 900.24(b) only once every 5 years. The frequency per response under those requirements are 0.05 and 0.2, respectively.

The hourly reporting burden per response for the State certification agency in responding to major deficiencies was estimated in the proposed regulations to be 10 hours. This burden is increased because of the addition of the requirement that the State certification agency inform the facilities that it certifies of the need for it to take corrective action. It was assumed that this would be carried out by mail and would entail an hourly reporting burden per response of 2 hours to produce the letter plus a burden of 15 minutes per facility to mail it out. The total burden would depend upon the number of facilities in the State, which cannot be predicted in advance, so for estimation purposes, 200 facilities (approximately the average number of facilities per State in the United States) was used. This added requirement was thus estimated to increase the hourly reporting burden per response by 52 hours, bringing the total hourly reporting burden per response under § 900.24(a) to 62 hours.

In addition, if the State certification agency is unable to correct its major deficiencies to FDA's satisfaction and its approval is withdrawn, under § 900.24(a)(2), it would have to notify the facilities that it has certified. It was assumed that in 50 percent of the situations where major deficiencies occurred, the State would be unable to correct them, thus the frequency per response of having to notify facilities of withdrawal of approval would be 0.05 x 0.50 = 0.025. The associated hourly reporting burden per response would be the same as sending out the original notification to the facilities of the State certification agency's need for corrective action, that is, 52 hours.

In the cases where there are minor deficiencies, the hourly reporting burden per response associated with responding to minor deficiencies was estimated in the proposed regulations as 20 hours. FDA assumed that the State will, in most cases, make the necessary corrections but that once every 20 years (or once out of every four times the State has minor deficiencies), the State would face possible withdrawal of approval under § 900.24(b)(3). Therefore the frequency per response would be 0.05. It was assumed that in all such cases, the State certification agency would first be placed on probation, to give it the opportunity to correct the deficiencies, before withdrawal of approval would be considered. If placed on probation, under § 900.24(b)(1), it must notify the facilities that it has certified or that seek certification from it, of its probationary status. As with previous facility notification letters, it was assumed that the hourly reporting burden per response would be 2 hours to produce the letter plus 15 minutes per facility to mail it to 200 facilities or 52 hours total. In addition, if the State certification agency failed to correct its deficiencies and FDA had to withdraw its approval, under § 900.24(b)(3), the State certification agency would have to notify its facilities of this. The hourly reporting burden per response of this notification was again estimated to be 52 hours total, using the same assumptions as with the other notification letters.

Finally, the agency assumed that once every 4 years (a frequency per response of 0.25) each SAC State would seek an informal hearing under § 900.25(a) in responding to some adverse action against it.

The estimated recordkeeping burden was related to the maintenance of standard operating procedures (SOPs) in several areas. It was assumed that each State would spend 1 hour per year maintaining each SOP. All of these SOPs would be related to ongoing tasks under §§ 900.22 through 900.25. During the first year (see table 9 of this document) the recordkeeping burden would be borne by Iowa and Illinois only, in the second and succeeding years (see table 11 of this document), by all 15 States. FDA also has corrected an error in the proposed rule where it inadvertently omitted § 900.22(h) from the recordkeeping tables (see tables 9 and 11 of this document). There is no change in burden due to this correction.

The total estimated annual burden for the final MQSA regulations that went into effect on April 28, 1999, was 184,510 hours. Adding a subpart C to part 900 (Mammography) to incorporate these proposed regulations would lead to an estimated additional annual burden of 1,051.7 hours during the first year after the regulations were effective and an estimated additional burden of 575.25 hours in each succeeding year. Again, the actual total annual burden is dependent upon how many States voluntarily choose to enter the SAC program. These estimates are based upon 15 States becoming SAC States. The estimates would be reduced or increased if less than or more than 15 States join the program.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of the final rule to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 900

Electronic products, Health facilities, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 16 and 900 are amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

2. Section 16.1 is amended in paragraph (b)(2) by numerically adding an entry for § 900.25 to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) * * *

§ 900.25, relating to approval or withdrawal of approval of certification agencies.

* * * * *

PART 900—MAMMOGRAPHY

3. The authority citation for 21 CFR part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

4. Section 900.2 is amended by revising the introductory paragraph and paragraph (i), and by adding paragraphs (zz), (aaa), and (bbb) to read as follows:

§ 900.2 Definitions.

The following definitions apply to subparts A, B, and C of this part:

* * * * *

(i) *Certification* means the process of approval of a facility by FDA or a certification agency to provide mammography services.

* * * * *

(zz) *Certification agency* means a State that has been approved by FDA under § 900.21 to certify mammography facilities.

(aaa) *Performance indicators* mean the measures used to evaluate the certification agency's ability to conduct certification, inspection, and compliance activities.

(bbb) *Authorization* means obtaining approval from FDA to utilize new or changed State regulations or procedures during the issuance, maintenance, and withdrawal of certificates by the certification agency.

5. Subpart C, consisting of §§ 900.20 through 900.25, is added to read as follows:

Subpart C—States as Certifiers

Sec.
900.20 Scope.
900.21 Application for approval as a certification agency.
900.22 Standards for certification agencies.
900.23 Evaluation.
900.24 Withdrawal of approval.
900.25 Hearings and appeals.

Subpart C—States as Certifiers

§ 900.20 Scope.

The regulations set forth in this part implement the Mammography Quality Standards Act (MQSA) (42 U.S.C. 263b). Subpart C of this part establishes procedures whereby a State can apply to become a FDA-approved certification agency to certify facilities within the State to perform mammography services. Subpart C of this part further establishes requirements and standards for State certification agencies to ensure that all mammography facilities under their jurisdiction are adequately and consistently evaluated for compliance with quality standards at least as stringent as the national quality standards established by FDA.

§ 900.21 Application for approval as a certification agency.

(a) *Eligibility*. State agencies may apply for approval as a certification agency if they have standards at least as stringent as those of § 900.12, qualified personnel, adequate resources to carry out the States as Certifiers' responsibilities, and the authority to enter into a legal agreement with FDA to accept these responsibilities.

(b) *Application for approval*. (1) An applicant seeking FDA approval as a certification agency shall inform the Division of Mammography Quality and Radiation Programs (DMQRP), Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, Rockville, MD 20850, marked Attn: SAC[1] Coordinator, in writing, of its desire to be approved as a certification agency.

(2) Following receipt of the written request, FDA will provide the applicant with additional information to aid in the submission of an application for approval as a certification agency.

(3) The applicant shall furnish to FDA, at the address in paragraph (b)(1) of this section, three copies of an application containing the following information, materials, and supporting documentation:

(i) Name, address, and phone number of the applicant;

(ii) Detailed description of the mammography quality standards the applicant will require facilities to meet and, for those standards different from FDA's quality standards, information substantiating that they are at least as stringent as FDA standards under § 900.12;

(iii) Detailed description of the applicant's review and decisionmaking process for facility certification, including:

(A) Policies and procedures for notifying facilities of certificate denials and expirations;

(B) Procedures for monitoring and enforcement of the correction of deficiencies by facilities;

(C) Policies and procedures for suspending or revoking a facility's certification;

(D) Policies and procedures that will ensure processing certificates within a timeframe approved by FDA;

(E) A description of the appeals process for facilities contesting adverse certification status decisions;

(F) Education, experience, and training requirements of the applicant's professional and supervisory staff;

(G) Description of the applicant's electronic data management and analysis system;

(H) Fee schedules;

(I) Statement of policies and procedures established to avoid conflict of interest;

(J) Description of the applicant's mechanism for handling facility inquiries and complaints;

(K) Description of a plan to ensure that certified mammography facilities will be inspected according to MQSA (42 U.S.C. 263b) and procedures and policies for notifying facilities of inspection deficiencies;

(L) Policies and procedures for monitoring and enforcing the correction of facility deficiencies discovered during inspections or by other means;

(M) Policies and procedures for additional mammography review and for requesting such reviews from accreditation bodies;

(N) Policies and procedures for patient notification;

(O) If a State has regulations that are more stringent than those of § 900.12, an

[1]SAC means States as Certifiers.

explanation of how adverse actions taken against a facility under the more stringent regulations will be distinguished from those taken under the requirements of § 900.12; and

(P) Any other information that FDA identifies as necessary to make a determination on the approval of the State as a certification agency.

(c) *Rulings on applications for approval*. (1) FDA will conduct a review and evaluation to determine whether the applicant substantially meets the applicable requirements of this subpart and whether the certification standards the applicant will require facilities to meet are the quality standards published under subpart B of this part or at least as stringent as those of subpart B.

(2) FDA will notify the applicant of any deficiencies in the application and request that those deficiencies be corrected within a specified time period. If the deficiencies are not corrected to FDA's satisfaction within the specified time period, FDA may deny the application for approval as a certification agency.

(3) FDA shall notify the applicant whether the application has been approved or denied. The notification shall list any conditions associated with approval or state the bases for any denial.

(4) The review of any application may include a meeting between FDA and representatives of the applicant at a time and location mutually acceptable to FDA and the applicant.

(5) FDA will advise the applicant of the circumstances under which a denied application may be resubmitted.

(d) *Scope of authority*. FDA may limit the scope of certification authority delegated to the State in accordance with MQSA.

§ 900.22 Standards for certification agencies.

The certification agency shall accept the following responsibilities in order to ensure quality mammography at the facilities it certifies and shall perform these responsibilities in a manner that ensures the integrity and impartiality of the certification agency's actions:

(a) *Conflict of interest*. The certification agency shall establish and implement measures that FDA has approved in accordance with § 900.21(b) to reduce the possibility of conflict of interest or facility bias on the part of individuals acting on the certification agency's behalf.

(b) *Certification and inspection responsibilities*. Mammography facilities shall be certified and inspected in accordance with statutory and regulatory requirements that are at least as stringent as those of MQSA and this part.

(c) *Compliance with quality standards*. The scope, timeliness, disposition, and technical accuracy of completed inspections and related enforcement activities shall ensure compliance with facility quality standards required under § 900.12.

(d) *Enforcement actions*. (1) There shall be appropriate criteria and processes for the suspension and revocation of certificates.

(2) There shall be prompt investigation of and appropriate enforcement action for facilities performing mammography without certificates.

(e) *Appeals*. There shall be processes for facilities to appeal inspection findings, enforcement actions, and adverse certification decision or adverse accreditation decisions after exhausting appeals to the accreditation body.

(f) *Additional mammography review*. There shall be a process for the certification agency to request additional mammography review from accreditation bodies for issues related to mammography image quality and clinical practice. The certification agency should request additional mammography review only when it believes that mammography quality at a facility has been compromised and may present a serious risk to human health.

(g) *Patient notification*. There shall be processes for the certification agency to conduct, or cause to be conducted, patient notifications should the certification agency determine that mammography quality has been compromised to such an extent that it may present a serious risk to human health.

(h) *Electronic data transmission*. There shall be processes to ensure the timeliness and accuracy of electronic transmission of inspection data and facility certification status information in a format and timeframe determined by FDA.

(i) *Changes to standards*. A certification agency shall obtain FDA authorization for any changes it proposes to make in any standard that FDA has previously accepted under § 900.21 before requiring facilities to comply with the changes as a condition of obtaining or maintaining certification.

§ 900.23 Evaluation.

FDA shall evaluate annually the performance of each certification agency. The evaluation shall include the use of performance indicators that address the adequacy of program performance in certification, inspection, and enforcement activities. FDA will also consider any additional information deemed relevant by FDA that has been provided by the certification body or other sources or has been required by FDA as part of its oversight mandate. The evaluation also shall include a review of any changes in the standards or procedures in the areas listed in §§ 900.21(b) and 900.22 that have taken place since the original application or the last evaluation, whichever is most recent. The evaluation shall include a determination of whether there are major deficiencies in the certification agency's regulations or performance that, if not corrected, would warrant withdrawal of the approval of the certification agency under the provisions of § 900.24, or minor deficiencies that would require corrective action.

§ 900.24 Withdrawal of approval.

If FDA determines, through the evaluation activities of § 900.23, or through other means, that a certification agency is not in substantial compliance with this subpart, FDA may initiate the following actions:

(a) *Major deficiencies*. If, after providing notice and opportunity for corrective action, FDA determines that a certification agency has demonstrated willful disregard for public health, has committed fraud, has failed to provide adequate resources for the program, has submitted material false statements to the agency, has failed to achieve the MQSA goals of quality mammography and access, or has performed or failed to perform a delegated function in a manner that may cause serious risk to human health, FDA may withdraw its approval of that certification agency. The certification agency shall notify, within a time period and in a manner approved by FDA, all facilities certified or seeking certification by it that it has been required to correct major deficiencies.

(1) FDA shall notify the certification agency of FDA's action and the grounds on which the approval was withdrawn.

(2) A certification agency that has lost its approval shall notify facilities certified or seeking certification by it, as well as the appropriate accreditation bodies with jurisdiction in the State, that its approval has been withdrawn. Such notification shall be made within a timeframe and in a manner approved by FDA.

(b) *Minor deficiencies*. If FDA determines that a certification agency has demonstrated deficiencies in performing certification functions and responsibilities that are less serious or more limited than the deficiencies in

paragraph (a) of this section, including failure to follow the certification agency's own procedures and policies as approved by FDA, FDA shall notify the certification agency that it has a specified period of time to take particular corrective measures as directed by FDA or to submit to FDA for approval the certification agency's own plan of corrective action addressing the minor deficiencies. If the approved corrective actions are not being implemented satisfactorily or within the established schedule, FDA may place the agency on probationary status for a period of time determined by FDA, or may withdraw approval of the certification agency.

(1) If FDA places a certification agency on probationary status, the certification agency shall notify all facilities certified or seeking certification by it of its probationary status within a time period and in a manner approved by FDA.

(2) Probationary status shall remain in effect until such time as the certification agency can demonstrate to the satisfaction of FDA that it has successfully implemented or is implementing the corrective action plan within the established schedule, and that the corrective actions have substantially eliminated all identified problems, or

(3) If FDA determines that a certification agency that has been placed on probationary status is not implementing corrective actions satisfactorily or within the established schedule, FDA may withdraw approval of the certification agency. The certification agency shall notify all facilities certified or seeking certification by it, as well as the appropriate accreditation bodies with jurisdiction in the State, of its loss of FDA approval, within a timeframe and in a manner approved by FDA.

(c) *Transfer of records.* A certification agency that has its approval withdrawn shall transfer facility records and other related information as required by FDA to a location and according to a schedule approved by FDA.

§ 900.25 Hearings and appeals.

(a) Opportunities to challenge final adverse actions taken by FDA regarding approval of certification agencies or withdrawal of approval of certification agencies shall be communicated through notices of opportunity for informal hearings in accordance with part 16 of this chapter.

(b) A facility that has been denied certification is entitled to an appeals process from the certification agency. The appeals process shall be specified in writing by the certification agency and shall have been approved by FDA in accordance with §§ 900.21 and 900.22.

Dated: October 26, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2750 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The ANADA provides for a revised withdrawal time for use of oxytetracycline (OTC) hydrochloride (HCl) soluble powder in the drinking water of turkeys and swine.

DATES: This rule is effective February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, filed a supplement to ANADA 200–066 that provides for use of AGRIMYCIN 343 (oxytetracycline HCl) Soluble Powder for making medicated drinking water for the treatment of various bacterial diseases of livestock. The supplemental ANADA provides for a zero-day withdrawal time after the use of the product in the drinking water of turkeys and swine. The supplemental application is approved as of October 4, 2001, and the regulations are amended in 21 CFR 520.1660d to reflect the approval.

Section 520.1660d is also being amended to reflect approval of a 5-pound pail size, which was approved under ANADA 200–066 on June 15, 1994.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1660d is amended in paragraph (a)(6) by adding ''; pail: 5 lb'' after ''oz.''; in paragraphs (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*3*), and (d)(1)(ii)(C)(*3*) in the sixth sentence by removing '', 057561,'' and in the eighth sentence by numerically adding ''057561,''; and in paragraph (d)(1)(iii)(C) by revising the last sentence to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(C) * * * Administer up to 5 days; do not use for more than 5 consecutive days; withdraw zero days prior to slaughter those products sponsored by Nos. 046573, 057561, and 061133.

* * * * *

Dated: January 11, 2002.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–2589 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. 01N–0499]

Topical Nitrofurans; Extralabel Animal Drug Use; Order of Prohibition

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (we) is issuing an order prohibiting the extralabel use of topical nitrofuran animal and human drugs in food-producing animals. We are issuing this order based on evidence that extralabel use of topical nitrofuran drugs in food-producing animals may result in the presence of residues that we have determined to be carcinogenic and to not have been shown to be safe. We find that such extralabel use ''presents a risk to the public health'' for the purposes of the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA).

DATES: This rule is effective May 7, 2002. We invite your written or electronic comments. We will consider all comments that we receive by April 8, 2002.

ADDRESSES: Submit your written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Gloria J. Dunnavan, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1726, e-mail: gdunnava@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. AMDUCA

AMDUCA (Public Law 103–396) was signed into law on October 22, 1994. It amended the Federal Food, Drug, and Cosmetic Act (the act) to permit licensed veterinarians to prescribe extralabel uses of approved animal and human drugs in animals. However, section 512(a)(4)(D) of the act (21 U.S.C. 360b(a)(4)(D)) gives us authority to prohibit an extralabel drug use in animals if, after affording an opportunity for public comment, we find that such use presents a risk to the public health.

We published the implementing regulations (codified at part 530 (21 CFR part 530)) for AMDUCA in the **Federal Register** of November 7, 1996 (61 FR 57732). The sections regarding prohibition of extralabel use of drugs in food-producing animals are found at §§ 530.21 and 530.25. These sections describe the basis for issuing an order prohibiting an extralabel drug use in food-producing animals and the procedure to be followed in issuing an order of prohibition. We may issue a prohibition order if we find that extralabel use in animals presents a risk to the public health. Under § 530.3(e), this means that we have evidence that demonstrates that the use of the drug has caused or likely will cause an adverse event.

Section 530.25 provides for a public comment period of not less than 60 days. It also provides that the order of prohibition will become effective 90 days after the date of publication, unless we revoke the order, modify it, or extend the period of public comment. The list of drugs prohibited from extralabel use is found in § 530.41. The current list of drugs prohibited from extralabel use in food-producing animals includes furazolidone and nitrofurazone, but it contains the parenthetical statement ''(except for approved topical use)''.

II. Nitrofurans

In 1991, and after a full evidentiary hearing, we withdrew the approvals for furazolidone and nitrofuranzone labeled for antiprotozoal use in a wide variety of conditions in poultry and swine. (See the **Federal Register** of August 23, 1991 (56 FR 41902).) These withdrawals were based on our determination that use of the drugs resulted in residues in edible tissues for human food and that residues of these drugs were not shown to be safe, in part because both drugs are carcinogenic. We did not, however, withdraw the approvals of these products for use in nonfood animals or for topical use in food-producing animals. Moreover, while our current regulations in § 530.41 prohibit extralabel use of approved furazolidone and nitrofurazone products in food-producing animals, this prohibition does not extend to topical use in food-producing animals. These topical uses in food-producing animals were allowed because there was no evidence that such use of furazolidone and nitrofuranzone resulted in residues in edible tissues.

However, a recent carbon-14 (C–14) radio-label residue depletion study that we conducted showed that detectable levels of nitrofuran derivatives are present in edible tissues (milk, meat, kidney, liver) of cattle treated by the ocular (eye) route (Ref. 1). This study, coupled with our findings in our prior withdrawal action, means that residues, which are carcinogenic and have not been shown to be safe, will likely be present at slaughter as a result of topical uses of nitrofurans, including furazolidone and nitrofurazone, in food-producing animals.

We advised all manufacturers of nitrofuran drugs that were approved for ocular use in food-producing animals of the evidence and the manufacturers revised their labels to remove those indications. (See, for example, 65 FR 41587 (July 6, 2000).) Some lot numbers of these drugs may remain in commercial distribution channels with the former labels that contain indications for food-producing animals. These products, however, are not approved for use in food-producing animals and, therefore, are adulterated and misbranded. Some topical and ophthalmic nitrofuran products are still approved for certain uses in nonfood animals. Under the current regulations governing extralabel use, these remaining approved topical and ophthalmic products are not prohibited from extralabel topical use in food-producing animals. However, as stated previously, there is evidence that these uses will result in residues in edible tissues. Because of the likelihood of this adverse event, by this order of prohibition, we are prohibiting all extralabel uses, including extralabel topical use, in food-producing animals of nitrofuran products that are approved for use in nonfood animals or humans. Therefore, no nitrofuran product may be legally used in food-producing animals.

III. Request for Comments

We are providing 60 days from the date of this publication for you to comment. The order will become effective May 7, 2002, unless we revoke or modify the order or extend the comment period. You may submit written or electronic comments to the Dockets Management Branch (address above) by April 8, 2002. Please identify your comments with the docket number found in brackets in the heading of this document. You may read any comments that we receive at our Dockets Management Branch reading room (address above). The reading room is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

IV. Order of Prohibition

Therefore, I hereby issue the following order under section 512(a)(4)(D) of the act and 21 CFR 530.21 and 530.25. We find that extralabel use of nitrofurans in food-

producing animals likely will cause an adverse event, which constitutes a finding under section 512(a)(4)(D) of the act that extralabel use of these drugs in food-producing animals presents a risk to the public health. Therefore, we are prohibiting all extralabel uses of these drugs in food-producing animals.

V. Reference

The following information has been placed on display in the Dockets Management Branch (address above). You may view it between 9 a.m. and 4 p.m., Monday through Friday.

1. Smith, D. J., G. D. Paulson, and G. L. Larsen, ''Distribution of Radiocarbon After Intermammary, Intrauterine or Ocular Treatment of Lactating Cows With Carbon-14 Nitrofurazone,'' *Journal of Dairy Science*, vol. 81, pp. 979–988, 1998.

List of Subjects in 21 CFR Part 530

Administrative practice and procedure, Advertising, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Accordingly, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, 21 CFR part 530 is amended as follows:

PART 530—EXTRALABEL DRUG USE IN ANIMALS

1. The authority citation for 21 CFR part 530 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e.

§ 530.41 [Amended]

2. Section 530.41 *Drugs prohibited for extralabel use in animals* is amended in paragraphs (a)(7) and (a)(8) by removing the parenthetical phrase ''(except for approved topical use)''.

Dated: November 9, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–2751 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8983]

RIN 1545–BA42

Time for Eligible Air Carriers To File The Third Calendar Quarter 2001 Form 720

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the time for eligible air carriers reporting air transportation excise taxes to file Form 720, ''Quarterly Federal Excise Tax Return,'' for the third calendar quarter of 2001. These regulations affect certain air carriers.

DATES: *Effective Date*: These regulations are effective February 6, 2002.

Applicability Date: For date of applicability of these regulations, see § 40.6071(a)–3(c).

FOR FURTHER INFORMATION CONTACT: Susan Athy (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Subchapter C of chapter 33 of the Internal Revenue Code (Code) imposes tax on the amount paid for: taxable transportation by air of any person (section 4261(a)); each domestic segment of taxable transportation (section 4261(b)); use of international air travel facilities (section 4261(c)); and taxable transportation of property by air (section 4271(a)) (air transportation excise taxes). Section 6071 generally provides that return filing dates are prescribed by regulation. Under § 40.6071(a)–2, a return of air transportation taxes was due by the last day of the second month following the quarter for which it was made. On August 8, 2001, the regulations were amended to remove this provision but the provision remained in effect for the third calendar quarter of 2001. Thus, the return of air transportation taxes for that quarter was due on November 30, 2001.

Under section 6151, generally, tax must be paid at the time the return is required to be filed. In general, under section 6601, interest must be paid on any amount of tax not paid by the last day for payment. Accordingly, if the return due date prescribed in § 40.6071(a)–2 remains in effect for the third calendar quarter of 2001, interest would be imposed on third-quarter air transportation excise taxes not paid by November 30, 2001.

Section 301(a) of the Air Transportation Safety and System Stabilization Act (the Act), Public Law 107–42 (115 Stat. 236) provides relief to eligible air carriers with respect to the semimonthly deposits required for air transportation excise taxes. The relief contained in the Act applies to deposits only and does not extend the return filing and associated payment date. By extending the filing date for eligible air carriers, these final regulations will provide return filing, payment, and interest relief consistent with the deposit relief provided for air transportation excise taxes by section 301(a) of the Act. Notice 2001–77 (2001–50 I.R.B. 576) provided that regulations would change the third calendar quarter 2001 filing date.

Explanation of Provisions

These final regulations change the date by which eligible air carriers reporting tax that includes the air transportation excise taxes imposed by subchapter C of chapter 33 must file excise tax returns for the third quarter of 2001. The due date for these returns is postponed from November 30, 2001, to January 15, 2002. For these taxpayers, payment of their third-quarter excise tax liability may also be delayed until January 15, 2002.

Special Analyses

This Treasury decision is necessary to provide immediate relief to the eligible air carriers affected by the events of September 11, 2001. This Treasury decision provides additional time for eligible air carriers to file the third calendar quarter 2001 Form 720 and to pay certain taxes due with the return. Therefore, it has been determined that notice and public comment are unnecessary and contrary to the public interest and a delayed effective date under section 553(d) of the Administrative Procedure Act (5 U.S.C. chapter 5) is not required. Also, it has been determined that section 553(b) of the Administrative Procedure Act does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. It also has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for

comment on their impact on small business.

Drafting Information

The principal author of these regulations is Susan Athy, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 40 is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by adding an entry in numerical order to read in part as follows:

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

Section 40.6071(a)-3 also issued under 26 U.S.C. 6071(a).* * *

Par. 2. Section 40.6071(a)-3 is added to read as follows:

§ 40.6071(a)-3 Time for an eligible air carrier to file a return for the third calendar quarter of 2001.

(a) *In general.* If, in the case of an eligible air carrier, the quarterly return required under § 40.6011(a)-1(a) for the third calendar quarter of 2001 includes tax imposed by subchapter C of chapter 33—

(1) The requirements of § 40.6071(a)-2 as in effect on August 7, 2001, do not apply to the return; and

(2) The return must be filed by January 15, 2002.

(b) *Definition of eligible air carrier. Eligible air carrier* has the same meaning as provided in section 301(a)(2) of the Air Transportation Safety and System Stabilization Act; that is, any domestic corporation engaged in the trade or business of transporting (for hire) persons by air if such transportation is available to the general public.

(c) *Effective date.* This section is applicable with respect to returns that relate to the third calendar quarter of 2001.

Approved: January 23, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–2624 Filed 2–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim rule.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is issuing regulations to implement Executive Order 13194 of January 18, 2001, as expanded in scope in Executive Order 13213 of May 22, 2001, prohibiting, with limited exceptions, the importation into the United States of rough diamonds from Sierra Leone or Liberia.

DATES: *Effective date:* February 6, 2002.

Comments: Written comments must be received no later than April 8, 2002.

ADDRESSES: Comments may be submitted either via regular mail to the attention of Chief, Policy Planning and Program Management Division, rm. 2176 Main Treasury Annex, 1500 Pennsylvania Ave. NW., Washington, DC 20220 or via OFAC's Web site (*http://www.treas.gov/ofac*).

FOR FURTHER INFORMATION CONTACT: Chief of Licensing, tel.: 202/622–2480, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat7 readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac,* or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On January 18, 2001, the President issued Executive Order 13194 (66 FR 7389, Jan. 23, 2001), taking into account United Nations Security Council Resolution 1306 of July 5, 2000. This order declared a national emergency in response to the actions of the insurgent Revolutionary United Front in Sierra Leone (''RUF'') and prohibits the importation into the United States of rough diamonds from Sierra Leone that have not been controlled by the Government of Sierra Leone through its Certificate of Origin regime. The stated purpose of the order is to ensure that the direct or indirect importation into the United States of rough diamonds from Sierra Leone will not contribute financial support to the RUF, whose illicit trade in rough diamonds fuels the civil war in Sierra Leone by funding the rebels' aggressive actions and procurement of weapons, while at the same time seeking to avoid undermining the legitimate diamond trade or diminishing confidence in the integrity of the legitimate diamond industry.

On May 22, 2001, the President issued Executive Order 13213 (66 FR 28829, May 24, 2001), taking into account United Nations Security Council Resolution 1343 of March 7, 2001. This order expanded the scope of the national emergency declared in Executive Order 13194 to respond to, among other things, the Government of Liberia's complicity in the RUF's illicit trade in rough diamonds through Liberia. Executive Order 13213 prohibits the direct or indirect importation into the United States of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia.

Both Executive orders authorize the Secretary of the Treasury, in consultation with the Secretary of State, to promulgate rules and regulations as may be necessary to carry out the purposes of the orders. To implement the orders, the Treasury Department's Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury, is promulgating the Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations (the ''Regulations'').

Section 591.201 of subpart B of the Regulations implements section 1 of Executive Order 13194 and section 1 of Executive Order 13213 by prohibiting (1) subject to limited exceptions, the direct or indirect importation into the United States of all rough diamonds from Sierra Leone on or after January 19, 2001, and (2) the direct or indirect importation into the United States of all

rough diamonds from Liberia on or after May 23, 2001. Section 591.202 implements section 2 of Executive Order 13194 by excepting from the import prohibition those importations of rough diamonds from Sierra Leone that are controlled through the Certificate of Origin regime of the Government of Sierra Leone, provided that the diamonds have not physically entered the territory of Liberia.

Section 591.203 implements section 3 of Executive Order 13194 and section 2 of Executive Order 13213 by prohibiting any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the order. The regulation also prohibits any conspiracy formed to violate any of the prohibitions of the Executive orders.

Subpart C of part 591 provides definitions of terms used in the Regulations. Subpart D sets forth interpretive guidance for the Regulations. For example, § 591.403 makes clear that any transaction that is ordinarily incident to a licensed transaction and necessary to give effect to the licensed transaction is also authorized.

Subpart E relates to licenses, authorizations, and statements of licensing policy. Section 591.501 refers the reader to subpart D of part 501 of 31 CFR chapter V for procedures relating to general licenses and the issuance of specific licenses to authorize transactions otherwise prohibited under part 591 but found to be consistent with U.S. policy. Subpart F refers the reader to subpart C of part 501 of 31 CFR chapter V for provisions relating to required records and reports. Penalties for violations of the Regulations are described in subpart G of the Regulations.

Request for Comments

Because the promulgation of the Regulations pursuant to Executive Orders 13194 and 13213 involves a foreign affairs function, the provisions of Executive Order 12866, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. However, because of the importance of the issues raised by the Regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the Regulations on the submitter's activities, whether of a commercial, non-commercial, or humanitarian nature, as well as changes that would improve the clarity and organization of the Regulations.

The period for submission of comments will close April 8, 2002. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials when submitted by regular mail to the person submitting the comments and will not consider them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of public record concerning these regulations will be made available not sooner than May 7, 2002, and will be obtainable from OFAC's website (*http://www.treas.gov/ofac*). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220, Attn: Chief, Records Division.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting and Procedures Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in CFR Part 591

Administrative practice and procedure, Certificate of origin, Diamonds, Foreign trade, Imports, Liberia, Penalties, Reporting and recordkeeping requirements, and Sierra Leone.

For the reasons set forth in the preamble, 31 CFR chapter V is amended by adding part 591 to read as follows:

PART 591—ROUGH DIAMONDS (SIERRA LEONE & LIBERIA) SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

591.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

591.201 Prohibited importation of rough diamonds.
591.202 Permitted importation of rough diamonds.
591.203 Evasions; attempts; conspiracies.

Subpart C—General Definitions

591.301 Controlled through the Certificate of Origin regime of the Government of Sierra Leone.
591.302 Effective date.
591.303 Entity.
591.304 Importation into the United States.
591.305 Licenses; general and specific.
591.306 Person.
591.307 Rough diamond.
591.308 Rough diamonds from Sierra Leone or Liberia.
591.309 United States.
591.310 United States person; U.S. person.

Subpart D—Interpretations

591.401 Reference to amended sections.
591.402 Effect of amendment.
591.403 Transactions incidental to a licensed transaction.
591.404 Transshipment or transit through the United States prohibited.
591.405 Direct or indirect importation of rough diamonds from Sierra Leone or Liberia.
591.406 Importation into and release from a bonded warehouse or foreign trade zone.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

591.501 General and specific licensing procedures.
591.502 Effect of license or authorization.
591.503 Exclusion from licenses.

Subpart F—Reports

591.601 Records and reports.

Subpart G—Penalties

591.701 Penalties.
591.702 Prepenalty notice.
591.703 Response to prepenalty notice; informal settlement.
591.704 Penalty imposition or withdrawal.
591.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

591.801 Procedures.
591.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

591.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13194, 66 FR 7389 (Jan. 23, 2001); E.O. 13213, 66 FR 28829 (May 24, 2001).

Subpart A—Relation of This Part to Other Laws and Regulations

§ 591.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 591.201 Prohibited importation of rough diamonds.

Except to the extent provided in § 591.202 or authorized by other regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date, the direct or indirect importation into the United States of all rough diamonds from Sierra Leone or Liberia is prohibited.

§ 591.202 Permitted importation of rough diamonds.

The prohibition in § 591.201 of the importation into the United States of rough diamonds from Sierra Leone does not apply if the importation is controlled through the Certificate of Origin regime of the Government of Sierra Leone and the rough diamonds have not physically entered the territory of Liberia.

§ 591.203 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date, any transaction by any United States person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

Subpart C—General Definitions

§ 591.301 Controlled through the Certificate of Origin regime of the Government of Sierra Leone.

The term *controlled through the Certificate of Origin regime of the Government of Sierra Leone* means accompanied by a Certificate of Origin or other documentation that demonstrates to the satisfaction of the United States Customs Service (or analogous officials of a United States territory or possession with its own customs administration) that the rough diamonds were legally exported from Sierra Leone with the approval of the Government of Sierra Leone.

§ 591.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, which is 12:01 a.m., eastern standard time, January 19, 2001, with respect to importations of rough diamonds from Sierra Leone and which is 12:01 a.m., eastern daylight time, May 23, 2001, with respect to importations of rough diamonds from Liberia.

§ 591.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 591.304 Importation into the United States.

The term *importation into the United States* means the bringing of goods into the United States.

§ 591.305 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 591.305. See § 501.801 of this chapter on licensing procedures.

§ 591.306 Person.

The term *person* means an individual or entity.

§ 591.307 Rough diamond.

The term *rough diamond* means all unworked diamonds classifiable in heading 7102 of the Harmonized Tariff Schedule of the United States.

§ 591.308 Rough diamonds from Sierra Leone or Liberia.

The term *rough diamonds from Sierra Leone or Liberia* means rough diamonds extracted in Sierra Leone or Liberia and rough diamonds that have physically entered the territories of Sierra Leone or Liberia, regardless of where they have been extracted.

§ 591.309 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 591.310 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 591.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 591.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 591.403 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized.

§ 591.404 Transshipment or transit through the United States prohibited.

The prohibitions in § 591.201 apply to the importation into the United States, for transshipment or transit, of rough diamonds from Sierra Leone or Liberia that are intended or destined for any country other than the United States.

§ 591.405 Direct or indirect importation of rough diamonds from Sierra Leone or Liberia.

The prohibitions in § 591.201 apply to the importation of rough diamonds from Sierra Leone or Liberia whether those rough diamonds are being imported directly into the United States from Sierra Leone or Liberia, or indirectly through any other country.

§ 591.406 Importation into and release from a bonded warehouse or foreign trade zone.

The prohibitions in § 591.201 apply to the importation into and release from a bonded warehouse or foreign trade zone of the United States. However, § 591.201 does not prohibit the release from a bonded warehouse or a foreign trade zone of rough diamonds from Sierra Leone or Liberia that were imported into that bonded warehouse or foreign trade zone prior to the effective date.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 591.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart D, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 591.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 591.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

Subpart F—Reports

§ 591.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 591.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty not to exceed $11,000 per violation may be imposed on any person who violates or attempts to violate any license, order, or regulation issued under the Act;

(2) Whoever willfully violates or willfully attempts to violate any license, order, or regulation issued under the Act, upon conviction, shall be fined not more than $50,000 and, if a natural person, may also be imprisoned for not more than 10 years; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. The criminal penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

(d) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and

willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(e) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 591.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within the applicable 30-day period set forth in § 591.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 591.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original must also be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time

is granted by the Office of Foreign Assets Control.

(f) *Representation*. A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 591.704 Penalty imposition or withdrawal.

(a) *No violation*. If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation*. (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

§ 591.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in federal district court.

Subpart H—Procedures

§ 591.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart D, of this chapter.

§ 591.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13194 of January 18, 2001 (66 FR 7389, January 23, 2001), Executive Order 13213 of May 22, 2001 (66 FR 28829, May 24, 2001), and any further Executive orders relating to the national emergency declared in Executive Order 13194 may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 591.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: December 14, 2001.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 30, 2002.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–2763 Filed 2–1–02; 10:26 am]

BILLING CODE 4810–25–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[RIN 0720–AA68]

TRICARE Prime Remote for Active Duty Family Members

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This rule implements 10 U.S.C. 1079(p), as added by section 722(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The rule provides coverage for medical care for active duty family members who reside with an active duty member of the Uniformed Services assigned to remote areas and eligible for the program known as TRICARE Prime Remote. Active duty family members who enroll in TRICARE Prime Remote for Active Duty Family Members (TPRADFM) will enjoy benefits generally comparable to TRICARE Prime enrollees including access standards, benefit coverage, and cost-shares.

DATES: This interim final rule is effective April 8, 2002. Written comments will be accepted until April 8, 2002.

ADDRESSES: Forward comments to Optimization and Integration Division TRICARE Management Activity, Skyline 5, Suite 801, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Styron, Optimization and Integration, TRICARE Management Activity, Office of the Secretary of Defense (Health Affairs), telephone (703) 681–0064. Questions regarding payment of specific TRICARE claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Overview of the Rule

On October 30, 2000, the Floyd D. Spence National Defense Authorization Act for Fiscal Year 20012 (NDAA) (Public Law 106–398) was signed into law. This interim final rule implements section 722(b) of this Act, which amended section 1079 of Title 10, United States Code, by adding subsection (p). It requires a TRICARE Prime-like benefit for active duty family members residing with their active duty Uniformed Services sponsor eligible for TRICARE Prime Remote, as defined by section 1074(c)(3) of Title 10, United States Code.

II. TRICARE Prime Remote for Active Duty Members

A member of the uniformed services who is on active duty is entitled to medical and dental care in any facility of any Uniformed Service u8nder 10 U.S.C. 1074(a). Although members on active duty have this entitlement, members of the Uniformed Services who qualify for TRICARE Prime Remote may not be required to receive routine primary medical care at a military treatment facility. TRICARE Prime Remote (TPR) was established under 10 U.S.C. 1074(c) to provide a TRICARE Prime-like benefit. As defined by 10 U.S.C. 1074(c)(3), the benefit is for active duty service members (ADSM) assigned to remote locations, who pursuant to that assignment, work and reside at a location more than 50 miles, or approximately one hour of driving time, from the nearest military treatment facility. ADSM who are TPR-eligible are required to enroll in TPR unless another enrollment site designated by the services is available.

The TPR ADSM is required to use the network providers, including network Veteran's Affairs facilities, provided the network providers have capacity and meet the TRICARE drive time standards of 30 minutes for primary care and one hour for specialty care.

III. TRICARE Prime Remote for Active Duty Family Members

In order to be eligible for TRICARE Prime Remote for Active Duty Family Members (TPRADFM), active duty family members (ADFM) must reside with a TPR-eligible and enrolled ADSM. For purposes of TPRADFM, ADFM include the spouse and children of an active duty member and certain unmarried dependents placed in the legal custody of the active duty member as a result of a court order for a period of at least 12 months. ADFM must enroll in TPRADFM to receive the TPRADFM benefit. ADFM who elect not to enroll, or whose sponsor has not enrolled in TPR, may use the TRICARE Standard benefit, or enroll in TRICARE Prime where available. Under section 722(c) of the Floyd D. Spense National Defense Authorization Act for Fiscal Year 2001 (NDAA), the waiver of TRICARE Standard cost-shares and deductibles that apply during the interim period between the enactment of the NDAA and implementation of TPRADFM will expire upon implementation of this rule. TPRADFM eligible beneficiaries may elect not to enroll in TPRADFM, and instead receive benefits under the Standard program, but will be required to pay the associated TRICARE Standard cost-shares and deductibles.

Section 1079(p) of Title 10, subject to such exceptions as the Secretary considers necessary, requires coverage for medical care under this section for dependents and standards with respect to timely access to such care to be comparable to coverage and standards under the managed care option of the TRICARE program known as TRICARE Prime. Therefore, the requirements and benefits of TPRADFM shall be similar to TRICARE Prime under Section 199.17 to the maximum extent practicable.

For primary care, family members enrolled in TPRADFM will be assigned or be allowed to select a primary care manager when available through the TRICARE civilian provider network. The primary care manager may be an individual physician, a group practice, a clinic, a treatment site or other designation. If a network provider is not available to serve as their primary care provider, the TPRADFM enrollee will be able to utilize any local TRICARE authorized provider for primary care services.

Family members enrolled in TPRADFM will have the same cost-shares and deductibles as those enrolled in TRICARE Prime. If a TRICARE network primary care provider is available to serve as their primary care manager (PCM); TPRADFM enrollees must select or be assigned to the PCM. Enrollment with the network PCM and compliance with the program requirements will result in the TPRADFM enrollee having no cost-shares or deductibles for the care provided. A TPRADFM enrollee who does not enroll with a network provider when one is available to serve as their primary care manager is subject to higher point-of-service deductible and cost sharing requirements under Section 199.17. Similarly, when a TPRADFM is enrolled with a TRICARE network PCM and receives health care services for a provider other than their PCM, he/she will be responsible for the point-of-service cost-shares and deductibles under Section 199.17. If a network provider is not available to serve as their primary care manager, a TPRADFM enrollee may use any local TRICARE authorized provider for their primary care, and will have no cost-shares or deductibles for the care provided.

TPRADFM enrolled members will be able to access their primary care provider without pre-authorization. Referrals to specialists will require a pre-authorization by the regional managed care support contractor for medical appropriateness and necessity. To the greatest extent possible, contractors will assist in finding a TRICARE network or authorized provider within the TRICARE Prime drive time access standards of one hour for specialty care. Contractors will not be required to establish new network relationships for TPRADFM enrollees, except where contractually required or deemed economically feasible. TPRADFM members are required to use TRICARE network providers for specialty-care where available within TRICARE access standards or pay the point-of-service deductible and cost-shares under Section 199.17. They may use any TRICARE authorized provider to obtain specialty-care where a network provider is not available with access standards, once they have received authorization and assistance in finding a provider by the contractor.

IV. Rulemaking Procedures

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. This rule is not an economically significant regulatory action and it will not significantly affect a substantial number of small entities. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of entities.

This rule imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

This rule is being implemented as an interim final rule, with comment period, as an exception to our normal practice of soliciting public comment prior to issuance. The Acting Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This rule implements statutory requirements that became effective October 30, 2000, for a program Congress intended to become operational one year later. This rule implements the new statutory program without significant embellishment of the legislative requirements. Public comments are welcome and will be considered for possible revisions in the rule.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as

required under the provisions of Executive Order 12866.

List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel, TRICARE Prime.

For the reasons set forth in the preamble, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.16 is amended by revising paragraphs (d) introductory text and (d)(2), redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively, and adding a new paragraph (e) to read as follows:

§ 199.16 Supplemental Health Care Program for active duty members.

* * * * *

(d) *Special rules and procedures.* As exceptions to the general rule in paragraph (c) of this section, the special rules and procedures in this section shall govern payment and administration of claims under the supplemental care program. These special rules and procedures are subject to the TRICARE Prime Remote program for active duty service members set forth in paragraph (e) of this section and the waiver authority of paragraph (f) of this section.

* * * * *

(2) Preauthorization by the Uniformed Services of each service is required for the supplemental care program *except* for services in cases of medical emergency (for which the definition in § 199.2 shall apply) or in cases governed by the TRICARE Prime Remote program for active duty service members set forth in paragraph (e) of this section. It is the responsibility of the active duty members to obtain preauthorization for each service. With respect to each emergency inpatient admission, after such time as the emergency condition is addressed, authorization for any proposed continued stay must be obtained within two working days of admission.

* * * * *

(e) *TRICARE Prime Remote for Active Duty Members.* (1) *General.* The TRICARE Prime Remote (TPR) program is available for certain active duty members of the Uniformed Services assigned to remote locations in the United States and the District of Columbia who are entitled to coverage of medical care, and the standards for timely access to such care, outside a military treatment facility that are comparable to coverage for medical care and standards for timely access to such care as exist under TRICARE Prime under § 199.17. Those active duty members who are eligible under the provisions of 10 U.S.C. 1074(c)(3) and who enroll in the TRICARE Prime Remote program, may not be required to receive routine primary medical care at a military medical treatment facility.

(2) *Eligibility.* To receive health care services under the TRICARE Prime Remote program, an individual must be an active duty member of the Uniformed Services on orders for more than thirty consecutive days who meet the following requirements:

(i) Has a permanent duty assignment that is greater than fifty miles or approximately one hour drive from a military treatment facility or military clinic designated as adequate to provide the needed primary care services to the active duty service member; and

(ii) Pursuant to the assignment of such duty, resides at a location that is greater than fifty miles or approximately one hour from a military medical treatment facility or military clinic designated as adequate to provide the needed primary care services to the active duty service member.

(3) *Enrollment.* An active duty service member eligible for the TRICARE Prime Remote program must enroll in the program. If an eligible active duty member does not enroll in the TRICARE Prime Remote program, the member shall receive health care services provide under the supplemental health program subject to all requirements of this section without application of the provisions of paragraph (e) of this section.

(4) *Preauthorization.* If a TRICARE Prime network under § 199.17 exists in the remote location, the TRICARE Prime Remote enrolled active duty member will select or be assigned a primary care manager. In the absence of a TRICARE primary care manager in the remote location and if the active duty member is not assigned to a military primary care manager based on fitness for duty requirements, the TRICARE Prime Remote enrolled active duty member may use a local TRICARE authorized provider for primary health care services without preauthorization. Any referral for specialty care will require the TRICARE Prime Remote enrolled active duty member to obtain preauthorization for such services.

* * * * *

3. Section 199.17 is amended by revising paragraph (g) to read as follows:

§ 199.17 TRICARE program.

* * * * *

(g) *TRICARE Prime Remote for Active Duty Family Members.* (1) *In general.* In geographic areas in which TRICARE Prime is not offered and in which eligible family members reside, there is offered under 10 U.S.C. 1079(p) TRICARE Prime Remote for Active Duty Family Members as an enrollment option. TRICARE Prime Remote for Active Duty Family Members (TPRADFM) will generally follow the rules and procedures of TRICARE Prime, except as provided in this paragraph (g) and otherwise except to the extent the Director, TRICARE Management Activity determines them to be infeasible because of the remote area.

(2) *Active duty family member.* For purposes of this paragraph (g), the term ''active duty family member'' means one of the following dependents of an active duty member of the Uniformed Services: spouse, child, or unmarried child placed in the legal custody of the active duty member as a result of an order of a court of competent jurisdiction for a period of at least 12 consecutive months.

(3) *Eligibility.* An active duty family member is eligible for TRICARE Prime Remote for Active Duty Family Members if he or she is eligible for CHAMPUS and meets all of the following additional criteria:

(i) The family member's active duty sponsor has been assigned permanent duty as a recruiter; as an instructor at an educational institution, an administrator of a program, or to provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps; as a full-time adviser to a unit of a reserve component; or any other permanent duty more than 50 miles, or approximately one hour driving time, from the nearest military treatment facility that the Executive Director, TRICARE Management Activity determines is adequate to provide care.

(ii) The family member's active duty sponsor, pursuant to the assignment of duty described in paragraph (g)(3)(i) of this section, resides at a location that is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility that the Director, TRICARE Management Activity determines is adequate to provide care.

(iii) The family member resides with the active duty sponsor.

(4) *Enrollment.* TRICARE Prime Remote for Active Duty Family Members requires enrollment under procedures set forth in paragraph (o) of

this section or as otherwise established by the Executive Director, TRICARE Management Activity.

(5) *Health care management requirements under TRICARE Prime Remote for Active Duty Family Members.* The additional health care management requirements applicable to Prime enrollees under paragraph (n) of this section are applicable under TRICARE Prime Remote for Active Duty Family Members unless the Executive Director, TRICARE Management Activity determines they are infeasible because of the particular remote location. Enrollees will be given notice of the applicable management requirements in their remote location.

(6) *Cost sharing.* Beneficiary cost sharing requirements under TRICARE Prime Remote for Active Duty Family Members are the same as those under TRICARE Prime under paragraph (m) of this section, except that the higher point-of-service option cost sharing and deductible shall not apply to routine primary health care services in cases in which, because of the remote location, the beneficiary is not assigned a primary care manager or the Executive Director, TRICARE Management Activity determines that care from a TRICARE network provider is not available within the TRICARE access standards under paragraph (p)(5) of this section. The higher point-of-service option cost sharing and deductible shall apply to specialty health care services received by any TRICARE Prime Remote for Active Duty Family Members enrollee unless an appropriate referral/preauthorization is obtained as required by section (n) under TRICARE Prime. In the case of pharmacy services under § 199.21, where the Director, TRICARE Management Activity determines that no TRICARE network retail pharmacy has been established within a reasonable distance of the residence of the TRICARE Prime Remote for Active Duty Family Members enrollee, cost sharing applicable to TRICARE network retail pharmacies will be applicable to all CHAMPUS eligible pharmacies in the remote area.

* * * * *

Dated: January 29, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2676 Filed 2–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 01–020]

RIN 2115–AA97

Security Zone; San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the waters adjacent to the San Onofre Nuclear Generating Station in San Diego, CA. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the public and commercial structures and individuals near or in this structure. This security zone will prohibit all persons and vessels from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port (COTP), or his designated representative.

DATES: This rule is effective from 6 p.m. (PDT) on October 25, 2001 to 3:59 p.m. (PDT) on June 21, 2002.

ADDRESSES: Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 01–020, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: PO Christopher Farrington, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon in Arlington, Virginia on the same day. National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels operating in the waters adjacent to the San Onofre Nuclear Generating Station area. This security zone is needed to protect the United States and more specifically the personnel and property of the San Onofre Nuclear Generating Station.

The delay inherent in the NPRM process, and any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the San Onofre Nuclear Generating Station vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by the rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to the San Onofre Nuclear Generating Station facility. Immediate action is required to accomplish this objective. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the San Onofre Nuclear Generating Station present possible platforms from which individuals may gain unauthorized access to this installation, or launch terrorist attacks upon the waterfront structures and adjacent population centers.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended The Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the San Onofre Nuclear Generating Station.

This temporary security zone is necessary to provide for the safety and security of the United States of America and the people, ports, waterways and

properties within the San Onofre Nuclear Generating Station area. This temporary security zone, which prohibits all vessel traffic from entering, transiting or anchoring within a one nautical mile radius of San Onofre Nuclear Generating Station, is necessary for the security and protection of the San Onofre Nuclear Generating Station. This zone will be enforced by the official patrol (Coast Guard commissioned, warrant or petty officers) onboard Coast Guard vessels and patrol craft. The official patrol may also be onboard patrol craft and resources of any government agency that has agreed to assist the Coast Guard in the performance of its duties.

Persons and vessels are prohibited from entering into this security zone unless authorized by the Captain of the Port or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board any vessel in a security zone without the permission of the COTP.

Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years (class C felony).

Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Due to the recent terrorist actions against the United States the implementation of this security zone is necessary for the protection of the United States and its people. Because these security zones are established in an area near the San Onofre Nuclear Generating Station that is seldom used, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' includes small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because the portion of the security zone that affects the San Onofre Nuclear Generating Station area is infrequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Petty Officer Chris Farrington, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34), of Commandant Instruction M16475.1D, this rule, which establishes a security zone, is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add new § 165.T11–048 to read as follows:

§ 165.T11–048 Security Zone: Waters adjacent to San Onofre

Nuclear Generating Station San Diego, CA.

(a) *Location: San Onofre Nuclear Generating Station.* This security zone encompasses waters within a one nautical mile radius of San Onofre Nuclear Generating Station that is centered at the following coordinate: latitude 33° 22′ 30″ N, longitude 117° 33′ 50″ W.

(b) *Effective dates.* These security zones will be in effect from 6 p.m. (PDT) on October 25, 2001 to 3:59 p.m. (PDT) on June 21, 2002. If the need for these security zones ends before the scheduled termination time and date, the Captain of the Port will cease enforcement of the security zones and will also announce that fact via Broadcast Notice to Mariners and Local Notice to Mariners.

(c) *Regulations.* This section is also issued under section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226). In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the security zone established by this temporary section, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this temporary section. Mariners requesting permission to transit through the security zone must request authorization to do so from the Captain of the Port, who may be contacted through Coast Guard Activities San Diego on VHF-FM Channel 16.

Dated: October 25, 2001.

S. P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 02–2821 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 01–011]

RIN 2115–AA97

Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing two temporary security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5 p.m. (PDT) on October 31, 2001 to 4:59 p.m. (PDT) on June 21, 2002. Comments and related material must reach the Coast Guard on or before April 8, 2002.

ADDRESSES: Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of docket COTP San Francisco Bay 01–011, and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office, San Francisco Bay, Coast Guard Island, Alameda, CA 94501 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 21, 2001, we issued a similar temporary final rule under docket COTP San Francisco Bay 01–009, and published this rule in the **Federal Register** (66 FR 54663, Oct. 30, 2001). Upon further reflection, and after discussion with airport officials and members of the public, we have decided to withdraw the temporary section created by that rule (33 CFR 165.T11–095) and issue a new temporary section in title 33 of the Code of Federal Regulations.

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. On the same day, a similar attack was conducted on the Pentagon in Arlington, Virginia. Also, on the same date, a fourth commercial passenger airplane was hijacked, this one from Newark, New Jersey, and later crashed in Pennsylvania. National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels transiting in the San Francisco Bay, and particularly in waters adjacent to San Francisco International Airport and Oakland International Airport. These security zones are needed to protect the United States and more specifically the people, ports, waterways, and properties of the San Francisco Bay area.

The delay inherent in the NPRM process, and any delay in the effective

date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the San Francisco and Oakland airports vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to these west coast airports. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP San Francisco Bay 01–011, indicate the specific section of this document to which each comment applies, and give the reason for each comment.

Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to the person identified in the **FOR FURTHER INFORMATION CONTACT** section, or to the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the airports adjacent to the San Francisco Bay present possible platforms from which individuals may gain unauthorized access to the airports.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001 have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing two temporary security zones in the navigable waters of the United States surrounding San Francisco International Airport and Oakland International Airport.

As mentioned in the Regulatory Information section, we opened docket COTP San Francisco Bay 01–009 on September 21, 2001. We have since determined that the sizes of the zones created by that rule may be reduced. As a result, we are withdrawing that rule and are establishing new, smaller zones in this rule.

The security zones will extend 1000 yards seaward from the shorelines of the San Francisco International Airport and the Oakland International Airport. This distance from the shoreline is estimated to be an adequate zone size to provide increased security for each airport. The two security zones are designed to provide increased security for the airports, while minimizing the impact to vessel traffic on the San Francisco Bay.

These temporary security zones are necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Francisco Bay area. These zones will be enforced by the official patrol (Coast Guard commissioned, warrant or petty officers) onboard Coast Guard vessels and patrol craft. The official patrol may also be onboard the patrol craft and resources of any government agency that has agreed to assist the Coast Guard in the performance of its duties.

Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years (class C felony).

Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Due to the recent terrorist actions against the United States the implementation of these security zones are necessary for the protection of the United States and its people. Because these security zones are established in an area of the San Francisco Bay that is seldom used, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

These security zones will not have a significant impact on a substantial number of small entities because these security zones will not occupy an area of the San Francisco Bay that is frequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact

on a substantial number of small entities.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–3073.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation, because we are establishing security zones. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T11–095 [Removed]

2. Remove § 165.T11–095.

3. Add new § 165.T11–097 to read as follows:

§ 165.T11–097 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.

(a) *Locations:*

(1) *San Francisco International Airport Security Zone.* This security zone extends 1000 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37° 38′ 23″ N and longitude 122° 23′ 02″ W; thence to 37° 38′ 25″ N and 122° 22′ 26″ W; thence to 37° 37′ 45″ N and 122° 21′ 19″ W; thence to 37° 37′ 11″ N and 122° 20′ 46″ W, thence to 37° 36′ 45″ N and 122° 20′ 42″ W, thence to 37° 36′ 19″ N and 122° 20′ 57″ W, thence to 37° 35′ 45″ N and 122° 21′ 50″ W, and along the shoreline back to the beginning point.

(2) *Oakland International Airport Security Zone.* This security zone extends 1000 yards seaward from the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37° 44′ 00″ N and longitude 122° 15′ 11″ W; thence to 37° 43′ 40″ N and 122° 15′ 42″ W; thence to 37° 43′ 08″ N and 122° 15′ 30″ W; thence to 37° 41′ 37″ N and 122° 13′ 23″ W; thence to 37° 41′ 38″ N and 122° 12′ 25″ W; thence to 37° 42′ 10″ N and 122° 11′ 55″ W, and along the shoreline back to the beginning point.

(b) *Effective dates.* This section is in effect from 5 p.m. (PST) on October 31, 2001 to 4:59 p.m. (PDT) on June 21, 2002. If the need for these security zones ends before the scheduled

termination time, the Captain of the Port will cease enforcement of these security zones and will also announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in either of these security zones established by this temporary section, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zones established by this temporary section.

Dated: October 31, 2001.

L. L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 02–2820 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0007a, WY–001–0008a, WY–001–0009a; FRL–7130–3]

Clean Air Act Approval and Promulgation of State Implementation Plan; Wyoming; Revisions to Air Pollution Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action partially approving and partially disapproving revisions to the State Implementation Plan (SIP) submitted by the designee of the Governor of Wyoming on August 9, 2000; August 7, 2001; and August 13, 2001. These revisions are intended to restructure and modify the State's air quality rules so that they will allow for more organized expansion and revision and are up to date with Federal requirements. The August 9, 2000 revisions include a complete restructuring of the Wyoming Air Quality Standards and Regulations (WAQSR) from a single chapter into thirteen separate chapters. In addition to restructuring the regulations, the State's August 9, 2000 revisions also update the definition in Chapter 3, Section 6 Volatile organic compounds (previously Chapter 1, Section 9) and include revisions to Chapter 6, Section 4 Prevention of significant deterioration (PSD) (previously Chapter 1, Section 24). The August 7, 2001 revisions include the addition of a credible evidence provision and another update to the definition of VOC. The August 13, 2001 revisions include changes to the State's particulate matter regulations. We partially approve these SIP revisions because they are consistent with Federal requirements. We are partially disapproving the provisions of the State's submittal that allow the Administrator of the Wyoming Air Quality Division (WAQD) to approve alternative test methods in place of those required in the SIP, because such provisions are inconsistent with section 110(i) of the Clean Air Act (Act) and the requirement that SIP provisions can only be modified through revisions to the plan that must be approved by EPA. We are taking these actions under section 110 of the Act. We are not acting on Chapter 8, Section 4 Transportation Conformity (part of the August 9, 2000 submittal) or on the $PM_{2.5}$ revisions in Chapter 1 and Chapter 2 of the State's August 13, 2001 submittal.

DATES: This rule is effective on April 8, 2002, without further notice, unless we receive adverse comment by March 8, 2002. If we receive adverse comments, we 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: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466. Copies of the Incorporation by Reference material are available at the Air and Radiation Docket (6102), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Division, Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming, 82002.

FOR FURTHER INFORMATION CONTACT: Megan Williams, EPA Region VIII, (303) 312–6431.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''our'', or ''us'' is used, we mean EPA.

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I. What Is the Purpose of This Document?

In this document we are partially approving and partially disapproving revisions to the SIP submitted by the designee of the Governor of Wyoming on August 9, 2000; August 7, 2001; and August 13, 2001. Specifically, we are approving the following sections of the renumbered WAQSR from the State's submittals into the SIP: Chapter 1 Common Provisions, Sections 2–6, Chapter 2 Ambient Standards, Sections 2, 6, 8 and 10, Chapter 3 General Emission Standards, Sections 5 and 6, Chapter 4 State Performance Standards for Existing Sources, Section 3, Chapter 6 Permitting Requirements, Sections 2 and 4, Chapter 7 Monitoring Regulations, Section 2, Chapter 8 Non-attainment Area Regulations, Sections 2–3, Chapter 9 Visibility Impairment/PM Fine Control, Section 2, Chapter 10 Smoke Management, Sections 2–3, Chapter 12 Emergency Controls, Section 2 and Chapter 13 Mobile Sources, Section 2. We are partially approving and partially disapproving the following sections of the renumbered WAQSR: Chapter 2 Ambient Standards, Sections 3–5; Chapter 3 General Emission Standards, Sections 2–4; and Chapter 4 State Performance Standards for Specific Existing Sources, Section 2. We are not acting on Chapter 8 Non-attainment Area Regulations, Section 4 Transportation Conformity (part of the August 9, 2000 submittal) or on the $PM_{2.5}$ revisions in Chapter 1 and

Chapter 2 of the State's August 13, 2001 submittal.

II. Is the State's Submittal Approvable?

Section 110(k) of the Act addresses our actions on submissions of SIP revisions. The Act also requires States to observe certain procedures in developing SIP revisions. Section 110(a)(2) of the Act requires that each SIP revision be adopted after reasonable notice and public hearing. We have evaluated the State's submission and determined that the necessary procedures were followed. We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act). Our completeness criteria for SIP submittals can be found in 40 CFR part 51, appendix V. We attempt to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we do not determine completeness within six months after we receive it. The State's August 9, 2000 submission became complete by operation of law on February 9, 2001, in accordance with section 110(k)(1)(B) of the Act. We reviewed the State's August 7, 2001 and August 13, 2001 submissions against our completeness criteria in 40 CFR Part 51, Appendix V. We determined these submissions were complete and notified the State in a letter dated August 24, 2001.

A. The State's August 9, 2000 Revisions

1. Restructuring of WAQSR

The State restructured the entire WAQSR from a single chapter into thirteen separate chapters. This was done, according to the State, to create a more organized set of rules that will be more accessible to the public and the regulated community and will allow for more organized expansion and revision, when necessary.

Several of the sections submitted to us for approval into the SIP continue to provide for the use of an equivalent or alternative test method to be approved by the Administrator of the WAQD. In an August 19, 1998 letter to the WAQD and in our December 21, 2000 partial approval and partial disapproval of earlier revisions to the WAQSR (65 FR 80329), we raised concerns about provisions in the WAQSR where the WAQD has the discretion to approve the use of alternative or equivalent test methods in place of those required in the SIP. Such discretionary authority for the State to change test methods that are included in the SIP, without obtaining prior EPA approval is not consistent with section 110 of the Act. These ''director's discretion'' provisions essentially allow for a variance from SIP requirements, which is not allowed under section 110(i) of the Act and the requirement that SIP provisions may only be modified by SIP revisions approved by EPA. In our August 19, 1998 letter, we identified the sections in the WAQSR that contain these ''director's discretion'' provisions, and informed the State that the provisions needed to be revised to require EPA approval of any alternative or equivalent test methods. In a September 9, 1998 letter responding to our comments, the WAQD committed to address our concerns through revisions to these rules in the future. However, until these provisions are revised, we believe it is necessary to continue to disapprove the various ''director's discretion'' provisions, to ensure that any alternatives to the test methods required in the SIP are approved by EPA. Therefore, we are partially disapproving these provisions in Chapter 2 Ambient Standards, Sections 3–5, Chapter 3 General Emission Standards, Sections 2–4 and Chapter 4 State Performance Standards for Specific Existing Sources, Section 2.

2. Chapter 3, Section 6 (Volatile Organic Compounds)

The State revised Chapter 3, Section 6 (previously Chapter 1, Section 9) of the WAQSR to adopt the July 1, 1998 definition of volatile organic compound (VOC) in 40 CFR 51.100(s). In the State's August 7, 2001 submittal Chapter 3, Section 6 was again revised to adopt the July 1, 1999 definition of VOC in 40 CFR 51.100(s). We are approving this more recent update to the incorporation by reference into the SIP, which will supercede the revisions submitted to us on August 7, 2000.

3. Chapter 6, Section 4 (Prevention of Significant Deterioration (PSD))

The State made two substantive changes to its PSD permitting regulations. The first revision is a modification to the definition of ''Minor source baseline date'' to remove the specific trigger date of January 1, 2001 from the definition. With this revision, the minor source baseline date is triggered only by the date on which a major stationary source or major modification submits a complete permit application as opposed to the date on which a major stationary source or major modification submits a complete permit application *or* January 1, 2001, whichever occurs first. The revised definition is consistent with our definition in 40 CFR 51.166(b)(14)(ii). The minor source baseline date has been triggered for SO_2, PM_{10} and NO_2 in all attainment and unclassifiable areas in the State. Most recently, a permit application from ENCOAL Corporation to construct a Liquids from Coal facility and an associated 240 megawatt coal-fired power plant in the Powder River Basin of Campbell County, Wyoming, was deemed complete on March 6, 1997; this triggered the minor source baseline date for the entire Powder River Basin PM_{10} unclassifiable area. We are approving the State's revision to delete the January 1, 2001 date since the minor source baseline date was already triggered, prior to January 1, 2001, for all attainment and unclassifiable areas in the State.

The second revision establishes a significance level for non-methane hydrocarbons from municipal solid waste landfills. Since the state-adopted significance level of 50 tons per year is the same as the significance level for non-methane hydrocarbons from municipal solid waste landfills in 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i), we are approving this revision into the SIP.

B. The State's August 7, 2001 Revisions

1. Chapter 1, Section 6 (Credible Evidence)

The addition of Section 6 Credible Evidence was made in response to a SIP call issued by EPA on October 20, 1999. EPA promulgated Credible Evidence Revisions (see 62 FR 8314) which became effective December 30, 1997 and which changed certain regulations to clarify that EPA can use, and has always been able to use, any credible evidence to prove violations of applicable requirements. In the Credible Evidence Revisions, EPA amended 40 CFR 51.212 to require SIPs to allow for the use of credible evidence for the purposes of submitting compliance certifications and for establishing whether or not a person has violated a standard in a SIP. Wyoming submitted a provision in Chapter 1, Section 6 that meets the requirements of 40 CFR 51.212; we are approving this provision into the SIP.

2. Chapter 3, Section 6 (Volatile Organic Compounds)

Chapter 3, Section 6 was revised to adopt the July 1, 1999 definition of VOC in 40 CFR 51.100(s). We are approving this update to the incorporation by reference into the SIP.

C. The State's August 13, 2001 Revisions

1. Chapter 1, Section 3 (Definitions)

Chapter 1, Common Provisions was revised to add definitions for ''fugitive emissions,'' ''$PM_{2.5}$'' and ''$PM_{2.5}$

emissions''. We are approving the definition of ''fugitive emissions'' into the SIP, but we are not taking action on the other definitions for $PM_{2.5}$. Currently, we are not approving provisions in any SIPs related to the implementation of a $PM_{2.5}$ standard because there is no $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) at this time. On May 18, 1999, the United States Court of Appeals for the D.C. Circuit in *American Trucking Associations, Inc. et al.,* v. *United States Environmental Protection Agency,* 175 F.3d 1027 (D.C. Cir. 1999), vacated the 1997 PM_{10} standard, determined that we were attempting to double-regulate the fine particulate fraction with the promulgation of the 1997 PM_{10} and $PM_{2.5}$ standards, and asked for further information from EPA regarding health effects of $PM_{2.5}$. Although the Court eventually agreed that there was a clear, health-based need for a $PM_{2.5}$ standard, we did not proceed with the $PM_{2.5}$ implementation schedule. Since the Court had determined that EPA would be double-regulating the fine particle fraction of this pollutant if we were to implement the new PM_{10} and $PM_{2.5}$ NAAQS, EPA decided not to proceed with implementation of the 1997 $PM_{2.5}$ NAAQS, but to wait for the outcome of the next required review of the PM standards for any further implementation of a new standard. On review of the Court of Appeals' decision, the U.S. Supreme Court reversed in part, upholding the new and revised NAAQS, but affirmed the lower court decision on the issue of EPA's implementation policy for the revised NAAQS, holding the policy unlawful. See *Whitman* v. *American Trucking Associations, Inc.,* 531 U.S. 457, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001). Accordingly, we are enforcing only the 1987 PM_{10} NAAQS at this time.

In addition to the new definitions, the State made changes to correct ''director's discretion'' provisions in the definitions of ''particulate matter emissions'' and ''PM_{10} emissions.'' In our December 21, 2000 action partially approving and partially disapproving revisions to Wyoming's air pollution regulations (see 65 FR 80330), we partially disapproved this particular section of the State's rules, because it allowed the Wyoming Air Quality Director discretion to approve the use of alternative or equivalent test methods in place of those required in the SIP. The State has eliminated this discretion by revising these definitions to read, ''* * * or an equivalent or alternative method approved by the EPA Administrator.'' This will ensure that any alternatives to the test methods required in the SIP are approved by EPA. We are now fully approving the revisions to Chapter 1, Section 3 of the WAQSR that were partially disapproved in our December 21, 2000 action.

2. Chapter 2, Section 2 (Ambient Standards for Particulate Matter)

Chapter 2, Section 2 was revised to incorporate the 1997 $PM_{2.5}$ NAAQS and to remove the ambient air standard for total suspended particulate (TSP). Since EPA is currently not implementing a $PM_{2.5}$ standard, we are not taking action at this time on the new $PM_{2.5}$ standard adopted by the State. Since EPA repealed the national ambient air quality standard for TSP over ten years ago, we are approving this deletion of the State's ambient air standard for TSP. We raised a concern to the State during the public comment period for these revisions about whether the State plans to relax any permitted emission limits as part of this rule change; relaxations of any limits on particulate matter could potentially impact the PM_{10} National Ambient Air Quality Standards (NAAQS). We also wanted to be sure that this change to delete the TSP ambient air quality standard would not impact the State's particulate matter monitoring network that has been established in the Powder River Basin. The State made clear, in a February 16, 2000 letter from Dan Olson, Administrator, Wyoming Air Quality Division, to Richard Long, Director, EPA Region VIII Air and Radiation Program, that relaxing existing permit emission limits as a result of deleting the TSP standard would be contrary to the State's basic philosophy of minimizing impact to air resources and that the State has no plans to do so. The State further indicated that the TSP monitors in the Powder River Basin that are used to measure compliance with the NAAQS are required to continue operation under existing air quality permits. Any changes in monitoring, which could only occur through a permit modification, would need to consider the effect of the monitor on the comprehensive particulate matter monitoring network in the Powder River Basin, which the State is committed to maintaining. We are relying on these clarifications in approving the deletion of the State's TSP ambient air standard and are archiving the above-referenced letter as Additional Materials in 40 CFR 52.2620(c)(30)(ii).

3. Chapter 3, Section 2 (Emission Standards for Particulate Matter)

Chapter 3, Section 2 was revised to incorporate revised fugitive dust provisions. The revisions to this section are not any less stringent than the existing fugitive dust provisions in the SIP, and therefore are approvable. The proposed agricultural provisions do contain an apparent change in stringency, because the SIP currently states that all agricultural activities must be conducted, ''* * * in such a manner as to prevent dust from becoming airborne''; the revision to that provision states that these operations should ''minimize'' fugitive dust emissions. However, because it is unrealistic to expect that agricultural activities such as tilling will not produce any fugitive dust and because there is no enforceable limit or work practice requirement associated with this SIP provision, the proposed revision to the SIP should not result in an increase in fugitive dust from agricultural activities.

In addition, the State added a provision in Chapter 3, Section 2 to clarify that the particulate matter limitations established through the process weight rate tables (Chapter 3, Section 2 Tables I and II) are based on the maximum design production rate unless otherwise restricted by enforceable limits on potential to emit. This additional language in Chapter 3, Section 2(g)(i) is meant to clarify which limit is intended to apply to permitted sources. Finally, Section 2(e) has been modified to explain that more stringent limits, such as new source performance standards, established elsewhere in the regulations may apply. We are approving all of these revisions to Chapter 3, Section 2 into the SIP.

4. Chapter 6, Section 2 (Permit Requirements for Construction, (Modification, and Operation)

Chapter 6, Section 2 was revised to remove the significance level for TSP. This change was made in conjunction with the removal of the ambient air standard for TSP in Chapter 2, Section 2 (see discussion in part 2, above). Without a referenced ambient air standard, the TSP significance level is not needed. This change is consistent with 40 CFR 51.166, and we are approving the change into the SIP.

III. What Is EPA's Final Action?

In this action, we are granting partial approval and partial disapproval of revisions to the WAQSR submitted as a SIP revision by the designee of the Governor of Wyoming on August 9, 2000; August 7, 2001; and August 13, 2001. The portions of the restructured regulations and revisions that we are approving replace the prior SIP approved regulations. Specifically, we are granting approval of the following

sections of the renumbered WAQSR into the SIP: Chapter 1 Common Provisions, Sections 2–6; Chapter 2 Ambient Standards, Sections 2, 6, 8 and 10; Chapter 3 General Emission Standards, Sections 5 and 6; Chapter 4 State Performance Standards for Existing Sources, Section 3; Chapter 6 Permitting Requirements, Sections 2 and 4; Chapter 7 Monitoring Regulations, Section 2; Chapter 8 Non-attainment Area Regulations, Sections 2 and 3; Chapter 9 Visibility Impairment/PM Fine Control, Section 2; Chapter 10 Smoke Management, Sections 2 and 3; Chapter 12 Emergency Controls, Section 2; and Chapter 13 Mobile Sources, Section 2. We are granting partial approval and partial disapproval of the following sections of the renumbered WAQSR: Chapter 2 Ambient Standards, Sections 3–5; Chapter 3 General Emission Standards, Sections 2–4; and Chapter 4 State Performance Standards for Specific Existing Sources, Section 2. We are not acting on Chapter 8 Non-attainment Area Regulations, Section 4 Transportation Conformity (part of the August 9, 2000 submittal) or on the $PM_{2.5}$ revisions in Chapter 1 and Chapter 2 of the State's August 13, 2001 submittal.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective April 8, 2002, without further notice unless the Agency receives adverse comments by March 8, 2002. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. What Are the Administrative Requirements for This Action?

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

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

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

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.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not

have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final partial approval rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This final partial disapproval rule will not have a significant impact on a substantial number of small entities because this partial disapproval only offsets the State's ability to grant variances from SIP testing requirements. As explained in this notice, the provisions of the SIP revision related to director's discretion do not meet the requirements of the Clean Air Act and EPA cannot approve the State's request to approve these provisions into the SIP. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

The partial approval and partial disapproval will not affect existing state requirements applicable to small entities. Federal disapproval of a state submittal does not affect its state-enforceability.

G. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action partially approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective April 8, 2002, unless EPA receives adverse written comments by March 8, 2002.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. 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 April 8, 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) of the Clean Air Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 3, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart ZZ—Wyoming

2. Section 52.2620 is amended by adding paragraph (c)(30) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(30) On August 9, 2000, August 7, 2001, and August 13, 2001, the designee of the Governor of Wyoming submitted a restructured version of the Wyoming Air Quality Standards and Regulations (WAQSR) along with revisions to Chapter 1, Section 3 Definitions; Chapter 1, Section 6 Credible evidence; Chapter 2, Section 2 Ambient standards for particulate matter; Chapter 3, Section 2 Emission standards for particulate matter; Chapter 3, Section 6 Volatile organic compounds (VOCs); Chapter 6, Section 2 Permit requirements for construction, modification, and operation; and Chapter 6, Section 4 Prevention of significant deterioration (PSD). EPA is replacing in the SIP all of the previously approved Wyoming air quality regulations with those regulations listed in paragraphs (c)(30)(i)(A) through (C) of this section.

(i) Incorporation by reference.

(A) Revisions to the WAQSR submitted on August 9, 2000: Chapter 1, Section 2, Section 3 (excluding the words ''or an equivalent or alternative method approved by the Administrator'' in the definition of ''Particulate matter emissions'' and ''PM_{10} emissions''), Sections 4 and 5; Chapter 2, Section 2, Section 3 (excluding the words ''or by an equivalent method''), Section 4 (excluding the words ''or an equivalent method''), Section 5 (excluding the words ''or by an equivalent method''), Sections 6, 8 and 10; Chapter 3, Section 2 (excluding the words ''specified by the Administrator'' and excluding the sentence ''Provided that the Administrator may require that variations to said methods be included or that entirely different methods be utilized if he determines that such variations or different methods are necessary in order for the test data to reflect the actual emission rate of particulate matter'' in subsection 2(h)(iv)), Section 3, Section 4 (excluding the words ''or an equivalent method'' in subsection (f)), Sections 5 and 6; Chapter 4, Section 2 (excluding the words ''or an equivalent method''), and Section 3; Chapter 6, Sections 2 and 4; Chapter 7, Section 2; Chapter 8, Sections 2 and 3; Chapter 9, Section 2; Chapter 10, Sections 2 and 3; Chapter 12, Section 2; and Chapter 13, Section 2; all effective 10/29/99.

(B) Revisions to the WAQSR submitted on August 7, 2001: Chapter 1, Section 6; and Chapter 3, Section 6; effective December 8, 2000.

(C) Revisions to the WAQSR submitted on August 13, 2001: Chapter 1, Section 3; Chapter 2, Section 2; Chapter 3, Section 2 (excluding the words ''specified by the Administrator'' and excluding the sentence ''Provided that the Administrator may require that variations to said methods be included or that entirely different methods be utilized if he determines that such variations or different methods are necessary in order for the test data to reflect the actual emission rate of particulate matter'' in subsection 2(h)(iv)); and Chapter 6, Section 2; all effective March 30, 2000.

(ii) Additional Material.

(A) February 16, 2000 letter from Dan Olson, Administrator, Wyoming Air Quality Division, to Richard Long, Director, EPA Region VIII Air and Radiation Program, clarifying the State's commitments to maintaining TSP permitting and monitoring requirements that contribute to protection of the PM_{10} NAAQS.

3. Section 52.2622 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2622 Approval status.

* * * * *

(b) Wyoming Air Quality Standards and Regulations Chapter 2, Sections 3–5, Chapter 3, Section 3 and Chapter 4, Section 2, which were submitted by the designee of the Governor on August 9, 2000, as well as Chapter 3, Section 2, which was submitted by the designee of the Governor on August 13, 2001, and which all allow the Administrator of the Wyoming Air Quality Division the discretion to approve the use of alternative or equivalent test methods in place of those required in the SIP, are partially disapproved. Such discretionary authority for the State to change test methods that are included in the SIP, without obtaining prior EPA approval, cannot be approved into the SIP. Pursuant to section 110 of the Clean Air Act, to change a requirement of the SIP, the State must adopt a SIP revision and obtain our approval of the revision.

[FR Doc. 02–2706 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 55 and 71

[FRL–7138–1]

State and Local Jurisdictions Where a Federal Operating Permits Program Became Effective on December 1, 2001—Connecticut; Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of States and local jurisdictions subject to 40 CFR parts 55 and 71.

SUMMARY: On July 1, 1996, pursuant to title V of the Clean Air Act (Act) as amended in 1990, EPA published a new regulation at 61 FR 34202 (codified as 40 CFR part 71) setting forth the procedures and terms under which the Administrator will issue operating permits to covered stationary sources of air pollution. This rule, called the ''part 71 rule,'' became effective on July 31, 1996. In general, the primary responsibility for issuing operating permits to sources rests with State, local, and Tribal air agencies. However, EPA will administer a Federal operating permits program in areas that lack an EPA-approved or adequately administered operating permits program and in other limited situations. The Federal operating permits program will serve as a ''safety net'' to ensure that sources of air pollution are meeting their permitting requirements under the Act. Federally issued permits will meet the same title V requirements as do State issued permits. The purpose of this document is to provide the names of those State and local jurisdictions where a Federal operating permits program is effective on December 1, 2001.

FOR FURTHER INFORMATION CONTACT: A. Scott Voorhees at (919) 541–5348 (e-mail: voorhees.scott@epa.gov).

SUPPLEMENTARY INFORMATION:

I. Background, Authority and Purpose

What Is the Intent of ''Title V'' of the Clean Air Act?

Title V of the Act as amended in 1990 (42 U.S.C. 7661 et seq.) directs States to develop, administer, and enforce operating permits programs that comply with the requirements of title V (section 502(d)(l)). Section 502(b) of the Act requires that EPA promulgate regulations setting forth provisions under which States develop operating permits programs and submit them to EPA for approval. Pursuant to this section, EPA promulgated 40 CFR part 70 on July 21, 1992 (57 FR 32250) which specifies the minimum elements of approvable State operating permits programs.

What Is a ''Federal Operating Permits Program''?

Sections 502(d)(3) and 502(i)(4) of the Act require EPA to promulgate a Federal operating permits program when a State does not obtain approval of its program within the timeframe set by title V or when a State fails to adequately administer and enforce its approved program. The part 71 rule published on July 1, 1996 establishes a national template for a Federal operating permits program that EPA will administer and enforce in those situations. Part 71 also establishes the procedures for issuing Federal permits to sources for which States do not have jurisdiction (*e.g.*, Outer Continental Shelf sources outside of State jurisdictions and sources located in Indian Country over which EPA and Indian Tribes have jurisdiction). Finally, part 71 provides for delegation of certain duties that may provide for a smoother program transition when part 70 programs are approved.

This notice makes frequent use of the term ''State.'' This term includes a State or a local air pollution control agency that would be the permitting authority for a part 70 permit program. The term ''permitting authority'' can refer to State, local, or Tribal agencies and may

also apply to EPA where the Agency is the permitting authority of record.

II. Description of Action

What Is the Purpose of This Notice?

The EPA is, by this notice, providing a list of State and local jurisdictions where EPA assumed responsibility to issue permits, effective as of December 1, 2001. The EPA received submittals of part 70 operating permits programs from all 52 State and territorial agencies and all 60 local programs. The EPA has granted full approvals to all of the operating permits programs except Connecticut and Maryland. As a result, EPA expects that the impact of the Federal operating permits program rule will be minimal. The EPA is working with the affected States in an effort to fully approve a State program before significant resources must be expended.

Will Some Pollution Sources Be Required To Prepare New Permit Applications?

Yes. Section 71.5(a)(1) of part 71 provides that a timely application is one that is submitted within 12 months or an earlier date after a source that does not have an operating permit issued by a State under the State's part 70 program becomes subject to the part 71 program. Because part 71 for these two State jurisdictions was effective on December 1, 2001, such sources are required to submit part 71 permit applications no later than December 1, 2002. Sources required to submit applications earlier than 12 months will be notified in advance by the permitting authority (whether it is EPA or a State in the case of a delegated part 71 program) and given a reasonable time to submit their applications. In general, this notice shall not be given less than 180 days in advance of the deadline for submittal of the application.

III. List of States and Local Jurisdictions

Which State and Local Jurisdictions Became Subject to a Federal Operating Permits Program on December 1, 2001?

Connecticut: The EPA's Region I proposed full approval of the State's program on August 13, 2001. *See* 66 FR 42496. However, EPA is unable to take final action on this proposal because Connecticut's interim approval expired on December 1, 2001, and the necessary corrections to the State's program will not become effective until early 2002. Until Connecticut's program receives final full approval, part 71 is effective in the State.

Maryland: Maryland acknowledged that it would not have in place by December 1, 2001 law to unambiguously provide standing for judicial review of the permits consistent with the Act and 40 CFR part 70. Therefore, on December 1, 2001, Maryland lost its interim approval status of its part 70 permitting program. *See* 66 FR 63236 (December 5, 2001) for further details.

The Office of Management and Budget has exempted this action informing the public of a Federal air quality permitting program, as outlined above, from Executive Order 12688 review. This notice is issued under the authority of sections 101, 110, 112 and 301 of the Act as amended (42 U.S.C. 7401, 7410, 7412, 7601).

Dated: January 30, 2002.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 02–2834 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 27 and 73

[GN Docket No. 01–74; FCC 01–364]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts allocation and service rules for the 698–746 MHz spectrum band (Lower 700 MHz Band), which is being reallocated pursuant to statutory requirements. The Commission takes these actions to support the development of new services in the Lower 700 MHz Band, and to protect existing television operations that will occupy the band throughout the transition to digital television.

DATES: Effective April 8, 2002 except for § 27.50(c)(5) which contains information collection that has not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

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SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order* (*R&O*), FCC 01–364, in GN Docket No. 01–74, adopted on December 12, 2001 and released on January 18, 2002. The full text of this *R&O* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893. The complete text may also be downloaded at: *www.fcc.gov.*

Synopsis of R&O

In the *R&O*, the Commission: (1) Reallocates the entire 48 megahertz of spectrum in the Lower 700 MHz Band to the fixed and mobile services while retaining the existing broadcast allocation; (2) establishes technical criteria designed to protect television (TV) operations during the digital television (DTV) transition period; (3) allows low power television (LPTV) and TV translator stations to retain secondary status and operate in the band after the transition; (4) sets forth a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58; (5) divides the 48 megahertz of reallocated spectrum into three 12-megahertz blocks, with each block consisting of a pair of 6-megahertz segments, and two 6-megahertz blocks of contiguous, unpaired spectrum; (6) licenses the two six-megahertz blocks of contiguous unpaired spectrum and two of the three 12-megahertz blocks of paired spectrum over six Economic Area Groupings (EAGs) and the remaining 12-megahertz block of paired spectrum over 734 Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs); (7) provides for a 50 kW effective radiated power (ERP) power limit for the Lower 700 MHz Band to permit both wireless services and certain new broadcast operations; and (8) establishes competitive bidding procedures and voluntary band-clearing mechanisms for the Lower 700 MHz Band.

I. Background

1. In the *Notice of Proposed Rulemaking* (*NPRM*) (66 FR 19106, April 13, 2001) in this proceeding, the Commission proposed to reallocate and adopt service rules for the Lower 700 MHz Band as part of the ongoing conversion to DTV broadcasting. Because DTV technology is more

spectrally efficient than the current analog standard, the same amount of television service can operate in a reduced allocation. 47 U.S.C. 309(j)(14) requires the Commission to assign spectrum recovered from broadcast television using competitive bidding, and envisions that the Commission will conduct an auction of this spectrum by September 30, 2002. The statute further requires analog broadcasters to cease operation in the recovered spectrum by the end of 2006 unless the Commission extends the end of the transition. As provided in the statute, the Commission is required to extend the end of the transition at the request of individual broadcast licensees on a market-by-market basis if one or more of the four largest network stations or affiliates are not broadcasting in digital, digital-to-analog converter technology is not generally available, or 15 percent or more television households are not receiving a digital signal. While the end of the DTV transition is targeted for the end of 2006, the statute anticipates that the Commission will reclaim excess television spectrum by September 30, 2002. Therefore, the auction for this spectrum will occur a number of years in advance of the end of the digital transition.

2. The Commission previously determined that television operations can be relocated to a core spectrum (TV Channels 2–51), which will make existing broadcast spectrum on TV Channels 52–69 available for reallocation. The Commission previously reallocated TV Channels 60–69 (Upper 700 MHz Band). In this *R&O*, the Commission adopts a flexible allocation for the Lower 700 MHz Band that will allow service providers to select the technology they wish to use to provide new services that the market may demand. At the same time, it takes steps to protect incumbent broadcasters during the technically complex transition to digital broadcasting during which there will be significant interference protection issues for new licensees seeking to initiate service in the Lower 700 MHz Band.

II. Discussion

A. Spectrum Allocation Issues

1. Reallocation of the 698–746 MHz Band

3. Domestically, the Lower 700 MHz Band is currently allocated on a primary basis to non-government broadcasting. TV Channels 52–59 (each channel represents 6 megahertz of spectrum) occupy the band. TV broadcast services may also use TV subcarrier frequencies, and, more generally, their TV channels, on a secondary basis for other purposes, including datacasting. The band is further allocated to the fixed service for subscription television operations in accordance with part 73 of the Commission's rules. Internationally, the band is allocated worldwide on a primary basis to broadcasting services. The band is also allocated to fixed and mobile services in Region 2 (which includes the United States) on a secondary basis and in Region 3 on a co-primary basis. A footnote to the International Table of Frequency Allocations elevates the allocation to fixed and mobile services to primary status in the United States, Mexico, and several other Region 2 countries, but this primary allocation has yet to be implemented domestically.

4. In recent years, there has been tremendous growth in new wireless services and demand for spectrum. In previous proceedings, the Commission has noted that the propagation characteristics of the Lower 700 MHz Band are ideal for two-way mobile communications. Further, a resolution adopted at World Radiocommunication Conference-2000 (WRC–2000) recognized that some administrations may use the Lower 700 MHz Band for 3G services. At WRC–2000, the United States proposed that the Lower 700 MHz Band be identified as one of several candidate bands for the terrestrial component of new advanced communication applications. However, significant investment and planning is required by broadcasters to build new digital facilities and relocate operations. The Commission has anticipated that the band will remain principally a television band until the end of the digital transition and early recovery of additional spectrum beyond the Upper 700 MHz Band was not contemplated in the DTV transition plan. Because of the statutory requirement to auction this spectrum several years in advance of the end of the transition, the Commission balances the opportunities for new services with the challenges faced by incumbent broadcasters.

a. Fixed, Mobile, and Broadcast Allocation

5. The Commission reallocates the entire 48 megahertz of spectrum in the Lower 700 MHz Band to fixed and mobile services, and retains the existing broadcast allocation. This decision is consistent with the Commission's allocation plans as set forth in the *Spectrum Reallocation Policy Statement* (14 FCC Rcd 19868 (1999)). It is also consistent with the principles of the policy statement " that flexible allocations can promote efficient spectrum markets, which, in turn, encourages efficient use of the spectrum. Furthermore, it conforms with positions the United States has taken at the World Radio Conference (WRC). The broadcast allocation supports broadcasting that will take place during the DTV transition period (and LPTV and TV translator operations on a secondary basis for the indefinite future). It also draws on the Upper 700 MHz Band proceeding, where the Commission permitted both broadcast and advanced fixed and mobile service use of the band (with service rules that limited the power of any new broadcasting services in order to insure the protection of new wireless entrants in the band). The Commission notes that no commenter suggested an alternative basis for its allocation decision, but, instead, those who do not fully support the Commission's proposal expressed narrow technical concerns about a shared allocation as opposed to broader concerns about the overall spectrum management approach.

6. The Commission describes how the *R&O* meets several additional statutory responsibilities. 47 U.S.C. 309(j)(14) requires the Commission to reclaim and assign the Lower 700 MHz Band by competitive bidding. Furthermore, 47 U.S.C. 309(j)(3) sets forth objectives that the Commission must promote in developing our competitive bidding methodology including, *inter alia*, the development, and rapid deployment of new technologies. As in the Upper 700 MHz Band proceeding, the Commission expects many of the new technologies to be developed and deployed will support advanced wireless applications, and wants to provide licensees with the maximum opportunity to make use of these opportunities.

7. The Commission finds that the flexible use approach it is adopting is consistent with 47 U.S.C. 303(y), and meets all four of the criteria outlined in that section. 47 U.S.C. 303(y) requires the Commission to make affirmative findings that a proposed flexible use allocation (1) is consistent with international agreements; (2) would be in the public interest; (3) would not deter investment in communications services and systems, or technology development; and (4) would not result in harmful interference among users. Because the band is allocated worldwide on a primary basis to the broadcasting service, and is also allocated to the fixed and mobile services in Region 2 (which includes the United States) on a primary basis, via footnote to the International Table of Frequency Allocations, the Commission may add a fixed and mobile service

allocation to the existing broadcast allocation and be consistent with international band management plans. The Commission envisions that the existing broadcast allocation (in conjunction with the new technical rules designed to support both broadcast and fixed and mobile services) will support investment in and development of a variety of broadcast-type applications in the band, including two-way interactive services and services using coded orthogonal frequency division multiplex (COFDM) technology. These applications could include video transmissions to mobile receivers, similar to services being developed in Europe and Asia. Development of these applications, it concludes, would be in the public interest.

8. The Commission recognizes that these public interest benefits might be frustrated if broadcast and fixed and mobile services cannot successfully co-exist, and it therefore adopts technical rules that account for the differences between the services. The rules it adopts will allow the two services can co-exist without harmful interference among users and, in doing so, will not deter investment in and development of technology for the two services. The flexible use characteristic of the allocation—by which both broadcast and fixed and mobile services is allowed in the band—is identical to the approach the Commission took in the Upper 700 MHz Band proceeding.

9. The Commission prohibits licensees who acquire the reallocated spectrum from providing full-power broadcast services of the type that has traditionally been made available in this band because such high-powered broadcasting is likely to cause harmful interference and deter development of the band. Otherwise, the Commission would have to adopt interference protection criteria that would make a large portion of this band effectively unusable for those licensees who seek to offer new wireless applications. However, the approach the Commission takes also recognizes that a highly restrictive approach to broadcasting power limits would sharply limit broadcasting options for this band and would frustrate the public interest afforded by a broadcast allocation.

b. Special Considerations for Broadcast Allocation

10. At the end of the DTV transition, television broadcasting will remain adjacent to the Lower 700 MHz Band, with full power and Class A low power television stations operating on TV Channel 51. The Commission declines to adopt a guard band or other specialized mechanism to protect DTV operations on Channel 51, but instead relies on interference protection criteria to ensure that new licensees adequately protect core TV channel operations. The Commission takes this approach because the protection for Channels 52–59 is no different from the protection for the core TV channels (Channels 2–51)—only the duration of that protection differs. Accordingly, the Commission concludes that there is no basis for adopting additional protective measures at the lower end of the Lower 700 MHz Band and instead finds that the protective measures suggested by commenters are unnecessarily restrictive. Instead of making special considerations for new licensees—such as adjusting our allocation to minimize the presence of systems with low immunity to high-power signals—the Commission chooses a flexible approach and expects licensees to consider potential interference situations when designing and developing their systems. The Commission believes that bidders for this spectrum will take into account criteria established to protect the core TV channels and will develop their business plans, services, and facilities accordingly.

c. Low Power Television Service and Television Translators

11. The Commission will permit LPTV operations (which, for purposes of this proceeding, includes television translators) in the Lower 700 MHz Band after the end of the transition on a secondary basis. These stations may operate until they cause actual interference to a DTV station or new licensee and LPTV stations may negotiate interference agreements with new service providers. The Commission prohibits LPTV stations, licensed under 47 CFR 74 subpart G from causing harmful interference to stations of primary services—including new licensees in the band. (However, if a licensee who acquires Lower 700 MHz Band spectrum through the competitive bidding process opts to use the spectrum for low power digital broadcasting, such a station would have primary regulatory status.)

12. The Commission concludes that its approach appropriately balances two largely conflicting interests. 47 U.S.C. 337(e)(2) states that after allocating the Upper 700 MHz Band, the Commission ''shall seek to assure * * * that each qualifying low-power television station is assigned a frequency below 746 MHz to permit the continued operation of such station.'' However, LPTV operators in the Lower 700 MHz Band must be prepared to cease service once television Channels 52–59 are reclaimed, pursuant to 47 U.S.C. 309(j)(14), when new licensees (who will have primary status) begin using the band. Congress has recognized—and the Commission has repeatedly noted—that not all LPTV stations can be guaranteed a certain future due to the emerging DTV service, and the Commission concludes that it is inadvisable to defer the ultimate displacement of LPTV operations to the detriment of new primary service licensees in the band. To grant LPTV operations special considerations vis-à-vis new licensees would turn the concept of secondary status upside down and would retard the potential development of new and innovative services.

13. Because the overall framework for the Commission's treatment of LPTV stations was previously decided outside of this proceeding, the Commission concludes that there is no reason to modify those decisions and notes that those commenters who outline circumstances in which they believe LPTV should have greater protection do not explain how circumstances have changed since the Commission last examined the issue. LPTV licensees have been aware of their secondary status throughout the transition and LPTV entities with operations on Channels 52–59 must recognize the possibility that a primary licensee can initiate service in the band. The *DTV Sixth Report and Order* (62 FR 26684, May 14, 1997) identified the core DTV spectrum to consist of those TV channels below Channel 52 and stated that secondary operations (such as LPTV) will be able to continue to operate until a displacing DTV station or a new primary service provider is operational. The requirement to auction reclaimed spectrum has also been in place since 1997. Because of the steps it has taken to allow continued LPTV operation, including allowing LPTV licensees to remain in the band until they actually cause interference and permitting LPTV operators to negotiate with new licensees for interference protection agreements, the Commission nevertheless expects that many LPTV licensees will be able to continue to operate in the band for some time to come.

14. The Commission also rejects specific comments that suggest that some LPTV stations should receive the same protection from displacement and interference as full power television stations because of the Commission's obligations with respect to Class A status, and decides that a proposal that

out-of-core LPTV stations that are eligible for Class A status be allowed to continue operating until such a time as an in-core channel becomes available is overly broad and inconsistent with the Commission's ultimate goals for the band. Furthermore, it rejects a request to afford continued secondary status to part 74 low power broadcast auxiliary devices (such as wireless microphones) operating in the Lower 700 MHz Band, and to establish a new service in part 95 of our Rules to accommodate their use.

d. Satellite Services

15. The Commission does not include a satellite allocation in the Lower 700 MHz Band and concludes allowing satellite operations would be inconsistent with the principles of effective spectrum management in the Lower 700 MHz Band. The Commission concludes that the inherent difficulties in coordinating satellite and terrestrial services could delay or stifle the introduction of new services in this band; questions whether a flexible satellite allocation in this band could meet the statutory requirements 47 U.S.C. 303(y); and notes that current international allocations do not include satellite operations in this band.

2. Transition Issues

a. Incumbent Broadcasters

16. The Commission's treatment of issues related to incumbent broadcasters who will continue to use the band throughout the DTV transition recognizes differences between the Upper and Lower 700 MHz Bands. Early recovery of additional spectrum beyond the Upper 700 MHz Band was not contemplated in the DTV transition plan. Even with the mechanisms it adopts to encourage voluntary band clearing in both the Upper and Lower 700 MHz Bands, the Commission has never anticipated that it will be able to clear the Lower 700 MHz Band before the Upper 700 MHz Band. Because of this history, and because encumbrances in the Lower 700 MHz Band are likely to make band clearing a more complex operation, the Commission realizes that some broadcasters may have accepted an allotment in the Lower 700 MHz Band with the expectation that the band would continue to be extensively used for broadcasting throughout the transition.

17. New licensees will need to take into account the large number of digital broadcasters who will operate in the Lower 700 MHz Band during the transition. On average, there are slightly more than ten times the number of digital stations per channel on Channels 52–59 as compared to Channels 60–69. While the planning for the DTV Table of Allotments sought to minimize use of out-of-core channels, the Commission was unable to accommodate a second digital channel for all broadcasters within the ''core'' broadcast spectrum. The degree of incumbency in the Lower 700 MHz Band—consisting of both digital and analog broadcasters—is likely to make it far more difficult for new services to operate in this band, particularly in major metropolitan markets, prior to the end of the transition. The Commission notes that the degree of incumbency in the Lower 700 MHz Band underscores its obligation to fully protect incumbent full-power analog and digital broadcasters during the transition period, and the rules it adopts are designed to support this core value.

(i) Analog Stations

18. Currently, there are 94 licensed full service NTSC analog stations and seven approved analog construction permits in the Lower 700 MHz Band. Although this figure represents approximately the same number of analog incumbents as in the Upper 700 MHz Band, the Lower 700 MHz Band consists of less spectrum and, therefore, incumbent licensees are more densely situated across the band. The Commission addresses requests for new NTSC stations in the 698–746 MHz band in two parts: (1) Petitions for new allotments and (2) applications for construction permits. Some of these applications may also include requests for modifications of the allotment such as changes in frequencies to cure interference to new DTV operations or as a replacement channel for channels in the Upper 700 MHz Band (*i.e.* channels 60–69). The Commission dismisses the pending petitions for new NTSC channel allotments in the 698–746 MHz band. In this regard, it notes that its staff previously dismissed a number of petitions for rulemaking for new station allotments on channels 52–58 as defective, and petitions for reconsideration have been filed. Given its decision to dismiss all petitions on these channels, the Commission concludes that the pending petitions for reconsideration are now rendered moot and determines that they will be dismissed. The Commission concludes that beginning the process of adding new analog television allotments or stations at this stage of the transition to digital television would be inconsistent with the DTV transition process because the allotment proceedings, station authorization, and construction would likely not be completed until much later in the DTV transition. The new licensee might then have only a limited period of time to operate in analog before being required to transition to digital service. The Commission also notes that the Balanced Budget Act of 1997 requires that analog television spectrum be reclaimed for new services and concludes that adding analog allotments or stations in the 698–746 MHz band would be inconsistent with the purpose of that Act and would not foster the timely and efficient transition to digital television. The Commission notes that petitioners may, however, refile a new DTV channel allotment petition on a core channel (2–51), subject to meeting the DTV spacing requirements.

19. With regard to applications for construction permits, the Commission recognizes that parties have made investments in these applications and that they are generally further along in the regulatory process and thus could potentially provide service to the public on a more near-term basis. While it believes that these applications can be processed in a manner consistent with our DTV transition policies, the Commission does not believe that deploying service in analog format is consistent with the statutory mandate to reclaim this spectrum for new services or with its DTV transition policies. It concludes that authorizing additional analog television operations at this stage in the DTV transition so close the May 1, 2002, date when commercial broadcast stations are required to be operating on their digital allotments would be inconsistent with the goal of achieving a rapid conclusion of the transition.

20. Although the Commission does not wish to encourage the expansion of analog television service, it also notes that digital deployment on the allotments for which there are pending analog applications will introduce new digital services and will promote the acquisition of digital receiving equipment by consumers. In addition, the Commission concludes that such an approach will avoid the complications that could arise in requiring licensees to convert their analog operation to digital operation relatively soon after they commence analog operation. It also believes that new service providers may be able to co-exist more easily with digital television stations given that such stations operate with lower power and their signals may generally be less susceptible to interference than analog television signals. Accordingly, the Commission provides a 45-day opportunity for applicants to request a change in their pending applications for a construction permit or petition for rule

making. Requests to provide analog or digital service in the core spectrum will require the filing of a petition for rulemaking to amend either the TV Table of Allotments (47 CFR 73.606) or the DTV Table of Allotments (47 CFR 73.622) or an amendment to such a petition if the applicants have already filed one. The Mass Media Bureau will set forth these procedures in a soon-to-be released Public Notice. The Commission made the 45-day window effective upon release of the Commission's *R&O.* Applications can be modified in one of two ways: (1) To provide analog or digital service in the core television spectrum, *i.e.,* channels 2–51 or (2) to provide digital service in the 698–740 MHz band, *i.e.,* channels 52–58 (In this limited circumstance, the Commission will not treat these application amendments to provide digital service in channels 52–58 as new DTV allotments under 47 CFR 73.622(a)(1)). At the end of the 45-day period, the Commission will dismiss any pending application that does not meet either of the above conditions. Finally, because of the adjacent channel interference that new stations on channel 59 could cause to new licensees in the adjacent Upper 700 MHz Band, the Commission will no longer accept or grant any application for channel 59, and parties with outstanding applications that specify channel 59 and who have not yet filed a channel allotment rulemaking petition to specify another channel must do so within the 45-day period. The Commission also amends its rules to specify that petitions requesting a change in the channel of an initial DTV allotment may only be amended to specify channels 2–58.

(ii) Low Power Stations

21. At the time the *NPRM* was adopted, there were 835 licenses and 244 construction permits for LPTV operations on Channels 52–59, and an additional 607 pending applications for LPTV stations on those channels. Although the Commission recognizes that it must clear all LPTV operations from the Upper 700 MHz Band at the end of the transition, it also finds that it has additional flexibility with respect to operations in the Lower 700 MHz Band. Thus, to ensure the continuation of television service, the Commission will continue to permit LPTV and TV translator stations to request the use of channels 52–69 in order to eliminate or avoid conflicts with NTSC and DTV stations or allotments. This decision recognizes that these ''displacement relief'' stations may be in very rural areas of the country where the 700 MHz Band could be used by these stations with little chance that they would again be displaced in the near future. The Commission takes a measured approach with regard to the filing and processing of applications seeking new LPTV and TV translator stations to operate on channels 52–69. With respect to all such applications on file, namely those tendered in the August 2000 LPTV and TV translator filing window, the Commission will process these applications and, if found acceptable, grant them. The proposed channel 52–69 operations will also be authorized on a secondary basis.

22. The Commission sought an approach that will not unduly encumber the 700 MHz Band further during the DTV conversion, but will also further its desire to treat fairly all of the nearly 4,700 LPTV and TV translator applicants that filed during the August 2000 window. Accordingly, it revises its LPTV displacement relief policies and rules as follows: Future LPTV and TV translator permittees and licensees that tendered new station applications during or subsequent to the August 2000 filing window and have been authorized to operate in the 700 MHz Band (TV channels 52–69) will be entitled to displacement relief only in order to eliminate or avoid interference conflicts. Priority over pending Class A TV, LPTV or TV translator station applications will not be afforded to the displacement applications of these future LPTV or TV translator permittees or licensees solely by virtue of their authorization to operate in the 700 MHz Band. With respect to future filing windows, the Commission retains the discretion to geographically restrict or preclude altogether the filing of applications for new LPTV and TV translator stations seeking to operate on channels 52–69. The Commission will permit secondary operation of LPTV stations below channel 60 after the end of the transition.

23. Throughout the DTV and related proceedings, the Commission has recognized that the transition and reallocation of spectrum will significantly affect LPTV. It concludes that the rule changes previously adopted in the DTV proceeding, in conjunction with its decision to allow continued LPTV operations in the Lower 700 MHz Band strike the appropriate balance between facilitating the DTV transition and reallocating the spectrum as required by law, and permitting continued LPTV operations outside the core channels.

b. Interference Protection for TV Services

24. The Commission adopts the same protection criteria for analog TV stations in the Lower 700 MHz Band at it previously adopted in the Upper 700 MHz Band. Because these limits are based on the results of a thorough experimental study of land mobile interference to analog television conducted many years before the advent of digital television, the Commission concludes that they properly apply only to analog television and finds that it is not necessary or appropriate to apply the same interference protection for DTV stations in the Lower 700 MHz Band. It concludes that the D/U ratio of 17 dB for co-channel interference to digital stations should be 23 dB for protection of DTV from wideband land mobile transmissions. At the edge of the DTV (noise-limited) service area, where the DTV S/N ratio is small, the value of D/U is 23 dB for co-channel interference protection from another DTV station (*i.e.*, the desired signal must be at least 23 dB greater than the undesired signal). A wideband land mobile or digital broadcast signal will increase the noise floor for the DTV reception just as though it were a DTV transmission. Because DTV receivers treat interference from wideband co-channel signals as an increase in the noise floor of the desired signal, the Commission finds that new land mobile systems operating in the Lower 700 MHz Band employing wide band noise-like signals need to provide co-channel DTV stations with an additional 6 dB of protection. 6 dB is the difference between the D/U ratio of 17 dB that applies to the Upper 700 MHz Band and the value 23 dB that the Commission finds is necessary to fully protect DTV from wideband transmissions. The corresponding maximum field strengths are 18 dBμ and 64 dBμ respectively for co- and adjacent-channel land mobile transmissions. The Commission permits fields no stronger than these at the DTV service contour where the DTV signal strength is 41 dBμ. This criterion, the Commission concludes, will best protect existing broadcast operations.

25. The Commission concludes that its approach is warranted because the number and density of incumbent TV stations in the Lower 700 MHz Band is greater than those in the Upper 700 MHz Band and a major factor that led to the specific protection standards adopted in the Upper 700 MHz Band—the goal of maximizing the utility of the new public safety allocation—is not present in this case. The Commission also rejects a proposal to revise the

Grade B contour predictions/broadcast television protections based on new field strength measurements. The Commission concludes that any such ad hoc re-evaluation of broadcast protections could inadvertently lead to loss of service by viewers.

c. Coordination With Canada and Mexico

26. Because the United States is obligated under existing agreements to protect the signals of Canadian and Mexican TV broadcast stations located in the border areas, new licensees' use of the band will be subject to any future agreements that the United States establishes with Canada and Mexico. Until that time, new licensees in the band will be subject to existing agreements and the condition that harmful interference not be caused to, and must be accepted from, television broadcast operations in those countries.

B. Service Rules

27. The *R&O* provides the service rule decisions required by the Commission's reallocation of the Lower 700 MHz Band to fixed, mobile, and broadcast services. In the *R&O*, the Commission generally applies the part 27 licensing and operational rules that it applied previously to the spectrum band 747–762 MHz and 777–792 MHz (Upper 700 MHz Commercial Band). The Commission believes that the general application of the same part 27 licensing and operating rules to the 700 MHz Band as a whole will help promote flexible and efficient use of the spectrum. In the *Spectrum Reallocation Policy Statement*, the Commission explained that flexibility can be promoted by harmonizing the rules for like services. The Commission continues to believe that regulatory neutrality and operational uniformity across the 700 MHz Band will permit the marketplace to achieve the highest valued end use of the spectrum. These part 27 rules will enable the broadest possible use of this spectrum consistent with the spectrum management obligations and objectives identified in the Commission's *Spectrum Reallocation Policy Statement*.

28. While the Commission generally adopts the same part 27 framework established for licenses in the Upper 700 MHz Commercial Band, the Commission's service rules for the Lower 700 MHz Band also contain some distinctive elements based on its assessment of similarities and differences between these spectrum resources. These include the specific record pertaining to the band, the potential demand for these licenses, the nature of the spectrum resource (*e.g.*, propagation characteristics), statutory considerations, various external constraints (*e.g.*, degree of incumbency, scarcity of spectrum suitable for mobile applications), and several longer-term policy objectives (*e.g.*, the pace of the DTV transition, the feasibility of clearing the band). As a result, the Commission has added definitional and technical rules to part 27 to reflect what it believes to be the optimal initial scope of licenses for the Lower 700 MHz Band.

29. These service rules, along with the competitive bidding provisions that the Commission adopts in the *R&O*, derive from the Commission's statutory obligations under 47 U.S.C. 309(j). 47 U.S.C. 309(j)(3) outlines a number of public interest objectives that the Commission must consider when establishing the characteristics of licenses that are to be assigned by competitive bidding and designing auction systems. These statutory objectives include the development and rapid deployment of new technologies, products, and services for the benefit of the public, the promotion of economic opportunity and competition, the recovery of a portion of the value of the spectrum made available for commercial use, and the efficient and intensive use of the spectrum. Further, 47 U.S.C. 309(j)(14)(c) directs the Commission to reclaim, reorganize, and auction this spectrum well before broadcasters are required to vacate the band at the end of the DTV transition period. The Commission believes that adopting flexible, market-based service rules is the most appropriate approach for implementing its 47 U.S.C. 309(j) statutory directives.

1. Scope of Licenses

30. The *NPRM* sought comment on the three sets of issues that define the scope of licenses for the Lower 700 MHz Band: the permissible licensed services, the size of spectrum blocks, and the size of licensed service areas. By these decisions, the Commission seeks to define an initial scope of licenses that can be obtained and used by a wide range of entities and services. It is the Commission's intent that market forces assign this spectrum to its highest valued use and thereby determine the ultimate use of the band.

a. Permissible Licensed Services

31. The Commission will apply § 27.2 of its rules to define the permissible communications for the Lower 700 MHz Band and allow a multitude of fixed, mobile, and broadcast uses that the market may demand. Because the Commission has declined to reallocate the Lower 700 MHz Band for satellite use, the *R&O* does not consider service rules for the deployment of satellite operations on this band. Consistent with the Commission's *Spectrum Reallocation Policy Statement*, this flexible use approach will allow the provision of services to the public that could include mobile and other digital new broadcast operations, fixed and mobile wireless commercial services (including Frequency Division Duplex (FDD) and Time Division Duplex (TDD) based services), as well as fixed and mobile wireless uses for private, internal radio needs. The record in this proceeding demonstrates demand for expanded wireless services in the Lower 700 MHz Band, particularly in non-urban areas, for uses ranging from the implementation of next generation applications and extensions of existing mobile and fixed networks to the implementation of various innovative stand-alone technologies. It also demonstrates demand for certain broadcast and other broadband applications that could include two-way interactive, cellular, and mobile television broadcasting services. The Commission therefore declines to exclude all broadcast services and will instead allow any broadcast services that meet its part 27 technical rules. These technical rules will provide opportunities for existing broadcasters and others who wish to operate certain new digital television services in the Lower 700 MHz Band. The Commission does not wish to exclude competitors by adopting use restrictions on spectrum with characteristics suitable for new broadcast, wireless, and broadband services.

32. This decision will permit market forces to effectively assign spectrum to its highest valued use as well as meet the Commission's statutory mandate under 47 U.S.C. 303(y) to ensure harmful interference will not result from the permitted flexibility. As part of the Commission's commitment to establish maximum practicable flexibility for services, the Commission has determined and lessened the potential for interference by the Commission's power limit and other technical decisions set forth in the *R&O*. The Commission believes this approach affords maximum flexibility while promoting efficient use of scarce spectrum and preventing harmful interference between mobile wireless and broadcast applications using a variety of different technologies.

b. Band Plan

33. The Commission adopts a band plan that divides the 48 megahertz of

reallocated spectrum into three 12-megahertz blocks, with each block consisting of a pair of 6-megahertz segments, and two 6-megahertz blocks of contiguous, unpaired spectrum. The Commission's decision to institute multiple paired and unpaired blocks in a combination of sizes and pairings accommodates the proposals of nearly all of the parties participating in this proceeding. Although two commenters advocated a larger initial allocation per spectrum block, their recommended sizes were not significantly larger than 12 megahertz. The block sizes that the Commission adopt, therefore, should not burden their attempts to acquire more than 12 megahertz of spectrum in any given area. Moreover, the Commission's decision not to apply any spectrum aggregation limits to the Lower 700 MHz Band will permit parties seeking larger blocks to aggregate spectrum both at auction and in the secondary market.

34. The size and placement of the five blocks reflect several important spectrum management considerations. Each of these blocks corresponds with either one or two 6 megahertz television channels. The Commission agrees that this will facilitate use of the Lower 700 MHz Band by analog and digital broadcasters as well as a variety of fixed and mobile wireless services. In addition, this alignment will minimize the number of incumbent television licensees to which a new Lower 700 MHz Band licensee's operations would potentially cause interference.

35. Placing the two unpaired 6-megahertz blocks at the center of the band plan has several advantages. It provides an opportunity for licensees to aggregate both licenses and thereby offer services with very wide emission types that may require more than 6 megahertz of contiguous spectrum. Centering these two blocks also results in 30-megahertz separation between the upper and lower segments of the 12-megahertz paired licenses. Such separation is consistent with licenses in the Upper 700 MHz Commercial Band and meets the requirements of many two-way technologies and equipment.

36. Finally, the size and nature of each paired segment should make those portions of the spectrum equally suitable to firms employing technologies that rely on unpaired spectrum, as well as firms seeking to launch certain new broadcast operations. Each segment consists of 6 megahertz of contiguous spectrum, an amount cited by both broadcast interests and TDD advocates as instrumental to their operations. In addition, all six segments are symmetric in size and will be subject to power limits based on usage rather than frequency, an approach that was adopted for the Upper 700 MHz Commercial Band in the *Upper 700 MHz MO&O and FNPRM.* By not imposing different restrictions on operations in upper versus lower segments, the Commission increases the potential use of these segments by new technologies and new service providers that do not rely on paired spectrum.

37. This flexible band plan offers five licenses in any given area that are of sufficient bandwidth to permit a variety of services. The Commission has considered commenters' desires for multiple blocks by adopting smaller blocks of spectrum. The Commission has balanced this demand, however, against its goal of enabling new broadband services and advanced wireless services on spectrum with propagation characteristics well suited for such applications. Although it acknowledges that encumbrances by broadcasters may preclude such services in the near term, the Commission is committed to reorganizing the spectrum in such a way that its bandwidth assignments, at a minimum, can eventually support the deployment of the new technologies and services that it is bound to promote by statute

38. As compared to smaller block sizes, the Commission believes that 12 megahertz paired blocks are required to afford sufficient capacity for the provision of many new services. Accordingly, the Commission has adopted three 12-megahertz paired blocks to provide opportunities for augmentation of existing systems, especially CMRS systems, as well as for new systems. The Commission also believes that 12-megahertz licenses could in some cases facilitate band clearing and new licensees' use of the Lower 700 MHz Band during the DTV transition.

39. In addition to the three 12-megahertz paired blocks, the Commission has adopted two 6-megahertz unpaired blocks because it believes they add flexibility to the band plan while offering the minimum capacity for the provision of additional new services, including certain broadband services. The Commission finds that a combination approach is appropriate given the interest in small spectrum block sizes, the support by broadcasters for 6-megahertz blocks, and the *R&O*'s technical rule decisions that permit certain new broadcast operations in the Lower 700 MHz Band. In addition, a 6-megahertz contiguous block of spectrum is sufficient to allow for development and deployment of certain services including new broadcast services and fixed and mobile wireless services that do not depend on paired frequencies.

40. In providing a flexible band plan with multiple spectrum blocks and small sizes, the Commission presents ample opportunities for participation by rural telephone companies and small businesses. The Commission therefore declines to set aside 10 to 12 megahertz in each geographic licensing area for designated entities. As opposed to restricting certain firms' access to spectrum, the Commission has created five smaller spectrum licenses in each geographic area of the United States.

c. Size of Service Areas for Geographic Area Licensing

41. The Commission adopts a geographic area licensing approach to assign licenses in the Lower 700 MHz Band. This is consistent with the Commission's past experience that geographic area licensing, as compared to site-specific licensing, offers licensees superior flexibility to respond to market demands.

42. Regarding the size of each service area for geographic licensing, the Commission has determined that the most appropriate configuration for the Lower 700 MHz Band is based on a combination of large regional areas and small geographic areas. The Commission therefore will license the five blocks in the Lower 700 MHz Band plan as follows: the two 6-megahertz blocks of contiguous unpaired spectrum, as well as two of the three 12-megahertz blocks of paired spectrum, will be assigned over 6 EAGs as defined in the Upper 700 MHz Band proceeding; the remaining 12 megahertz block of paired spectrum (designated as Block C) will be licensed over 734 MSAs and RSAs originally adopted for the cellular radiotelephone service with modifications for cellular market 306, which covers the Gulf of Mexico, and for all MSAs and RSAs that border the Gulf. *See* 47 CFR 27.6(c).

43. The Commission's assignment of 36 megahertz of spectrum in this band over EAGs complements the approach used for the Upper 700 MHz Commercial Band. As the Commission observed in the Upper 700 MHz Band proceeding, EAGs can provide licensees significant flexibility to address issues associated with protection of incumbent TV stations. The Commission believes that certain interference risks are offset by avoiding the need for complicated agreements that could arise if spectrum were licensed in smaller areas where several geographic service areas could overlap a TV protection zone.

44. The use of EAGs establishes an initial license scope that provides flexibility and opportunities for a wide variety of fixed, mobile, and new broadcast services. In the Upper 700 MHz Band proceeding, the Commission noted that the ability to build nationwide service was an important advantage of EAGs, along with the opportunity EAGs offer providers to achieve economies of scale in their operations. Such efficiencies have allowed providers to offer or expand innovative pricing plans such as one-rate type plans, which in turn reduce prices to consumers. Licensees may, therefore, use EAGs to build larger, even nationwide footprints.

45. Despite the efficiencies associated with nationwide service, however, the Commission believes the use of EAGs is preferable to the assignment of nationwide service areas. The vast majority of commenters recommend using much smaller geographic areas, and only two commenters recommend assigning any portion of this spectrum across a nationwide service area. Using EAGs instead of nationwide license areas facilitates the acquisition of spectrum by different providers with spectrum needs that are confined to their particular region or market. As the Commission observed in the Upper 700 MHz Band proceeding, EAGs are easier to partition than nationwide licenses, which also may help serve the needs of regional providers. Furthermore, the Commission believes aggregating EAGs into nationwide areas is an administratively straightforward process, and the Commission notes that this may be simplified through the auction process. While any type of aggregation is not without cost, the Commission believes that such costs are outweighed by the significant benefits associated with use of large regional areas, such as EAGs.

46. The Commission's assignment of a 12-megahertz block of paired spectrum, 25 percent of the Lower 700 MHz Band spectrum, over MSAs/RSAs reflects its desire to promote opportunities for a wide variety of applicants, including small and rural wireless providers, to obtain spectrum. This is consistent with the Commission's congressional mandate to promote ''economic opportunity and competition'' and to disseminate licenses ''among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' 47 U.S.C. 309(j)(3)(B). In contrast to the Commission's experience in the Upper 700 MHz Band proceeding, many commenters in this proceeding favor geographic areas that are smaller than the 6 EAGs used for the Upper 700 MHz Commercial Band. Licensing a portion of the Lower 700 MHz Band over these small geographic areas balances the playing field such that small and rural providers will have an opportunity to participate in the auction and the provision of spectrum-based services. The Commission believes that a combination of large and small geographic service areas best accomplishes these various statutory objectives.

47. The Commission, therefore, recognizes the importance to small and regional providers of licensing a significant portion of this spectrum band across MSAs and RSAs. The propagation characteristics of the spectrum in this band make it conducive to business models that are built on serving consumers over a large area. The Commission concludes that MSAs and RSA are the appropriate size for small geographic licenses based on the record in this proceeding, which indicates a strong preference for these areas over, for example, EAs or MEAs. MSAs and RSAs represent known area sizes to many business entities, especially small regional and rural providers. These smaller areas also may correspond to the needs of many customers, including customers of small regional and rural providers. Specifically, MSAs and RSAs represent areas over which many customers may desire to receive the majority of their wireless or broadcast-type services and thus can be the focus of smaller carriers that do not wish to bid on or provide service to larger regions. Assigning a portion of the Lower 700 MHz Band across MSAs and RSAs may allow licensees to focus on consumers that seldom travel outside of these geographic areas and that do not place a high value on roaming or long distance services. While some commenters recommend that all of the spectrum in this band be allocated to such small areas, the Commission declines to take such an approach. As the Commission noted in the *Spectrum Reallocation Policy Statement*, it seeks to make this spectrum available for use by a variety of new technologies and providers. The Commission believes that a combination of large and small geographic service areas, rather than an assignment comprised only of small service areas, best accomplishes these goals.

2. Technical Rules

48. In the interest of maximizing spectrum use, all new broadcast and fixed and mobile wireless operations in the Lower 700 MHz Band will be governed generally by the flexible technical standards contained in part 27 of the Commission's rules. Licensees are subject, therefore, to part 27's provisions relating to equipment authorization, frequency stability, antenna structures and air navigation safety, international coordination, disturbance of AM broadcast station antenna patterns, and protection from interference. *See* 47 CFR 27.51, 27.54, 27.56, 27.57, 27.63, 27.64. Although part 27 provides an appropriate technical framework for the development of both wireless and new broadcast services, the Commission has revised certain provisions as they apply to the Lower 700 MHz Band so as to promote greater flexibility in the choice of licensed services.

a. Power Limits and Related Requirements

(i) Power Limits

49. For all services operating in the Lower 700 MHz Band, the Commission adopts a maximum power limit of 50 kW ERP subject to specific requirements regarding non-interference. Specifically, for those services operating base or fixed stations at power levels greater than 1 kW ERP, the Commission adopts a power flux density (PFD) standard as a way to address the interference potential, as well as a general notification requirement. Following the approach adopted for the Upper 700 MHz Commercial Band, the Commission adopts a maximum power limit of 30 watts ERP for mobile and control stations, and 3 watts ERP for portable (hand-held) devices. In addition, all operations 1 kW ERP or below will be subject to previously established requirements governing antenna height above average terrain (HAAT).

50. The Commission's choice of a 50 kW maximum ERP limit will promote efficiency and maximize flexibility to the extent practicable by allowing the greatest number of different services to co-exist—and to serve more consumers—subject only to reasonable standards for non-interference. The Commission believes such a power limit will produce the most efficient use of this spectrum resource. The Commission disagrees with comments suggesting that use of this spectrum should be limited to wireless applications, or that the 1 kW limit applied to the Upper 700 MHz Commercial Band should be applied to the Lower 700 MHz Band. In the Lower 700 MHz Band, unlike the Upper 700 MHz Band, there is no issue regarding the need to protect public safety

spectrum from interference. In addition, the Commission has been able to adopt 6 and 12 megahertz blocks for the Lower 700 MHz Band, a band plan that more readily accommodates new broadcast services. The Commission notes that providers of non-broadcast services may also operate at power levels up to 50 kW ERP, provided they comply with the same technical requirements associated with such operation. The Commission believes that to promote flexibility and efficiency, it is important to create a consistent set of technical rules for all services operating in this band.

51. The Commission recognizes that establishing a power limit in excess of 1 kW ERP creates the potential for stations operating at such power levels to cause interference to systems on adjacent channels, especially those that operate at lower power levels. However, the Commission believes that any risk that such interference will be harmful can be mitigated so as not to outweigh the added flexibility that is afforded by the higher power limit. Accordingly, in order to limit such interference and to make the various services compatible, the Commission imposes the following requirement on licensees operating at higher power levels: Licensees operating base stations at power levels in excess of 1 kW ERP must design their systems such that transmissions from their base station antenna produce PFD levels that are no greater than the PFD levels that would ordinarily occur from stations operating at power levels of 1 kW ERP or less. Specifically, the Commission will require licensees operating base stations at power levels greater than 1 kW ERP to limit the calculated PFD of the signal from their base station to 3000 microwatts per square meter at any location at ground level within 1 km of their base station transmitter.

52. This PFD standard will minimize the likelihood of adjacent channel interference to ground-based devices by effectively limiting the energy received by such devices to levels no greater than what they would receive from adjacent channel base stations operating at 1 kW ERP or less. For UHF operations, antenna height tends to be a more important variable than output power in causing/mitigating interference, so the effect of a 50 kW ERP signal on adjacent channel devices operating on the ground will be minimized given the tower heights likely to be used. The Commission has provided calculations that demonstrate, for example, how 50 kW ERP, high antenna broadcast operations can co-exist with lower-power/low antenna height land mobile operations.

53. The Commission believes that current technologies reasonably and practically allow certain measures to limit interference among various services that may be provided in this band. The Commission provides a table that describes the potential for interference that may be caused by a base station operating at 50 kW ERP to a nearby, adjacent channel base station receiver. Based on these sample computations, the Commission concludes that a licensee operating a base station receiver could mitigate potential harmful interference through use of a selective vertical antenna pattern or by downtilting of its receive antenna. In addition to these antenna selections or adjustments, a licensee could mitigate interference through use of improved filtering, by avoiding the use of spectrum at the edge of its authorized block, or through other measures. In any bid for a license within this band, the Commission expects that prospective licensees will take into account any costs that may be necessary to incorporate technical features to alleviate interference issues if adjacent channel licensees operate systems at power levels greater than 1 kW ERP.

54. The Commission will not, however, permit broadcasting at power levels higher than 50 kW (*e.g.*, conventional full-power broadcasting under part 73). As the Commission found for the Upper 700 MHz Commercial Band, the contrasting technical characteristics of broadcasting at these higher power levels and wireless services effectively preclude the development of interference rules that would enable the practical provision of both sets of services on this spectrum. Spectrum for full-power terrestrial broadcast television service has been provided on Channels 2–51. Since the adoption of the *Upper 700 MHz First Report and Order*, the Commission has received no convincing evidence that contradicts its finding that part 73 full-power broadcasting is too different technically from fixed and mobile commercial wireless services to permit a spectrum-efficient co-existence of these services in the Lower 700 MHz Band. Those commenters who believe that these two services may coexist do not provide any specific engineering proposals and only offer generalized assertions that maximum flexibility should be ensured. Maximizing flexibility without due consideration of harmful interference is not in the public interest. Accordingly, the Commission concludes that a 50 kW ERP limit is practicable for maximizing both flexibility and freedom from harmful interference for the widest number of potential users.

55. The Commission declines to adopt a proposal to let licensees increase their power above 50 kW ERP within their service areas provided they do not cause co- or adjacent-channel interference to other users. The Commission is concerned that this additional flexibility will result in uncertainty as to how all potentially affected licensees (both co- and adjacent-channel) are made aware of a licensee's proposed higher-power and whether these licensees have consented to such operation.

(ii) Notification Requirement

56. In the *NPRM*, the Commission requested comment on how innovative service rules can maximize use of this spectrum by different services. To facilitate licensees' use of spectrum and prevent harmful interference, the Commission will require licensees intending to operate base or fixed stations in excess of 1 kW ERP to file notifications with the Commission and provide notifications to all part 27 licensees authorized on adjacent blocks in their area of operation. When applicable, this requirement includes notification to part 27 commercial and guard band manager licensees operating on Channel 60 (746–752 MHz) in the Upper 700 MHz Band. The Commission shall require a licensee intending to operate a higher-power base or fixed station to provide notifications to all adjacent channel part 27 licensees authorized to construct and operate base or fixed stations within 75 km of the higher-power base or fixed station. Licensees filing notifications with the Commission and adjacent channel licensees must provide the location and operating parameters of all base and fixed stations operating in excess of 1 kW ERP. *See* 47 CFR 27.50(c)(5). Such notification must be filed with the Commission and adjacent channel licensees at least 90 days prior to the commencement of station operation. Licensees operating at or below the 1 kW ERP will not be subject to this requirement.

57. This action will ensure that licensees will be notified that their base, fixed, mobile, or portable receivers could be situated in the vicinity of an adjacent channel, high-powered base or fixed station. As discussed in the *R&O*, the Commission has concluded that, under appropriate regulations, a 50 kW ERP limit can be permitted without causing harmful interference among adjacent channel broadcasting and wireless operations. This notification requirement provides an opportunity for licensees to take steps to mitigate

potential interference to their stations—*e.g.*, by employing filters or modifying base station vertical attenuation patterns. In addition to notification, the Commission believes that licensees could employ voluntary coordination to prevent harmful interference.

(iii) RF Safety

58. The Commission will require transmitting facilities and devices in the Lower 700 MHz Band to comply with the existing RF safety criteria identified in § 27.52 of the Commission's rules. *See* 47 CFR 27.52. The Commission has provided guidance on complying with its RF safety exposure limits in OET Bulletin No. 65. The Commission is adopting these RF safety thresholds for this band because the Commission regards them to be essential for the protection of human beings from exposure to radiated RF energy.

b. Co-Channel Interference Control

59. Consistent with the Commission's intent to maximize spectrum use through application of flexible technical standards, the Commission is adopting a field strength limit to address co-channel interference in the Lower 700 MHz Band. The Commission agrees that a field strength limit provides established, objective criteria for licensees to understand the co-channel interference environment in which to construct and operate facilities in the geographic edges of their service areas. The Commission is not adopting a general coordination approach because, as it determined in the Upper 700 MHz Band proceeding, such an approach could impose unnecessary coordination costs for facilities and could lead to possible anti-competitive activities.

60. The Commission adopts for the Lower 700 MHz Band a field strength limit of 40 dBuV/m, the same field strength limit the Commission adopted for the Upper 700 MHz Band and the 800 MHz EA-based and 900 MHz MTA-based SMR services. *See* 47 CFR 27.55(a). The Commission believes that using the same field strength limit that it adopted for these other bands will enable licensees in the Lower 700 MHz Band, including new broadcast providers, to provide effective service within their authorized geographic area, while minimizing co-channel interference to co-channel licensees in adjacent areas. The Commission also notes that § 27.55(a) of the Commission's rules permits licensees, pursuant to mutual agreement, to use a different field strength limit. This will provide licensees with increased flexibility in implementing their systems without increasing the risk of harmful interference.

c. Out-of-Band Emission Limits

61. The Commission has determined that licensees operating in the Lower 700 MHz Band should be required to attenuate the power below the transmitter power (P) by at least 43 + 10 log (P) dB for any emission on all frequencies outside the licensee's authorized spectrum. The Commission adopts this standard consistent with the requirements for many of the Commission's radio services, including services in the Upper 700 MHz Commercial Band, which limits out-of-band emissions (OOBE) to no more than 50 microwatts (50 μW) of transmitter output power over a typical instrument measurement bandwidth. The Commission notes one commenter's preference for a stricter limit, but determines that in the absence of data and other support from the many parties to this proceeding, it should not increase OOBE limits given the potential adverse effects that may result on the commercial usefulness of the spectrum.

62. Although the Commission adopted an additional 76 + 10 log P dB limit to apply to OOBE of Upper 700 MHz commercial licensees that might fall within the Upper 700 MHz public safety bands, the Commission sees no need to apply this requirement to licensees in the Lower 700 MHz Band. Given the 18 megahertz of separation between the Lower 700 MHz Band and the Upper 700 MHz spectrum set aside for public safety, the Commission believes that public safety will be adequately protected by the attenuation limits the Commission has imposed on use of the Lower 700 MHz Band.

3. Licensing Rules

63. By its decisions in the *R&O*, the Commission will generally apply part 27's existing rules on applications and licenses to all fixed, mobile, and new broadcast services offered in the Lower 700 MHz Band. The part 27 rules that address applications and licenses provide a licensing framework for the common elements of regulation that are applicable to wireless and new broadcast services alike. Section 27.3 provides for the potential application of specific licensing provisions contained in other parts of the Commission's rules to the extent that they do not conflict with the supervening application of part 27. *See* 47 CFR 27.3. Therefore, a Lower 700 MHz Band licensee could be subject, for example, to licensing aspects of part 22 if providing public mobile services, to part 73 if providing radio broadcast services, to part 90 if providing private land mobile radio services, and to part 101 if providing fixed microwave services.

64. The Commission finds that the application of part 27 licensing rules permits the flexible use necessary for the variety of services that are permitted by the band's reallocation. The Lower 700 MHz Band, like the Upper 700 MHz Band, is being reclaimed as part of the DTV transition and reallocation for uses that include both broadcast and non-broadcast operations. Part 27 allows licensees to make determinations respecting the services provided and technologies to be used, including provision of the full range of FDD- and TDD-based wireless services, as well as possible new broadcast services. Applying the licensing rules of part 27 will promote innovative services and encourage the efficient use of the 700 MHz Band as a whole.

a. Regulatory Status

65. The Commission agrees with the commenters and finds that a part 27 approach is likely to achieve efficiencies in the licensing and administrative process. Consistent with § 27.10 of the Commission's rules, Lower 700 MHz Band licensees will be permitted to provide any combination of services anywhere within their licensed areas at any time, consistent with the regulatory status specified by the licensee on its FCC Form 601 (*i.e.*, common carrier, non-common carrier, private internal communications, and/or broadcast services) and with applicable interference protection requirements. Licensees operating in the Lower 700 MHz Band are subject to other FCC rule parts depending on the regulatory status of the services provided. *See generally* 47 CFR 27.3. For example, providers of CMRS must comply with applicable sections of Title II of the Communications Act, which governs common carrier service, as well as part 20 of the Commission's rules. To fulfill the Commission's enforcement obligations and ensure compliance with the statutory requirements of Titles II and III of the Communications Act, the Commission will require all Lower 700 MHz Band licensees to identify the service(s) they seek to provide. Consistent with § 27.10 of the Commission's rules, licensees in the Lower 700 MHz Band will not be required to describe the specific services they seek to provide, but only to designate the regulatory status of the service(s). Licensees will also be required to notify the Commission within 30 days of service changes that alter their regulatory status. Pursuant to

§ 27.66 of the Commission's rules, when the change results in the discontinuance, reduction, or impairment of the existing service, a different approach may apply, depending on the nature of the service affected.

66. With respect to the provision of broadcast services, the Commission is adopting the same regulatory approach for the Lower 700 MHz Band as it employed for the Upper 700 MHz Commercial Band. In the *Upper 700 MHz First Report and Order*, the Commission determined that the provision of new broadcast-type services under a part 27 license does not alter the underlying broadcast nature of such services. However, in the *Upper 700 MHz MO&O and FNPRM*, the Commission declined to apply the part 73 regulatory regime to part 27 new broadcast-type licensees in the Upper 700 MHz Commercial Band, stating that it would determine the applicable regulatory framework in the context of the offering of specific, actual new broadcast-type services. The Commission adopts this approach for the Lower 700 MHz Band and will allow any new broadcast services that meet the Commission's part 27 power limits and other technical standards. New broadcast services offered under part 27 will remain subject to the statutory provisions of the Communications Act governing broadcasting and the Commission will determine the applicability of additional provisions from part 73 on a case-by-case basis.

67. Consistent with the approach taken for the Upper 700 MHz Commercial Band, the Commission is permitting private radio uses in the Lower 700 MHz Band. In auctioning recaptured broadcast spectrum subject to 47 U.S.C. 309(j)(14), Congress did not preclude use of the spectrum for private, internal communications. The Commission's reallocation of the Lower 700 MHz Band, therefore, includes the ability to provide private fixed and mobile radio services.

b. Eligibility; Foreign Ownership Restrictions

68. Consistent with the Commission's tentative conclusion in the *NPRM*, the Commission will apply § 27.12's eligibility provisions to the Lower 700 MHz Band. *See* 47 CFR 27.12; *see also id.* § 27.302. As the Commission determined for the Upper 700 MHz Commercial Band, the Commission believes that the benefits of open eligibility also apply to the Lower 700 MHz Band. The Commission agrees that open eligibility will enhance the opportunities for licensees to provide service in any market or combinations of markets. A policy of open eligibility for the Lower 700 MHz Band will best serve the public interest by encouraging entrepreneurial efforts to develop new services and ensuring the most efficient use of the spectrum.

69. Because the Commission is adopting a flexible approach to regulatory status, all licensees will be subject to the same requirements to file changes in foreign ownership information to the extent required by the part 27 rules. In light of a part 27 licensee's ability to provide common carrier, non-common carrier, private internal communications and/or broadcast services, the part 27 rules require all licensees to report alien ownership to enable the Commission to monitor compliance. By establishing parity in reporting obligations, however, the Commission does not establish a single substantive standard for compliance. A non-broadcast applicant requesting authorization only for non-common carrier or private radio services will be subject to 47 U.S.C. 310(a) but not to the additional prohibitions of 47 U.S.C. 310(b). An applicant requesting authorization for new broadcast or common carrier services will be subject to both 47 U.S.C. 310(a) and 47 U.S.C. 310(b). Regarding foreign ownership of common carrier licenses under 47 U.S.C. 310(b)(4), the Commission will continue to apply the foreign ownership precedent set forth in prior Commission decisions.

c. Spectrum Aggregation Limits

70. The Commission will impose no specific limitations on the aggregation of spectrum in the Lower 700 MHz Band. Consistent with the Commission's *Spectrum Cap Report and Order* (67 FR 1626, January 14, 2002) the Commission believes entities should have the flexibility to aggregate Lower 700 MHz spectrum subject only to its 47 U.S.C. 310(d) public interest review.

71. Accordingly, the Commission will not adopt any Lower 700 MHz in-band or 700 MHz cross-band aggregation limits. The Commission agrees that parties should be afforded flexibility at auction or in the secondary market to aggregate sufficient unencumbered spectrum and to commence new services. The Commission recognizes that a single entity could acquire all 48 megahertz of the Lower 700 MHz Band spectrum in any given geographic area. The Commission believes, however, that given the high level of incumbency in the band and the need for flexibility to engineer around incumbent broadcasters, certain aggregations of spectrum may be in the public interest.

72. The Commission has also determined that the Lower 700 MHz Band should not be subject to any out-of-band aggregation limits, including the CMRS spectrum cap. The Commission disagrees with claims that exempting this band from the spectrum cap would lead to excessive concentration of spectrum in the hands of mega-carriers. Given the additional flexibility the Commission is permitting for the provision of new broadcast services, it is not clear that this spectrum will be used for CMRS. In addition, the Lower 700 MHz Band spectrum is significantly encumbered and is likely to remain so during the DTV transition, especially by the operations of DTV incumbents who await relocation to the core DTV spectrum. Thus, compared to the Upper 700 MHz Commercial Band, there is even less reason to extend the spectrum cap to the Lower 700 MHz Band. Moreover, to count this spectrum against the spectrum cap would be inconsistent with the Commission's decision to sunset the cap three months after the statutory deadline for auctioning Lower 700 MHz Band licenses.

d. License Term; Renewal Expectancy

73. Consistent with § 27.13(b) of the Commission's rules, the Commission is establishing a license expiration date of January 1, 2015 for Lower 700 MHz Band licenses. Because licensees need additional time to develop and use this spectrum in light of its continued use by incumbent broadcasters, the Commission has set an expiration date that is eight years after the earliest date that incumbent broadcasters may be required to vacate the Lower 700 MHz Band. The Commission is setting a definite license term that terminates January 1, 2015. The Commission believes that eight additional years will provide new licensees a reasonable period in which to comply with the performance requirements set forth in the *R&O*. If the continued presence of a substantial number of incumbents remains beyond this date, the Commission will consider whether extensions are warranted at that time. For licensees that elect to commence new broadcast operations prior to January 1, 2007, their renewal deadline will be set at the end of an eight-year term following commencement of such broadcast operations.

74. The Commission also is adopting the right to a renewal expectancy established in § 27.14(b), 47 CFR 27.14(b), for non-broadcast services. To claim a renewal expectancy, a Lower 700 MHz Band renewal applicant involved in a comparative renewal

proceeding must demonstrate, at a minimum, the showing required in § 27.14(b) of the Commission's rules. In the event that a license is partitioned or disaggregated, the Commission will permit any partitionee or disaggregatee to hold its license for the remainder of the original licensee's license term and obtain a renewal expectancy on the same basis as other licensees in the Lower 700 MHz Band. All licensees meeting the Lower 700 MHz Band's performance requirements will be deemed to have met this element of the renewal expectancy requirement regardless of which of the construction options the licensee has chosen.

e. Performance Requirements

75. Consistent with the Commission's approach towards the Upper 700 MHz Commercial Band, the Commission will apply the construction requirement in § 27.14(a) of the Commission's rules to the Lower 700 MHz Band. *See* 47 CFR 27.14(a). Accordingly, a licensee must provide ''substantial service'' to its license service area no later than the end of its license term.

76. Section 27.14(a)'s construction requirement provides the flexibility required to accommodate the new and innovative services that are permitted by the Lower 700 MHz Band's reallocation. The substantial service standard is particularly appropriate for the Lower 700 MHz Band given the highly-encumbered nature of this particular spectrum. The Commission disagrees with those commenters that advocate stricter standards such as an unserved area approach. Because new licensees in different geographic areas will not be similarly situated due to the varying levels of incumbency, specific benchmarks for all new licensees would be inequitable. In contrast, the substantial service standard provides the Commission with flexibility to consider the particular circumstances of each licensee and how the level of incumbency has had an impact on the licensee's ability to build-out and commence service in its licensed area.

77. The Commission adopts the following safe harbors for licensees in the Lower 700 MHz Band to demonstrate substantial service: (1) The construction of four permanent links per one million people in the licensed service area of a licensee that chooses to offer fixed, point-to-point services; (2) the demonstration of coverage for 20 percent of the population of the licensed service area of a licensee that chooses to offer fixed, point-to-multipoint services; and (3) the demonstration of coverage for 20 percent of the population of the licensed service area of a licensee that chooses to offer mobile services.

f. Partitioning and Disaggregation

78. The Commission will permit licensees in the Lower 700 MHz Band to partition their service areas and to disaggregate their spectrum in accordance with § 27.15 of the Commission's rules. *See* 47 CFR 27.15. Compared to an approach that restricts such transfers in the secondary market, the Commission believes that permitting partitioning and disaggregation in the Lower 700 MHz Band improves smaller entities' ability to overcome barriers to entry. The Commission does not agree with certain commenters that allowing licensees to partition and/or disaggregate their licensed spectrum fails to provide opportunities for small entities to enter and compete. As a part of the Commission's broader policy to facilitate efficient use of spectrum by its highest valued use, these allowances provide a mechanism by which all parties, including small businesses and rural telephone companies, can negotiate agreements to modify the geographic or spectral scope of any given license in the Lower 700 MHz Band. The Commission's decisions to adopt multiple blocks of spectrum and MSA/RSA-based service areas for 25 percent of the spectrum are specifically designed to identify an efficient starting point for small entities in this band.

79. A number of commenters recommend that the Commission permit spectrum leasing in the Lower 700 MHz Band. The Commission finds that a Lower 700 MHz Band licensee's right to lease its spectrum usage rights will be subject to decisions the Commission make in the Secondary Markets proceeding.

4. Operating Rules

80. The Commission has considered operating rules for a full range of possible licensees in the Lower 700 MHz Band and believe part 27 provides an appropriate licensing framework for this spectrum. The part 27 rules provide for the potential application of specific operating provisions contained in other parts of the Commission's rules. *See* 47 CFR 27.3.

a. Forbearance

81. The Commission declines to adopt additional forbearance initiatives in this proceeding. Although the Commission solicited comment on the proper application of the Commission's forbearance authority with respect to the Lower 700 MHz Band, the Commission received no comments on the appropriate interpretation of the forbearance criteria in this context and only general proposals concerning additional forbearance from regulatory provisions applicable to service providers operating on this spectrum. The Commission continues to invite suggestions on ways in which it can alleviate or streamline regulations that would otherwise be applicable to Lower 700 MHz Band services.

b. Equal Employment Opportunity

82. Consistent with the approach adopted in the *Upper 700 MHz First Report and Order*, the Commission finds that an applicant's Equal Employment Opportunity (EEO) requirements will depend on the type of service the applicant chooses to elect on its FCC Form 601. As explained in the *R&O*, the Commission's FCC Form 601 enables an applicant to choose one, or several, regulatory statuses, including common carrier, non-common carrier, private internal communications and/or broadcast services. All CMRS providers are subject to the Commission's EEO requirements in §§ 22.321 and 90.168 of the Commission's rules. The Commission also notes that CMRS providers are generally subject to the Commission's common carrier EEO obligations. *See* 47 CFR 1.815.

83. A licensee that provides broadcast service will be subject to the EEO rules contained in § 73.2080 of the Commission's rules. The U.S. Court of Appeals for the D.C. Circuit held a portion of the broadcast EEO rule unconstitutional and vacated the rule in *MD/DC/DE Broadcasters Associations v. FCC* (236 F.3d 13 (D.C. Cir.), *rehearing denied*, 253 F.3d 732 (D.C. Cir. 2001), *pet. for cert. filed, MMTC v. MC/DC/DE Broadcasters Ass'n*, No. 01–639 (October 17, 2001)). The Commission thereafter suspended the EEO program requirements (but not the nondiscrimination requirement) for broadcasters, cable entities, and multichannel video program distributors (MVPDs) until further order of the Commission. That suspension order is still in effect. The Commission recently proposed new EEO requirements for broadcast, cable and MVPDs that would be consistent with the court's decision in *MD/DC/DE Broadcasters Associations*. Thus, licensees who elect to provide broadcast services will be required to comply with the nondiscrimination requirement currently in effect and any other EEO requirements that may subsequently be adopted by the Commission.

5. Competitive Bidding Procedures

84. Pursuant to statutory mandate, competitive bidding procedures will be

used to assign licenses for spectrum in the Lower 700 MHz band.

a. Incorporation by Reference of the Part 1 Standardized Auction Rules

85. The Commission will use the general competitive bidding rules set forth in part 1, subpart Q, of its rules to conduct the auction of initial licenses in the Lower 700 MHz Band. The Commission's decision to adopt the part 1 rules is consistent with its ongoing effort to streamline the Commission's general competitive bidding rules for all radio services that are subject to competitive bidding and increase the efficiency of the competitive bidding process. Application of the part 1 rules will be subject to any modifications that the Commission may subsequently adopt.

86. The Commission will attribute casino gaming revenues in determining eligibility for small business preferences. The Commission's part 1 rules include an attribution rule that requires auction applicants to include gaming revenues in the calculations used to determine eligibility for small business status. The Commission adopted this policy in recognition that gaming revenues are exceptional revenues that, if not attributed to the applicant, could create an unfair competitive advantage with regard to all other applicants, and not just other Indian tribes. The Commission's attribution rules make no distinction among the types of businesses from which an attributable entity's gross revenues might arise, nor do they consider whether that entity is profitable. Given that gaming revenues are available for telecommunications uses, the Commission finds no basis to grant tribal entities an exemption from the attribution rule for gaming revenues. To the extent that tribal entities seek licenses with the intention to serve tribal lands, however, they may benefit from the Commission's policies and rules under which the Commission will award bidding credits in future auctions, including the Lower 700 MHz auction, for winning bidders who use licenses to deploy facilities and provide service to federally-recognized tribal areas that are either unserved by any telecommunications carrier or that have a telephone service penetration rate below 70 percent.

87. The Commission acknowledges certain commenters concerns regarding the use of combinatorial bidding procedures, but regards them as speculative at this time. The Commission notes that, consistent with statutory obligations, the Wireless Telecommunications Bureau (WTB) will seek comment on auction-related procedural issues, including auction design, prior to the start of the Lower 700 MHz auction pursuant to WTB's existing delegated authority. This will provide WTB with an opportunity to weigh the benefits and disadvantages of any particular bidding design, among other auction-specific issues (*e.g.*, minimum opening bids), prior to the start of the Lower 700 MHz Band auction.

b. Provisions for Designated Entities

88. The Commission will extend bidding preferences to small business entities that seek an opportunity to participate in an auction of Lower 700 MHz Band licenses. The Commission has long recognized that bidding preferences for qualifying bidders provides such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission has also found that the use of tiered or graduated small business definitions is useful in furthering the Commission's mandate under 47 U.S.C. 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants.

89. The Commission will adopt the same two small business definitions for the EAG-based licenses in the Lower 700 MHz Band that were applied to the EAG-based licenses in the Upper 700 MHz Commercial Band. Specifically, with respect to all EAG-defined licenses in the Upper and Lower 700 MHz Bands, the Commission will define a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, and a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million. The Commission believes that the considerations that formed the basis for its decision in the Upper 700 MHz Band proceeding are equally applicable with respect to the larger, EAG-based licenses that the Commission is establishing in this decision.

90. The Commission concludes that a third small business definition should be extended to those Lower 700 MHz Band licenses that are defined on the basis of MSAs and RSAs. In light of the expressions of interest in this proceeding by small business and rural interests in favor of smaller license areas, the Commission agrees to use the third small business definition that was suggested in the *NPRM* to allow ''small business and rural telecommunications providers to participate more meaningfully'' in a Lower 700 MHz Band auction. The Commission anticipates that new services that may be deployed in the smaller, non-EAG license areas could have different characteristics and capital requirements. Many of the same considerations that led the Commission to adopt smaller-sized licenses in the Lower 700 MHz Band also favor the use of a third small business size standard for those non-EAG licenses. Some new services that may be deployed in the smaller license areas may have lower capital requirements than for the larger EAG-based licenses. For example, these smaller license areas may be suited to applications with relatively low costs, such as fixed broadband wireless services which use only the ''white areas'' of a heavily-encumbered, smaller license area. In this regard, the Commission believes that this situation is analogous to that of the 24 GHz service, in which license areas were defined on the basis of EAs and a broad range of services were permitted. For these reasons, the Commission will use three small business definitions for the MSA and RSA-based licenses in the Lower 700 MHz Band, and will adjust the terms for size standards in this service accordingly. Thus, for services in the Lower 700 MHz Band, the Commission defines a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and an ''entrepreneur'' as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. Qualifying small businesses will be entitled to a bidding credit of 15 percent, qualifying very small businesses will be entitled to a 25 percent bidding credit, and qualifying entrepreneurs will be entitled to a 35 percent bidding credit.

91. We do not agree with commenters that criticize the Commission's designated entity preference program on the grounds that it has not been successful in meeting its objectives. The Commission's analysis of the results of its auction of licenses in the 39 GHz band demonstrates that small businesses can and will successfully compete for licenses. In that auction, entities that had average gross revenues of not more than $40 million for the three preceding years (including those that had average gross revenues of not more than $15 million for the preceding three years) successfully bid for 849 licenses, or almost 40 percent of the licenses sold. Such small businesses also successfully bid for 21 of the 46 licenses in the

largest EAs (defined for this purpose as the top 25 percent of the EAs, as ranked by population). The Commission believes that the use of a third small entity definition may result in the dissemination of Lower 700 MHz Band licenses among an even wider range of small business entities, consistent with the Commission's obligations under 47 U.S.C. 309(j)(3)(B).

92. The Commission does not find that the Communications Act requires it to adopt an independent bidding credit for large telephone companies that serve rural areas. The consideration of this issue is guided by a line of Commission decisions in which the Commission has consistently found no basis for establishing an independent bidding credit for large telephone companies in rural areas. Large rural telcos have failed to demonstrate any barriers to capital formation similar to those faced by other designated entities. Rural telcos have access to low-cost financing through the National Rural Utilities Cooperative Finance Corporation, and may seek below-market rate lending through the Department of Agriculture's Rural Utilities Service. These financing options suggest that rural telephone companies may have greater ability than other designated entities to attract capital. The Commission also notes that, in conducting the analysis of its 39 GHz auction, all six qualified bidders that identified themselves on their short-form applications as rural telephone companies were successful at auction.

93. The Commission will apply unjust enrichment penalties to assignments of this spectrum. Congress has directed the Commission to establish rules that prevent unjust enrichment. Having recognized the potential for abuse of its designated entity preference policies, the Commission has established unjust enrichment rules to safeguard against speculation in the auction process and participation by entities that lack *bona fide* intent to offer communications services. The Commission does not rescind the entire bidding discount from a designated entity that partitions or disaggregates portions of its license to a non-qualifying entity. Rather, in such cases, the licensee is required to remit an unjust enrichment payment only in an amount equal to the proportion of the population in the partitioned area. The Commission notes that the question of the applicability of the unjust enrichment rules to leasing situations is under consideration in the Commission's Secondary Markets proceeding and defers its consideration of this issue to that proceeding.

94. The Commission remains committed to meeting the statutory objectives of promoting economic opportunity and competition, avoiding excessive concentration of licenses, and ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. The Commission stated that it will continue to track the rate of participation in the Commission's auctions by minority- and women-owned firms and evaluate this information with other data gathered to determine whether additional provisions to promote participation by minorities and women are warranted.

c. Public Notice of Initial Applications/ Petitions to Deny

95. The Commission intends to follow the time periods set forth under § 1.2108 of the Commission's rules. *See* 47 CFR 1.2108. The Commission has recognized that, in most cases, a ten-day filing period serves the public interest by providing parties, including small businesses, more flexibility in challenging license awards than a five-day period. The Commission also confirms, however, that WTB may, in its discretion, shorten that period to five days, if exigent circumstances exist. In this regard, the Commission notes that the statutory auction deadline is approaching, and that it may be necessary to limit this period to comply with that deadline. In addition, the other time periods set forth in § 1.2108 will apply, including the requirement to allow at least seven days following the issuance of the public notice that long-form applications have been accepted for filing before acting on any such application.

6. Measures to Facilitate Early Clearing of the Lower 700 MHz Band and Accelerate the DTV Transition

a. Voluntary Band-Clearing Policies

96. The Commission agrees with those commenters that argue that any efforts to clear this band must be purely voluntary. However, in light of certain differences between the Upper and Lower 700 MHz Bands, the Commission concludes that the Commission should employ a different approach from that established for the Upper 700 MHz Band. For instance, there is no public safety allocation in the Lower 700 MHz Band, and there is a significantly greater degree of broadcast incumbency relative to the Upper 700 MHz Band. In addition, the Commission notes that Congress has directed it to reclaim the Upper 700 MHz Band for public safety and commercial use under an accelerated time frame, but did not accord the same priority to recovery of the Lower 700 MHz Band. Therefore, rather than apply the presumptions that the Commission established in the Upper 700 MHz Band for analyzing voluntary band-clearing proposals, the Commission will not adopt any rules, and will instead rely on the Commission's basic responsibility to consider any regulatory requests related to band clearing in the Lower 700 MHz Band on a case-by-case basis, considering all relevant public interest factors. Broadcasters seeking to implement early band-clearing agreements must generally comply with existing broadcast rules and policies. Accordingly, the Commission does not extend to the Lower 700 MHz Band the extended DTV construction period that was provided to certain single-channel broadcasters in connection with the arrangements for early clearing of the Upper 700 MHz Band.

b. Other Issues

97. Although the Commission did not seek comment in the *NPRM* on broader issues relating the DTV transition process generally, a number of commenters urge the Commission to adopt proposals that they have been advocating in the Commission's DTV and DTV must-carry proceedings. The Commission believes that these requests in this proceeding do not raise distinctive or additional factual or policy considerations that justify departure from the broad determinations made or under consideration in those other proceedings. The Commission therefore defers consideration of those requests to the proper proceedings.

98. The Commission agrees that incumbent broadcasters and new 700 MHz licensees should not be constrained from developing new and innovative approaches to band clearing, however, the Commission declines to adopt a rule of general applicability for approving sharing arrangements at this time, particularly in light of the limited record on the issue. While the Commission does not adopt a general sharing rule at this time, the Commission will consider any such proposal on a case-by-case basis.

Final Regulatory Flexibility Act Analysis

99. As required by section 603 of the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix C of the *NPRM* in this proceeding. The Commission sought written public

comment on the proposals set forth in the *NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) complies with the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA) (Public Law No. 104–121, 110 Stat. 847 (1996)).

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

100. In the *R&O*, the Commission adopts rules to reclaim and reallocate the Lower 700 MHz Band currently used for TV Channels 52–59, for new commercial services as part of the Commission's transition of TV broadcasting from analog to digital transmission systems, consistent with the statutory directives enacted in the Balanced Budget Act of 1997. This *R&O* reallocates the entire 48 megahertz of spectrum in the Lower 700 MHz Band to fixed and mobile services, while retaining the existing broadcast allocation. The *R&O* establishes technical criteria designed to protect incumbent television operations in the band during the DTV transition period, allows LPTV and TV translator stations to retain secondary status and operate in the band after the transition, and sets forth a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58. The decision to reallocate this band in a manner that will permit new licensees to provide a broad range of services was guided by the Commission's previously announced policies favoring flexible spectrum allocations. This reallocation is also consistent with the Commission's obligations under sections 303(y) and 309(j)(3) of the Communications Act.

101. The *R&O* also establishes service rules for the Lower 700 MHz Band using the flexible regulatory framework in part 27 of the Commission's rules. In particular, the band plan for the Lower 700 MHz Band divides this spectrum into three 12-megahertz blocks (with each block consisting of a pair of 6-megahertz segments) and two 6-megahertz blocks of contiguous, unpaired spectrum. The Commission will license the five blocks in the Lower 700 MHz Band plan as follows: the two 6-megahertz blocks of contiguous unpaired spectrum, as well as two of the three 12-megahertz blocks of paired spectrum, will be assigned over six EAGs; the remaining 12 megahertz block of paired spectrum will be licensed over 734 MSAs and Rural Service Areas RSAs. The service rules have been designed to promote the objectives identified in 47 U.S.C. 309(j), including the development and rapid deployment of new technologies, products, and services for the benefit of the public; the promotion of economic opportunity and competition; the recovery of a portion of the value of the spectrum made available for commercial use; and the efficient and intensive use of the spectrum.

102. Although the decisions in the *R&O* were patterned on the approach adopted for the Upper 700 MHz Band, the *R&O* adopts a geographic area licensing approach to assign licenses in the Lower 700 MHz Band that includes smaller license areas than were established for the Upper 700 MHz Band. As with the Upper 700 MHz Band, the *R&O* for the Lower 700 MHz Band also uses relatively small spectrum block sizes. The 48 megahertz of spectrum that comprises the Lower 700 MHz Band will be licensed with two six-megahertz blocks of contiguous unpaired spectrum and two 12-megahertz blocks of paired spectrum over 6 EAGs. The remaining 12-megahertz block of paired spectrum will be licensed over 734 MSAs/RSAs.

103. The use of these small license areas also is intended to satisfy the Commission's obligations in prescribing characteristics of licenses to ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' 47 U.S.C. 309(j)(3)(B). Establishing such small license areas also furthers the Commission's obligation to ''prescribe area designations and bandwidth assignments that promote '' economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' 47 U.S.C. 309(j)(4)(C).

104. The *R&O* also establishes competitive bidding rules and voluntary clearing procedures for the Lower 700 MHz Band. Consistent with the Commission's responsibility under 47 U.S.C. 309(j) to promote opportunities for, and disseminate licenses to, a wide variety of applicants, the *R&O* also adopts small business size standards and bidding preferences for qualifying bidders that will provide such bidders with opportunities to compete successfully against large, well-financed entities. In particular, for services in the Lower 700 MHz Band, the Commission has defined a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and an ''entrepreneur'' as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. The Commission will use its standard schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules. *See* 47 CFR 1.2110(f)(2). The entrepreneur standard and associated 35 percent bidding credit will, however, not apply to the larger EAG-based licenses in the Lower 700 MHz Band. Drawing on recent precedent involving another flexible-use service (the 24 GHz service), the Commission found that ''[b]ecause the capital costs of operational facilities in the '' band are likely to vary widely, the Commission believe that the use of three small business definitions will be useful in promoting opportunities for a wide variety of applicants * * *.'' The Commission has concluded that these bidding credits will provide adequate opportunities for small businesses to participate in the Lower 700 MHz Band auction.

105. The *R&O* also establishes a policy of permitting incumbent broadcasters and new licensees to reach voluntary agreements that would result in the early clearing of incumbents from the Lower 700 MHz spectrum. These policies are intended to further the Commission's objective of establishing rules that will facilitate, rather than hinder, the clearing of incumbent broadcasters from this spectrum in a manner consistent with the Commission's DTV transition policy goals.

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

106. Only one commenter, the National Telephone Cooperative Association (NTCA), specifically raises issues in response to the IRFA. NTCA urges the Commission to assign spectrum in the Lower 700 MHz Band across small geographic areas, arguing that small businesses such as rural telephone companies cannot compete against large carriers in auctions for large geographic areas. According to NTCA, assigning at least a portion of this spectrum across small geographic areas will allow small providers an opportunity to bid on, acquire, and develop service in the more limited areas in which they wish to operate. In

response to comments made by NTCA and other small business interests on this issue, the Commission decided to use the smallest geographic area option that was described in the *NPRM*, the 734 MSAs and RSAs, for 12 of the 48 megahertz of spectrum in the Lower 700 MHz Band.

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

107. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' under section 3 of the Small Business Act. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. According to SBA reporting data, there were approximately 4.44 million small business firms nationwide in 1992. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 local governments in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. The Commission therefore estimates that, of the 85,006 governmental entities, 81,600 (96 percent) are small entities. The Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by the rules adopted in the *R&O*.

108. The policies and rules adopted in the *R&O* and discussed in this FRFA will affect all entities, including small entities, that seek to acquire licenses in wireless services in the 698–746 MHz band, or are television broadcasters in this band.

109. *Wireless services.* The policies and rules adopted in this *R&O* affect all small entities that seek to acquire licenses in wireless services in the Lower 700 MHz Band currently used for television broadcasts on Channels 52–59, or are incumbent television broadcasters on Channels 52–59. The Commission has adopted small business size standards that define a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and an ''entrepreneur'' as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. (The entrepreneur standard does not extend to the larger EAG-based licenses in the Lower 700 MHz Band.) The SBA has approved this small business size standard for the Lower 700 MHz auction. However, the Commission cannot know until the auction begins how many entities will seek entrepreneur, small business, or very small business status. The Commission will allow partitioning and disaggregation, yet it cannot determine in advance how many licensees will partition their license areas or disaggregate their spectrum blocks. In view of the Commission's lack of knowledge of these factors, it is therefore assumed that, for purposes of the Commission's evaluations and conclusions in the FRFA, all of the prospective licenses are small entities, as that term is defined by the SBA or the Commission's small business definitions for these bands.

110. *Television Broadcast.* The SBA defines a television broadcasting station as a small business where it is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. There were 1,509 television stations operating in the United States in 1992, of which 1,155 (76.5 percent) produced less than $10.0 million in revenue. As of May 31, 1998, official Commission records indicate that 1,579 full power television stations, 2,089 low power television stations, and 4,924 television translator stations were licensed. Using the percentage of television broadcasting licensees that were small entities in 1992 (76.5 percent) and the 1998 records indicating 1,579 full power stations, the Commission concludes that there are approximately 1,208 full power television stations that are small entities.

111. The rules adopted in the *R&O* may affect approximately 1,663 television stations currently operating in the Lower 700 MHz Band, approximately 1,281 of which are considered small businesses. In addition, the rules adopted in the *R&O* will affect some 12,717 radio stations currently operating in this band, approximately 12,209 of which are small businesses. These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,366 LPTV stations. Given the nature of this service, the Commission presume that all LPTV licensees qualify as small entities under the SBA definition.

112. *Auxiliary or Special Broadcast.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable SBA definition is that noted previously, under the SBA rules applicable to television broadcasting stations. The Commission estimates that there are approximately 2,700 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. The Commission believes that most, if not all, of these auxiliary facilities could be classified as small businesses if viewed apart from any associated broadcasters. The Commission also recognizes that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($10.5 million for a TV

station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.

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

113. Entities interested in acquiring initial licenses for new services in the 698–746 MHz band will be required to submit short form applications (FCC Form 175) to participate in an auction and high bidders will be required to apply for their individual licenses. Also, commercial licenses will be required to make showings that they are in compliance with construction requirements, file applications for license renewals, and make certain other filings as required by the Communications Act and Commission regulations. Entities seeking to acquire licenses (or disaggregated or partitioned portions of licenses) from Commission licensees in the post-auction market are also required to submit long-form applications (FCC Form 601) seeking Commission authority to complete any such transactions. In addition to the general licensing requirements of part 27 of the Commission's rules, other parts may be applicable to commercial licensees, depending on the nature of service provided. For example, commercial licensees proposing to provide broadcast services on these bands may be required to comply with all or part of the broadcast-specific regulations in part 73 of the Commission's rules.

114. By this *R&O*, the Commission requires licensees to notify the Commission within 30 days of a change in regulatory status between common carrier and/or non-common carrier. In addition, because the Commission considers partitioning and disaggregation to be a form of license assignment, the Commission requires such action to receive Commission approval via application for assignment on FCC Form 603. With regard to alien ownership, the Commission requires licensees to amend their FCC Form 602 to reflect any changes in foreign ownership information, together with the initial information required by FCC Form 601.

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

115. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its decision, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

116. Commenters in this proceeding recommend a variety of steps the Commission may take to lessen the impact on small businesses while assigning spectrum in the Lower 700 MHz Band. For example, the majority of commenters advocate the use of small geographic license areas, especially MSAs and RSAs, so that small providers may avoid having to bid on areas that are larger than they need. A few commenters suggest the Commission could benefit small providers in a similar manner by assigning the spectrum across multiple blocks, and one party urges a set-aside for small businesses. Another commenter argues that spectrum aggregation limits must be maintained so as to prevent an excessive concentration of licenses by large providers that may work against the interests of other competitors.

117. With these RFA requirements and comments from the record in mind, the Commission adopts rules in the *R&O* that are designed to reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. They increase economic opportunities to a variety of spectrum users, including small businesses. Specifically, the Commission reallocates the entire 48 megahertz of spectrum in the 698–746 MHz band to fixed and mobile services, while retaining the existing broadcast allocation. New licensees, including smaller entities, will enjoy flexible use for the full range of proposed allocated services consistent with necessary interference requirements.

118. In addition, the Commission adopts rules on spectrum block size and geographic areas that may be of even greater significance for small entities. For example, with respect to the size of spectrum blocks for licensees, the Commission declines to allocate the 48 megahertz over a single block, instead choosing an allocation over multiple blocks of six and twelve megahertz each. The Commission also permits disaggregation and partitioning of these spectrum blocks. With respect to the size of geographic license areas, the Commission allocates licenses over large regional EAGs as well as small MSAs/RSAs. As small business commenters have observed, a MSA/RSA-based license area may be a particularly appropriate alternative for small providers that wish to avoid having to acquire a larger license area that they must subsequently partition. At the same time, consistent with the Commission's flexible approach, the Commission allows both partitioning and aggregation of all of these licenses, such that licensees may increase or decrease the size of their service areas to better meet market demands. Because the Commission believes that the use of multiple spectrum blocks and MSAs/RSAs effectively meets the needs of small providers, it therefore declines to adopt other suggested alternatives, such as spectrum aggregation limits, in this band.

119. The Commission further notes that the *R&O* adopts small business definitions and preferences for qualifying bidders in the 698–746 MHz band. These standards define an ''entrepreneur'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million, and a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $3 million. Although the Commission had initially proposed the adoption of only two small business definitions, it has found that the use of a third small business definition for MSA/RSA-based licenses will allow small business and rural telecommunications providers to participate more meaningfully in a Lower 700 MHz Band auction.

120. Finally, the *R&O* establishes a policy of permitting incumbent broadcasters and new licensees to reach voluntary agreements that would result in the early clearing of the Lower 700 MHz spectrum. Broadcasters electing to enter into such agreements may be required to seek Commission approvals in order to implement such agreements. Such regulatory requests may be submitted using existing application forms. Because the Commission's policy is entirely voluntary, broadcasters and new licensees, including small entities, are under no obligation to enter into such early clearing arrangements or to seek Commission approval of same.

121. The regulatory burdens contained in the *R&O,* such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and

efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

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

Paperwork Reduction Act of 1995 Analysis

123. This *R&O* contains either a new or modified information collection. The Commission is seeking immediate approval for the information collection contained herein pursuant to the ''emergency processing'' provisions of the Paperwork Reduction Act of 1995. *See* 5 CFR 1320.13. The Commission will publish a document in the **Federal Register** announcing the effective date of the information collection.

Procedural Matters and Ordering Clauses

124. Pursuant to sections 1, 2, 4(i), 5(c), 7, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535, this *R&O* is hereby ADOPTED and parts 2, 27 and 73 of the Commission's rules, 47 CFR parts 2, 27 and 73, ARE AMENDED to establish service rules for the 698–746 MHz band, as set forth in the *R&O,* effective April 8, 2002. The information collection contained in these rules will become effective upon OMB approval.

125. *Authority is delegated* to the Mass Media Bureau to implement the policies for the introduction of new wireless services and to promote the early transition of incumbent analog television licensees to DTV service *to the extent discussed in the R&O.*

126. A 45-day filing window period *will commence* on January 22, 2002 and *will end* March 8, 2002 for applicants to amend their pending proposals in accordance with the policies and procedures set forth in the *R&O.*

127. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Radio, Television.

47 CFR Part 27

Communications common carriers, Radio.

47 CFR Part 73

Radio, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 27, and 73 as follows:

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

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

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

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Revise page 37.

b. In the International Footnotes under heading I., revise footnotes S5.293, S5.296, and S5.297.

c. In the list of non-Government (NG) Footnotes, revise footnotes NG149 and NG159.

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

470-849 MHz (UHF) Page 37

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile S5.292 S5.293	470-585 FIXED MOBILE BROADCASTING S5.291 S5.298	470-608	470-512 BROADCASTING NG128 NG149 FIXED NG127 LAND MOBILE NG66 NG114	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING S5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION S5.149 S5.305 S5.306 S5.307		512-608 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	610-890 FIXED MOBILE S5.317A BROADCASTING	608-614 RADIO ASTRONOMY US74 LAND MOBILE US350 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile		614-890	614-698 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
				698-746 BROADCASTING NG128 FIXED MOBILE NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)

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International Footnotes

* * * * *

I. New ''S'' Numbering Scheme

* * * * *

S5.293 Different category of service: in Canada, Chile, Colombia, Cuba, the United States, Guyana, Honduras, Jamaica, Mexico, Panama and Peru, the allocation of the bands 470–512 MHz and 614–806 MHz to the fixed and mobile services is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21. In Argentina and Ecuador, the allocation of the band 470–512 MHz to the fixed and mobile services is on a primary basis (see No. S5.33), subject to agreement obtained under No. S9.21.

* * * * *

S5.296 Additional allocation: in Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Lithuania, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, Syria, the United Kingdom, Sweden, Switzerland, Swaziland and Tunisia, the band 470–790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries listed in this footnote shall not cause harmful interference to existing or planned stations operating in accordance with the Table of Frequency Allocations in countries other than those listed in this footnote.

S5.297 Additional allocation: in Costa Rica, Cuba, El Salvador, the United States, Guatemala, Guyana, Honduras, Jamaica and Mexico, the band 512–608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under No. S9.21.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG149 The frequency bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–512 MHz, 512–608 MHz, and 614–698 MHz are also allocated to the fixed service to permit subscription television operations in accordance with part 73 of the rules.

* * * * *

NG159 Full power analog television stations licensed and new digital television (DTV) broadcasting operations in the band 698–806 MHz shall be entitled to protection from harmful interference until the end of the DTV transition period. Low power television and television translators in the band 746–806 MHz must cease operations in the band at the end of the DTV transition period. Low power television and television translators in the band 698–746 MHz are secondary to all other operations in the band 698–746 MHz.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

3. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

4. Section 27.1 is amended by adding paragraph (b)(3) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(3) 698–746 MHz.

* * * * *

5. Section 27.3 is amended by redesignating paragraph (n) as paragraph (p), and by adding new paragraphs (n) and (o) to read as follows:

§ 27.3 Other applicable rule parts.

* * * * *

(n) *Part 73.* This part sets forth the requirements and conditions applicable to radio broadcast services.

(o) *Part 90.* This part sets forth the requirements and conditions applicable to private land mobile radio services.

* * * * *

6. Section 27.5 is amended by adding paragraph (c) to read as follows:

§ 27.5 Frequencies.

* * * * *

(c) *698–746 MHz band.* The following frequencies are available for licensing pursuant to this part in the 698–746 MHz band:

(1) Three paired channel blocks of 12 megahertz each are available for assignment as follows:

Block A: 698–704 MHz and 728–734 MHz;

Block B: 704–710 MHz and 734–740 MHz; and

Block C: 710–716 MHz and 740–746 MHz.

(2) Two unpaired channel blocks of 6 megahertz each are available for assignment as follows:

Block D: 716–722 MHz; and

Block E: 722–728 MHz.

7. Section 27.6 is amended by adding paragraph (c) to read as follows:

§ 27.6 Service areas.

* * * * *

(c) *698–746 MHz band.* WCS service areas for the 698–746 MHz band are as follows.

(1) Service areas for Blocks A, B, D, and E in the 698–746 MHz band are based on Economic Area Groupings (EAGs) as defined in paragraph (b)(2) of this section.

(2) Service areas for Block C in the 698–746 MHz band are based on cellular markets comprising Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by Public Notice Report No. CL–92–40 ''Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties,'' dated January 24, 1992, DA 92–109, 7 FCC Rcd 742 (1992), with the following modifications:

(i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline.

(ii) The service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

8. Section 27.10 is amended by revising paragraphs (a), (b), and (c)(1)(ii) to read as follows:

§ 27.10 Regulatory status.

* * * * *

(a) *Single authorization.* Authorization will be granted to provide any or a combination of the following services in a single license: common carrier, non-common carrier, private internal communications, and broadcast services. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service. An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status for which authorization is required to provide a specific communications service.

(b) *Designation of regulatory status in initial application.* An applicant shall specify in its initial application if it is requesting authorization to provide common carrier, non-common carrier, private internal communications, or broadcast services, or a combination thereof.

(c) * * *

(1) * * *

(ii) Add to the pending request in order to obtain common carrier, non-common carrier, private internal communications, or broadcast services status, or a combination thereof, in a single license.

* * * * *

9. Section 27.11 is amended by adding paragraph (d) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(d) *698–746 MHz band.* Initial authorizations for the 698–746 MHz band shall be for 6 or 12 megahertz of spectrum in accordance with § 27.5(c).

(1) Authorizations for Blocks A and B, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(1).

(2) Authorizations for Block C, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(2).

(3) Authorizations for Blocks D and E, consisting of an unpaired channel block of 6 megahertz each, will be based on those geographic areas specified in § 27.6(c)(1).

10. Section 27.13 is amended by revising paragraph (b) to read as follows:

§ 27.13 License period.

* * * * *

(b) *698–764 MHz and 776–794 MHz bands.* Initial authorizations for the 698–764 MHz and 776–794 MHz bands will extend until January 1, 2015, except that a part 27 licensee commencing broadcast services will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations.

11. Section 27.50 is amended by redesignating paragraph (c) as paragraph (d), adding a new paragraph (c), and revising the heading of Table 1, which follows newly redesignated paragraph (d), to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(c) The following power and antenna height requirements apply to stations transmitting in the 698–746 MHz band:

(1) Fixed and base stations are limited to a maximum effective radiated power (ERP) of 50 kW, with the limitation on antenna heights as follows:

(i) Fixed and base stations with an ERP of 1000 watts or less must not exceed an antenna height of 305 m height above average terrain (HAAT) except when the power is reduced in accordance with Table 1 of this section;

(ii) The antenna height for fixed and base stations with an ERP greater than 1000 watts but not exceeding 50 kW is limited only to the extent required to satisfy the requirements of § 27.55(b).

(2) Control and mobile stations are limited to 30 watts ERP.

(3) Portable stations (hand-held devices) are limited to 3 watts ERP.

(4) Maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(5) Licensees intending to operate a base or fixed station at a power level greater than 1 kW ERP must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees that must be notified are all licensees authorized under this part to operate a base or fixed station on an adjacent spectrum block at a location within 75 km of the base or fixed station operating at a power level greater than 1 kW ERP. Notices must provide the location and operating parameters of the base or fixed station operating at a power level greater than 1 kW ERP, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notices must be provided at least 90 days prior to the commencement of station operation.

* * * * *

Table 1—Permissible Power and Antenna Heights for Base and Fixed Stations in the 698–764 MHz and 777–792 MHz Bands

* * * * *

12. Section 27.53 is amended by redesignating paragraph (f) as paragraph (g), and adding a new paragraph (f) to read as follows:

§ 27.53 Emission limits.

* * * * *

(f) For operations in the 698–746 MHz band, the power of any emission outside a licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by at least 43 + 10 log (P) dB. Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kilohertz or greater. However, in the 100 kilohertz bands immediately outside and adjacent to a licensee's frequency block, a resolution bandwidth of at least 30 kHz may be employed.

* * * * *

13. Section 27.55 is revised to read as follows:

§ 27.55 Signal strength limits.

(a) *Field strength limits.* For the following bands, the predicted or measured median field strength at any location on the geographical border of a licensee's service area shall not exceed the value specified unless the adjacent affected service area licensee(s) agree(s) to a different field strength. This value applies to both the initially offered service areas and to partitioned service areas.

(1) 2305–2320 and 2345–2360 MHz bands: 47 dBμ V/m.

(2) 698–764 and 776–794 MHz bands: 40 dBμ V/m.

(b) *Power flux density limit.* For base and fixed stations operating in the 698–746 MHz band, with an effective radiated power (ERP) greater than 1 kW, the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

14. Section 27.57 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 27.57 International coordination.

* * * * *

(b) Operation in the 698–764 MHz and 776–794 MHz bands is subject to international agreements between Mexico and Canada. Unless otherwise modified by international treaty, licenses must not cause interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada.

15. Section 27.60 is amended by revising introductory text, paragraphs (a)(1) and (b) to read as follows:

§ 27.60 TV/DTV interference protection criteria.

Base, fixed, control, and mobile transmitters in the 698–764 MHz and 776–794 MHz frequency bands must be operated only in accordance with the rules in this section to reduce the potential for interference to public reception of the signals of existing TV and DTV broadcast stations transmitting on TV Channels 51 through 68.

(a) * * *

(1) The minimum D/U ratio for co-channel stations is:

(i) 40 dB at the hypothetical Grade B contour (64 dBμ V/m) (88.5 kilometers (55 miles)) of the TV station;

(ii) For transmitters operating in the 698–746 MHz frequency band, 23 dB at the equivalent Grade B contour (41 dBμ V/m) (88.5 kilometers (55 miles)) of the DTV station; or

(iii) For transmitters operating in the 746–764 MHz and 776–794 MHz frequency bands, 17 dB at the equivalent Grade B contour (41 dBμ V/m) (88.5 kilometers (55 miles)) of the DTV station.

* * * * *

(b) *TV stations and calculation of contours.* The methods used to calculate TV contours and antenna heights above average terrain are given in §§ 73.683 and 73.684 of this chapter. Tables to determine the necessary minimum distance from the 698–764 MHz or 776–794 MHz station to the TV/DTV station, assuming that the TV/DTV station has a hypothetical or equivalent Grade B contour of 88.5 kilometers (55 miles), are located in § 90.309 of this chapter and labeled as Tables B, D, and E. Values between those given in the tables may be determined by linear interpolation. Distances for station parameters greater than those indicated in the tables should be calculated in accordance with the required D/U ratios, as provided in paragraph (a) of this section. The locations of existing and proposed TV/DTV stations during the period of transition from analog to digital TV service are given in part 73 of this chapter and in the final proceedings of MM Docket No. 87–268.

(1) Licensees of stations operating within the ERP and HAAT limits of § 27.50 must select one of four methods to meet the TV/DTV protection requirements, subject to Commission approval:

(i) Utilize the geographic separation specified in Tables B, D, and E of § 90.309 of this chapter, as appropriate;

(ii) When station parameters are greater than those indicated in the tables, calculate geographic separation in accordance with the required D/U ratios, as provided in paragraph (a) of this section;

(iii) Submit an engineering study justifying the proposed separations based on the actual parameters of the land mobile station and the actual parameters of the TV/DTV station(s) it is trying to protect; or,

(iv) Obtain written concurrence from the applicable TV/DTV station(s). If this method is chosen, a copy of the agreement must be submitted with the application.

(2) The following is the method for geographic separations.

(i) Base and fixed stations that operate in the 746–764 MHz and 777–792 MHz bands having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to co-channel and adjacent channel TV/DTV stations in accordance with the values specified in Table B (co-channel frequencies based on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. Base and fixed stations that operate in the 698–746 MHz band having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to adjacent channel DTV stations in accordance with the values specified in Table E in § 90.309 of this chapter, shall afford protection to co-channel DTV stations by providing 23 dB protection to such stations' equivalent Grade B contour (41 dBμ V/m), and shall afford protection to co-channel and adjacent channel TV stations in accordance with the values specified in Table B (co-channel frequencies based on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. For base and fixed stations having an antenna height (HAAT) between 152–914 meters (500–3,000 ft.) the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power reduction graph in Figure B in § 90.309 of this chapter. For heights of more than 152 m. (500 ft.) above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the hypothetical or equivalent Grade B contour of a co-channel TV/DTV station (*i.e.*, it exceeds the distance from the appropriate Table in § 90.309 of this chapter to the relevant TV/DTV station), an authorization will not be granted unless it can be shown in an engineering study (*see* paragraph (b)(1)(iii) of this section) that actual terrain considerations are such as to provide the desired protection at the actual Grade B contour (64 dBμ V/m for TV and 41 dBμ V/m for DTV stations) or unless the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the actual Grade B contour (64 dBμ V/m for TV and 41 dBμ V/m coverage contour for DTV stations) will be achieved. Directions for calculating powers, heights, and reduction curves are listed in § 90.309 of this chapter for land mobile stations. Directions for calculating coverage contours are listed in §§ 73.683 through 73.685 of this chapter for TV stations and in § 73.625 of this chapter for DTV stations.

(ii) Control, fixed, and mobile stations (including portables) that operate in the 776–777 MHz and 792–794 MHz bands and control and mobile stations (including portables) that operate in the 698–746 MHz, 747–762 MHz and 777–792 MHz bands are limited in height and power and therefore shall afford protection to co-channel and adjacent channel TV/DTV stations in the following manner:

(A) For control, fixed, and mobile stations (including portables) that operate in the 776–777 MHz and 792–794 MHz bands and control and mobile stations (including portables) that operate in the 747–762 MHz and 777–792 MHz band, co-channel protection shall be afforded in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection for TV stations and 17 dB for DTV stations) in § 90.309 of this chapter.

(B) For control and mobile stations (including portables) that operate in the 698–746 MHz band, co-channel protection shall be afforded to TV stations in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection) and to DTV stations by providing 23 dB protection to such stations' equivalent Grade B contour (41 dBμ V/m).

(C) For control, fixed, and mobile stations (including portables) that operate in the 776–777 MHz and 792–794 MHz bands and control and mobile stations (including portables) that operate in the 698–746 MHz, 747–762 MHz, and 777–792 MHz band, adjacent channel protection shall be afforded by providing a minimum distance of 8 kilometers (5 miles) from all adjacent channel TV/DTV station hypothetical or equivalent Grade B contours (adjacent channel frequencies based on 0 dB protection for TV stations and −23 dB for DTV stations).

(D) Since control, fixed, and mobile stations may affect different TV/DTV stations than the associated base or fixed station, particular care must be taken by applicants/licensees to ensure that all appropriate TV/DTV stations are considered (e.g., a base station may be operating within TV Channel 62 and the mobiles within TV Channel 67, in which case TV Channels 61, 62, 63, 66, 67 and 68 must be protected). Control, fixed, and mobile stations shall keep a minimum distance of 96.5 kilometers (60 miles) from all adjacent channel TV/DTV stations. Since mobiles and portables are able to move and communicate with each other, licensees must determine the areas where the mobiles can and cannot roam in order to protect the TV/DTV stations.

* * * * *

16. Add subpart H to part 27 to read as follows:

Subpart H—Competitive Bidding Procedures for the 698–746 MHz Band

Sec.
27.701 698–746 MHz band subject to competitive bidding.
27.702 Designated entities.

§ 27.701 698–746 MHz band subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 698–746 MHz band are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

§ 27.702 Designated entities.

(a) *Eligibility for small business provisions.* (1) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. This definition applies only with respect to licenses in Block C (710–716 MHz and 740–746 MHz) as specified in § 27.5(c)(1).

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(3) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(4) A consortium of entrepreneurs, a consortium of very small businesses, or a consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the applicable definition in paragraphs (a)(1), (a)(2) or (a)(3) of this section. Where an applicant or licensee is a consortium of entrepreneurs, a consortium of very small businesses, or a consortium of small businesses, the gross revenues of each entrepreneur, very small business, or small business shall not be aggregated.

(b) *Bidding credits.* A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

PART 73—RADIO BROADCAST SERVICES

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

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

18. Section 73.622 is amended by revising paragraph (a)(2) to read as follows:

§ 73.622 Digital television table of allotments.

(a) * * *

(2) Petitions requesting a change in the channel of an initial allotment must specify a channel in the range of channels 2–58.

* * * * *

3. Section 73.3572 is amended by revising the last sentence of paragraph (a)(4)(ii) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translator and TV booster station applications.

(a) * * *

(4) * * *

(ii) * * * Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the displacement application(s) to the exclusion of other applications, provided the permittee or licensee had tendered its initial application for a new LPTV or TV translator station to operate on channels 52–69 prior to the August 2000 filing window.

* * * * *

[FR Doc. 02–2866 Filed 2–5–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR 1104

[STB Ex Parte 576]

Electronic Access to Case Filings

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is amending its rules governing how documents are filed in agency proceedings to facilitate the scanning of those documents for publication on the Board's Internet website, *www.stb.dot.gov.* The Board also is amending its rules governing electronic submissions to comport with current technology and is amending one rule to update a citation.

EFFECTIVE DATE: The amended rules are effective March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Anne K. Quinlan (202) 565–1727. [TDD for the hearing impaired: 1–800–877–7339.]

SUPPLEMENTARY INFORMATION: For several years, the Board has been making filings received in select agency proceedings available to the public by publishing them under the ''Filings'' link on the Board's Internet website, *www.stb.dot.gov.* We have used two methods to make filings available on the Internet.

Initially, we made filings available by downloading text files from diskettes, which were required to be filed along with the paper copies in certain cases to facilitate case processing. Public reaction to having filings available on the Internet was positive, and we were encouraged to make all filings available on our website. However, downloading text files was labor intensive, and some files could not be downloaded at all. Moreover, text files included only text that the filer had word processed; no signatures, stamps, or graphics could be made available on-line. A more complete solution was needed.

More recently, the Board acquired scanning resources. Instead of downloading text files, we began to scan filings received in select cases and publish images of the filings on our website. Scanning technology has given the Board the ability to place on the Internet a replica of every documentary filing, in its entirety, in every case. Thus, scanning will be used to provide the public with more complete Internet access to the documentary record in Board proceedings.

To ensure that the highest quality image is captured during the scanning process and to facilitate high-speed scanning, rule 1104.2 will be amended. Amended rule 1104.2 will provide that filings must be typed, double-spaced, on 8½ by 11-inch white paper, with dark type no smaller than 12 point. These standards will provide adequate contrast for scanning and photographic reproduction. To facilitate the scanning process, original documents must be unbound and without driver tabs [1] and

[1] However, *copies* of filings may contain divider tabs. And, as prescribed in *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases,* STB Ex Parte No. 347 (Sub-No. 3) (STB

Continued

printed only on one side of the paper.[2] Documents of more than one page may be clipped with a removable clip or similar device. These measures will reduce the possibility of damage to documents during removal of pins and staples and facilitate the use of the high-speed scanner mechanism for automated scanning. All pages of a submission (each side of each page, if printing is on both sides), including cover letters and attachments, must be paginated continuously.[3] This will help ensure scanning accuracy.

We recognize that some filings may not conform to the above specifications and, therefore, we will be unable to scan them. For example, spreadsheet data in electronic format and oversized maps or blueprints may be included in a filing, but will not be susceptible to scanning. To address this, we have developed procedures for referencing the location of non-scannable submissions and making them available to the public at the Board's offices. Where there are oversized documents, however, parties are encouraged to file, in addition to the oversized documents, representations of them that fit on the standard paper described in section 1104.2(a), if possible. For example, a copy of an oversized map may be reduced in size (but only if the map and any writing on the map remain legible), or may be cut into multiple sequential standard pages that, when placed together, make up the whole. The standard sized representation should be identified and placed immediately behind the oversized document it represents.

The Board has the capability to scan in color. However, scanning of color pages requires special handling. Accordingly, to ensure timely processing of all filings, color printing may not be used for textual submissions. Use of color in filings is limited to images such as graphs, maps and photographs. In addition, pages containing color images may be filed only as appendices or attachments to filings and not inserted among pages containing text. Also, the original of any filing that includes color images must bear an obvious notation, on the cover sheet, that the filing contains color.

Confidential filings will be processed so that persons using the Board's website will know by looking at the on-line list of filings that a particular filing is in the record as a confidential filing. However, the contents of confidential filings will not be viewable or downloadable from the Board's website.[4]

Rule 1104.3 is being amended to clarify the number and type of electronic filings required by the Board and to reflect the Board's use of more current technology. Electronic submissions must be submitted on compact discs or 3.5-inch IBM-compatible floppy diskettes (collectively referred to as discs).[5] Discs should be clearly labeled with (1) the Docket Number of the proceeding in which it is filed; (2) the name(s) of the party(ies) on whose behalf the filing is made; and (3) ''CONFIDENTIAL'' or ''REDACTED'' as appropriate. If more than one disc is needed for a single filing, the label of each disc must be sequentially numbered to indicate the disc number and the total number of discs filed (e.g., the first disc of a 4-disc set should be labeled ''Disc 1 of 4,'' the second disc ''Disc 2 of 4,'' and so forth.)

Rule 1104.15, which addresses certification of eligibility for Federal benefits, is being amended to reflect that the underlying statute has been transferred to a different section of the U.S. Code without substantive change.

Because these changes update rules to agency procedure and practice and are not substantive changes, we find good cause to dispense with notice and comment. 5 U.S.C. 553(b)(A) and (B).

The amended regulations are set forth in the Appendix.

Pursuant to 5 U.S.C. 605(b), we certify that these rules will not have a significant economic impact on a substantial number of small entities. They affect only the technical specifications for filing the original copy of documentary submissions and for filing electronic submissions.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1104

Administrative practice and procedure.

Decided: January 28, 2002.

By the Board, Chairman Morgan, Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, amend part 1104 of title 49 of the Code of Federal Regulations as follows:

PART 1104—FILING WITH THE BOARD—COPIES—VERIFICATION—SERVICE—PLEADINGS, GENERALLY

1. Revise the authority citation for part 1104 to read as follows:

Authority: 5 U.S.C. 553 and 559; 18 U.S.C. 1621; 21 U.S.C. 862; and 49 U.S.C. 721.

2. Revise section 1104.2 to read as follows:

§ 1104.2 Document specifications.

(a) Documents filed with the Board must be on white paper not larger than 8½ by 11 inches, including any tables, charts, or other documents that may be included. Ink must be dark enough to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations, which may be single-spaced), using type not smaller than 12 point. Printing may appear only on one side of the paper for original documents, but copies of filings may be printed on both sides of the paper.

(b) In order to facilitate automated processing in document sheet feeders, original documents of more than one page may not be bound in any permanent form (no metal, plastic, or adhesive staples or binders) but must be held together with removable metal clips or similar retainers. Original documents may not include divider tabs, but copies must if workpapers or expert witness testimony are submitted. All pages of original documents, and each side of pages that are printed on both sides, must be paginated continuously, including cover letters and attachments. Where, as a result of assembly processes, such pagination is

served Mar. 12, 2001), *copies* of filings that include expert testimony or workpapers *must* include divider tabs.

[2] However, *copies* of filings may be printed on both sides of the paper.

[3] For very large filings, often assembled at different times and locations, this may be impractical. Accordingly, these types of filings may be numbered within the logical sequence of volumes or sections that make up the filing and need not be renumbered to maintain a single numbering sequence throughout the entire filing.

[4] Filers are reminded that requests to maintain confidentiality of materials should be sought only when absolutely necessary. Also, in accordance with rule 1104.14, materials that parties believe are entitled to confidential treatment should be submitted in a separate package and marked ''Confidential material subject to a (request for a) protective order.'' Any accompanying request for a protective order should be submitted as a separate filing.

[5] Electronic submissions of textual material (pleadings, petitions, etc.) must be submitted in Corel WordPerfect format version 9.0 or earlier releases. Current rule 1104.3 requires the submission of electronic spreadsheets in Lotus format. However, we now have Excel spreadsheet software and will accept electronic spreadsheets in either Lotus or Excel format. Parties are reminded that in order to fully evaluate the evidence, we must be able to access and manipulate all spreadsheets. A more detailed description of current procedures for filing spreadsheets and related information in stand-alone cost proceedings appears in *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases.* STB Ex Parte No. 347 (Sub-No. 3) (STB served Mar. 12, 2001).

impractical, documents may be numbered within the logical sequences of volumes or sections that make up the filing and need not be renumbered to maintain a single numbering sequence throughout the entire filing.

(c) Some filings or portions of filings will not conform to the standard paper specifications set forth in paragraph (a) of this section and may not be scannable. For example, electronic spreadsheets are not susceptible to scanning, but oversized documents, such as oversized maps and blueprints, may or may not be scannable. Filings that are not scannable will be referenced on-line and made available to the public at the Board's offices. If parties file oversized paper documents, they are encouraged to file, in addition to the oversized documents, representations of them that fit on the standard paper, either through reductions in size that do not undermine legibility, or through division of the oversized whole into multiple sequential pages. The standard paper representations must be identified and placed immediately behind the oversized documents they represent.

(d) Color printing may not be used for textual submissions. Use of color in filings is limited to images such as graphs, maps and photographs. To facilitate automated processing of color pages, color pages may not be inserted among pages containing text, but may be filed only as appendices or attachments to filings. Also, the original of any filing that includes color images must bear an obvious notation, on the cover sheet, that the filing contains color.

3. Revise section 1104.3 to read as follows:

§ 1104.3 Copies.

(a) An executed original, plus 10 copies, of every pleading, document, or paper permitted or required to be filed under this subchapter, including correspondence, must be furnished for the use of the Board, unless otherwise specifically directed by another Board regulation or notice in an individual proceeding. Copies may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used so that matters shown in color on the original, but in black and white on the copies, will be accurately identified on all copies.

(b) Electronic submissions must be furnished as follows:

(1) Textual submissions of 20 or more pages must be accompanied by three electronic copies submitted on compact discs or 3.5-inch IBM-compatible formatted floppy diskettes in WordPerfect 9.0 format or earlier releases.

(2) Three sets of evidence or workpapers consisting of mathematical computations must be submitted as functioning electronic spreadsheets in Lotus 1–2–3 Release 9 or Microsoft Excel 97, or compatible versions, on compact discs or 3.5-inch IBM-compatible formatted floppy diskettes. In order to fully evaluate evidence, all spreadsheets must be fully accessible and manipulable. Electronic databases placed in evidence or offered as support for spreadsheet calculations must be compatible with the Microsoft Open Database Connectivity (ODBC) standard. ODBC is a Windows technology that allows a database software package to import data from a database created using a different software package. We currently use Microsoft Access 97 and databases submitted should be in either this format or another ODBC-compatible format. All databases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, and so forth.

(3) One copy of each diskette or compact disc submitted to the Board should, if possible, be provided to any other party requesting a copy.

(4) Each diskette and compact disc must be clearly labeled with the Docket Number of the proceeding in which it is filed; the name(s) of the party(ies) on whose behalf the filing is made, and ''CONFIDENTIAL'' or ''REDACTED'' as appropriate. If more than one diskette or disc is submitted for one filing, the label of each must be sequentially numbered to indicate the diskette or disc number and the total number of diskettes or discs filed (e.g., the first disc of a 4-disc set should be labeled ''Disc 1 of 4,'' the second disc ''Disc 2 of 4,'' and so forth).

4. In section 1104.15, remove the citation ''21 U.S.C. 853a'' and add, in its place, the citation ''21 U.S.C. 862'' in the section heading and in the text.

[FR Doc. 02–2844 Filed 2–5–02; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Washington Plant *Hackelia venusta* (Showy Stickseed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status under the Endangered Species Act of 1973, as amended (Act), for the Washington plant *Hackelia venusta* (showy stickseed). This plant species is a narrow endemic restricted to one small population of approximately 500 plants on less than 1 hectare (2.5 acres) of unstable, granitic talus on the lower slopes of Tumwater Canyon, Chelan County, Washington, entirely on Federal land. Major threats to *H. venusta* include: Collection; physical disturbance to the plants and habitat by humans, competition and shading from native trees and shrubs; encroachment onto the site by nonnative noxious weed species; wildfire; fire suppression and associated activities; and low seedling establishment. Highway maintenance activities, such as the spreading of sand and salt, and the use of de-icers during winter months, threaten the species. Also, the application of herbicides may pose a threat. Reproductive vigor may be depressed because of the plant's small population size and limited gene pool. A single natural or human-caused random environmental disturbance could destroy a significant percentage of the population.

We determine that the designation of critical habitat is not prudent for *Hackelia venusta* because it would likely increase the threats from collection and both direct and inadvertent habitat degradation and destruction. This rule implements the Federal protections provided by the Act for this plant.

DATES: This final rule is effective March 8, 2002.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive, Suite 102, Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: Ted Thomas, (see **ADDRESSES** section), telephone 360/753–4327; facsimile 360/753–9518.

SUPPLEMENTARY INFORMATION:

Background

Hackelia venusta (showy stickseed) is a showy perennial herb of the Borage family (Boraginaceae). The plant was originally described by Charles Piper as *Lappula venusta*, based on a collection from Tumwater Canyon, Chelan County, Washington made by J. C. Otis in 1920. In 1929, Harold St. John reexamined the specimen and placed it in the related genus *Hackelia* upon recognizing that, being a perennial plant, it more properly fit with *Hackelia* than *Lappula*, a genus of annual plants (St. John 1929).

Hackelia venusta is a short, moderately stout species, 20 to 40 centimeters (cm) (8 to 16 inches (in)) tall, often with numerous, erect to ascending stems from a slender taproot. It has large, showy, five-lobed flowers that are white and reach approximately 1.9 to 2.2 cm (0.75 to 0.87 in) across. Basal leaves are 7 to 14 cm (2.8 to 5.5 in) long and 0.64 to 1.3 cm (0.25 to 0.5 in) wide, while the upper stem leaves are 2.5 to 5.1 cm (1 to 2 in) long and 0.38 to 0.64 cm (0.15 to 0.25 in) wide (Barrett *et al.* 1985). The fruit consists of a prickly nutlet, approximately 0.38 to 0.43 cm (0.15 to 0.17 in) long, and is covered with stiff hairs that aid in dispersal by wildlife.

Hackelia venusta is morphologically uniform and is distinct from other species of *Hackelia* occurring in central Washington. It can be distinguished from other species in the genus, in part, by its smaller stature, shorter leaf length, fewer basal leaves, and the large size of the flowers. High-elevation *Hackelia* populations that have, in the past, been assigned to *Hackelia venusta* have distinct morphological features with the most obvious distinction being blue flowers. The Tumwater Canyon flowers are white and on rare occasion washed with blue. Other distinct morphological differences between the Tumwater Canyon and the high-elevation *Hackelia* populations are limb width, plant height, and radical leaf length (Harrod *et al.* 1999).

Hackelia venusta is shade-intolerant (Robert Carr, Eastern Washington University, pers. comm., 1998) and grows in openings within *Pinus ponderosa* (ponderosa pine) and *Pseudotsuga menziesii* (Douglas-fir) forest types. This vegetation type is described as the Douglas-fir zone by Franklin and Dyrness (1988). *H. venusta* is found on open, steep slopes (minimum of 80 percent inclination) of loose, well-drained, granitic weathered and broken rock fragmented soils at an elevation at about 486 meters (m) (1,600 feet (ft)). The type specimen for *H. venusta* was collected at a site between Tumwater and Drury in Tumwater Canyon, west of Leavenworth, Washington. *H. venusta* is restricted to this single population in Tumwater Canyon. The population is found in an area designated as the Tumwater Botanical Area by the Wenatchee National Forest. This designation was originally established in 1938 to protect a former candidate plant, *Lewisia tweedyi* (Tweedy's lewisia), that has been found to be more widespread than previously considered (F.V. Horton, U.S. Forest Service (Forest Service), *in litt.* 1938; Forest Service 1971). The designation for the botanical area remains because of the presence of *Hackelia venusta* and *Silene seelyi* (Seely's catch-fly), a species of concern due to its declining status.

Three other locations within 20 km (12 mi) of the type locality were thought to harbor *Hackelia venusta.* One location near Crystal Creek Cirque was relocated in 1986 after not having been seen since 1947 (Gamon 1988a). A second location near Asgard Pass was not discovered until 1987 (Gamon 1988a). The Asgard Pass population was apparently extirpated by a major landslide during 1994 or 1995 (Richy Harrod, Forest Service, pers. comm., 1996). A third location was discovered on Cashmere Mountain in August 1996 (R. Harrod, pers. comm., 1996). The Crystal Creek and Cashmere Mountain locations occur about 10 km (6 mi) apart and are both within the Alpine Lakes Wilderness Area of the Wenatchee National Forest. Elevations for these populations range from 1,920 to 2,255 m (6,300 to 7,400 ft). Recent information indicates these two high-elevation locations are a distinct taxon, different from the *H. venusta* found in the Tumwater Canyon population (Harrod *et al.* 1999). The Tumwater Canyon plants have a larger white corolla, a taller habit, remote lower leaves, and in general, the leaves are less stiff and leathery. The Crystal Creek and Cashmere Mountain populations, in contrast, have small, blue flowers and are more compact. The population at Tumwater Canyon does not have individuals that are intermediate in these characters. Also, the Tumwater Canyon population is geographically and reproductively isolated from the Crystal Creek and Cashmere Mountain populations. The Crystal Creek and Cashmere Mountain populations are temporally isolated from the Tumwater Canyon population in relation to their local seasons and climatic zones. The Tumwater Canyon population flowers in spring, while the Crystal Creek and Cashmere Mountain populations are under several meters of snow and normally flower in July.

Isozyme analysis conducted by the Forest Service indicates a clear separation between the Tumwater Canyon and high-elevation populations of *Hackelia* (Carol Aubry, Forest Service, pers. comm., 1998; Wilson *et. al.*, in review). This analysis measures the differences in plant proteins (usually an enzyme) and can be used to detect genetic differences among populations. Dr. Robert Carr, Professor of Botany, Eastern Washington University, attempted specific and intraspecific crosses with 18 species of North American *Hackelia* over a 3-year period but was unable to produce viable seed from these crosses in the greenhouse. Dr. Carr indicated that he had not attempted to cross the Tumwater Canyon and Crystal Creek/Cashmere Mountain populations, primarily because of the difficulty of growing *Hackelia* from seed in the greenhouse, and the temporal differences in the two populations' flowering. Dr. Carr, an expert on the genus *Hackelia*, has confirmed on numerous occasions that the Tumwater Canyon and high-elevation populations are separate and should be considered two separate and distinct species (R. Carr, pers. comm., 1998, *in litt.* 2000). The high-elevation species of *Hackelia* has been recently described and named as *H. taylori* (Harrod *et al.*, in review). Since the Crystal Creek and Cashmere Mountain populations are distinct from *Hackelia venusta,* they are not the subject of this final rule and will not be further discussed.

An occurrence of what was originally cataloged as *Hackelia venusta* was found in 1948 in Merritt, WA, in Chelan County, but attempts to relocate the site have failed. Changes in land use do not support growth of this species in this area anymore. The current element occurrence records of the Washington Natural Heritage Program designate this site as historic. Recent taxonomic work on the genus *Hackelia* indicates that the herbarium specimen for the Merritt site fits more closely into the subspecies *H. diffusa* var. *arida.* This subspecies will often have large white flowers and could have been misleading to the early plant collectors (Harrod *et al.*, 1999; R. Harrod, *in litt.* 2000). This being the case, the Tumwater Canyon population of *Hackelia venusta* may have always been the only location for the species.

In Tumwater Canyon, *Hackelia venusta* occurs primarily on unstable soils on steep rocky slopes and outcrops, though scattered individuals formerly occurred along a State highway roadcut and within the road right-of-way (ROW). The species is found entirely on Federal land administered by the Wenatchee National Forest. *H. venusta* appears to be somewhat adapted to natural and possibly human-caused substrate disturbance (R. Carr pers. comm., 1998). Although potential habitat for this species is widespread in Tumwater Canyon, the plant is scattered throughout an area of less than 1 hectare (ha) (2.5 acres (ac)).

In 1968, the taxon appeared ''limited to a few hundred acres'' (Gentry and Carr 1976), and in 1981 the population was estimated to have 800 to 1,000 plants. In 1984, and again in 1987, fewer than 400 individuals were found over an area of approximately 5 ha (12 ac) (Gamon 1988a). Personal observations by Ted Thomas (Service) (in cooperation with Richy Harrod (Forest Service) and Paul Wagner, Washington Department of Transportation (WDOT)), using an intensive search and count method on May 11, 1995, revealed fewer than 150 individuals growing on less than 1 ha (2.5 ac) of suitable habitat. According to Dr. Carr, the area occupied by *H. venusta* is greatly reduced, and the number of individual plants has seriously declined since he first visited the Tumwater Canyon population in the early 1970s (R. Carr, pers. comm., 1996). Although earlier counts were conducted by different workers using different techniques, the population size shows a clear downward trend.

During the late 1990s, and since the publication of the proposed rule to list the species on February 14, 2000 (65 FR 7339), the population of *H. venusta* has been monitored on an annual basis. In May 2000, nearly 300 plants were counted, and in May 2001, the number of plants in the population approached 500 plants (Lauri Malmquist, Forest Service, *in litt.* 2000, pers comm., 2001). The increase in the population size can be attributed to several events that have occurred in the past 7 years within the habitat for the species. Wildfires burned through Tumwater Canyon in 1994, resulting in both positive and negative effects on *H. venusta* habitat. The primary positive outcome was that the forest canopy was reduced, creating less shade and competition, and more open growing space that created new, suitable sites for the natural regeneration and establishment of *H. venusta* seedlings. The negative impact is the increased potential of landslides when wildfire removes overstory vegetation. Additionally, the Forest Service has been proactive in their treatment of the nonnative noxious weed problem within Tumwater Canyon. To reduce the nonnative plant threat to *H. venusta*, the Leavenworth Ranger District staff, Wenatchee National Forest, have both removed weeds by hand and carefully applied herbicides to them in *H. venusta* habitat. This project was implemented in 1999 and 2000, emphasizing treatment to the habitat directly adjacent to the State highway where invasive species tend to become established and then spread into the remainder of the population. (R. Harrod, pers comm., 2001).

Lastly, during the winter of 2000, the Forest Service, in cooperation with the WDOT and the Service, implemented a restoration project within the habitat of *Hackelia venusta.* About 35 small trees and one very large standing dead tree were felled and removed from the site (L. Malmquist, *in litt.* 2001; R. Harrod, pers. comm., 2000), using a deep snowpack to avoid impacts to the soil and protect the dormant *H. venusta* population. Each of these projects reduced shade; increased light onto the slope; reduced competition for light, water, and nutrients with native and nonnative trees, shrubs, and weeds; and provided new germination substrates for the establishment of *H. venusta* seedlings.

Previous Federal Action

Section 12 of the Act (16 U.S.C. 1541) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) announcing our decision to treat the Smithsonian report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and our intention to review the status of those plants. *Hackelia venusta* was included in this petition as an endangered species.

On December 15, 1980, we published a Notice of Review for plants (45 FR 82480) that included *Hackelia venusta* as a category 1 candidate species. Category 1 candidates were those species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. The plant notice revision of September 27, 1985 (50 FR 39525), included *H. venusta* as a category 2 candidate. Category 2 candidates were those species for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support a proposed rule. Pending completion of updated status surveys, the status was changed to category 1 in the February 21, 1990, Notice of Review (55 FR 6183). In the September 30, 1993, Notice of Review (58 FR 51144), *H. venusta* remained a category 1 candidate.

In the February 28, 1996, Notice of Review (61 FR 7596), we discontinued the use of multiple candidate categories and considered the former category 1 candidates as simply ''candidates'' for listing purposes. However, in that Notice of Review, *Hackelia venusta* was removed from the candidate list due to questions regarding the species' taxonomic status. An updated status review, completed in June 1997, reflected the new taxonomic information that determined only a single population of *H. venusta* currently existed. In the October 29, 1999, Notice of Review (64 FR 57534), *H. venusta* was included as a candidate species with a listing priority of 2.

We published a proposed rule to list the species as endangered on February 14, 2000 (65 FR 7339). The final rule for *Hackelia venusta* was delayed because of the need to focus our limited listing resources on listing actions that were under court order or settlement agreement during fiscal year 2001 which did not include *H. venusta.*

In March 2000, the Forest Service consulted with the Service on a restoration project to improve the habitat where *Hackelia venusta* is found. In an informal conference report, we concurred that the project ''was not likely to jeopardize the continued existence'' of *H. venusta.* If the species was listed in the future, the Forest Service concluded that the determination of effects for the project ''may affect, not likely to adversely affect'' the species (Service 2000).

On October 2, 2001, a consent decree was entered to settle listing litigation with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, Foundation for Global Sustainability, and the California Native Plant Society which requires us to complete work on a number of species proposed for listing. Under this settlement, we will issue several final listing decisions, including a final decision for *Hackelia venusta.* The consent decree requires us to send a final listing determination for this species to the **Federal Register** by

February 6, 2002 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)). On November 7, 2001, we reopened the comment period for an additional 30 days to accommodate the public notice requirement of the Act (66 FR 56265).

Summary of Comments and Recommendations

In the February 14, 2000, proposed rule (65 FR 7339), we requested all interested parties to submit factual reports, information, and comments that might contribute to the development of the final listing decision. We contacted appropriate State agencies, county and city governments, Federal agencies, university scientists, consulting organizations, conservation organizations and other interested parties and requested them to comment. Following the publication of the proposed rule, we received 20 written comments during the 60-day comment period. Comments were received from a variety of sources, including three Federal agencies, three Washington State agencies, three non-governmental organizations, four botanical and environmental consultants, one university, and six individuals. We reopened the comment period on November 7, 2001 (66 FR 56265) for 30 days and requested any new information from the public on the species since publication of the proposed rule. We published a legal notice in the *Wenatchee World* newspaper on November 13, 2001. We received an additional 12 comments during the second comment period, although three of these commenters had provided comments during the first comment period. Therefore, we received comments from a total of 29 respondents.

All 29 commenters supported the listing of *Hackelia venusta* as endangered. Several commenters provided new information on the current status of the species, and information on new threats to this single population of the *H. venusta*, which we have incorporated into this final rule. We have addressed each of the substantive issues raised by commenters by grouping the comments into four issues that are discussed below.

Issue 1: The overwhelming comment received from 28 of the 29 commenters was that designation of critical habitat for *Hackelia venusta* is not prudent. The principal concern is the increased risk of collection of the species that would occur from the publication of maps. Only one commenter supported critical habitat designation, although he admitted that designation of critical habitat would increase collection pressure on the population.

Our Response: Under the critical habitat section in the proposed rule, we stated that it was prudent to designate critical habitat for *Hackelia venusta* because it did not appear that collection of the species was a threat to its existence. However, information provided in the ''Summary of Factors Affecting the Species'' section (Factor B) of the proposed rule indicated otherwise. This section presented evidence of collection as a threat to the species. This information is consistent with the public comments expressing opposition to the designation of critical habitat for *H. venusta*. Only one commenter supported the designation of critical habitat, although this letter offered no substantive reason for this support. We are supported in our determination of a not prudent finding for the designation of critical habitat by a consensus of scientists, land managers (Federal, State, and county), professional botanists, local wildflower enthusiasts, non-governmental organizations, and environmental and botanical consultants. Each of these commenters expressed concern that the publicity associated with designating critical habitat for *H. venusta* would increase the threat of collection of the species, which exists in only one location.

Twenty commenters noted that they have witnessed, or were aware of collection of the species; many of these commenters admitted they have personally collected the species for herbarium or voucher specimens. One commenter presented information about a field botany class that had extensively collected the species on a taxonomy outing (Florence Caplow, Calypso Consulting, *in litt.* 2000). The rarity of the species was not known to the class or the instructor until they had returned to the laboratory to key and identify the plant. During the summer of 2000, while Forest Service personnel were counting the number of plants in the population and monitoring the habitat, they witnessed collection of a large individual specimen of *Hackelia venusta* and reported the action to our office the following day (L. Malmquist, pers. comm., 2000; J. Brickey, *in litt.* 2001; Terry Lillybridge, Forest Service, *in litt.* 2001; and R. Harrod, pers. comm., 2000). Forest Service personnel suspect the collector had purposely targeted a specific individual plant from the population because it was full, vigorous, and attractive (L. Malmquist, pers. comm., 2000). The specific plant had caught the attention of the Forest Service botanists as a particularly enticing plant, and its absence and the hole left from it being removed was easily noticed. Another commenter stated that ''rare plants bring a lot of money'' to collectors and designation of critical habitat would further advertise the species' presence, beyond listing of the species, so that it may be increasingly pursued (D. Werntz, *in litt.* 2000).

The District Ranger for the Leavenworth Ranger District commented that a critical habitat designation is not desirable, and it is against Forest Service policy (Forest Service Manual 2671.2) to make public the location of proposed, endangered, threatened, or sensitive species. This policy is consistent with the Thomas Bill (Pub. L. 105–391, section 207, 16 U.S.C. 5937), which was enacted to give the National Park Service the authority to withhold from the public any specific locality data for endangered, threatened, and rare species or commercially valuable resources within a park. The Forest Service believes that divulging locations or producing maps of *Hackelia venusta* habitat would greatly compromise their ability to protect the species on Forest Service lands where it occurs. Additionally, he commented that publicizing the location of critical habitat for this species was contrary to the ongoing coordination and Cooperative Agreement between Washington State's Natural Heritage Program, the Forest Service, and the Service, which includes a mutual agreement to not make public the location of proposed, endangered, threatened, or sensitive species.

It is not possible to designate critical habitat without increasing the public's attention to the species' location, and increased collection pressure will adversely affect the species and degrade its habitat. A single, heavily used highway allows access to the species' single location. While the species is in bloom, the plant population is easily visible. We have designated critical habitat for other attractive plants that were much less accessible to collectors, such as *Hudsonia montana* (mountain golden heather). *Hudsonia montana* was collected extensively and dwindled to only two plants soon after critical habitat was designated (Nora Murdock, Service, pers. comm., 2000). The situation for *Hackelia venusta* is comparable to the *Hudsonia montana* example, although the site location for *H. venusta* is more accessible to potential collectors than the more remotely located *Hudsonia montana*. We believe that because of the highly accessible location of this species, a designation of critical habitat would

increase collection and thereby increase the risk of extinction to this species.

Collection of *Hackelia venusta* has been documented for more than 35 years (R. Carr, *in litt.* 2000). The species has been collected for scientific purposes, by random visitors who were likely unaware of the rarity of the species, and perhaps by plant collectors who have purposely visited the site to collect the species. Those who have collected the species in the past for scientific purposes have observed the plant population decline to a low of 150 plants, and the spatial distribution of the suitable habitat has dwindled to less than 1 ha (2.5 ac) (T. Thomas, pers. obs., 1995, with R. Harrod and P. Wagner). These scientists are now aware of the extreme rarity and status of the species and seek its protection, without the designation of critical habitat (R. Carr, *in litt.* 2000; K. Robsen, *in litt.* 2001; R. Crawford, *in litt.* 2001; T. Lillybridge, *in litt.* 2001; William Null, *in litt.* 2001; E. Guerrant, *in litt.* 2001; Sarah Reichard, University of Washington, *in litt.* 2001). The conservation Chair of the Washington Native Plant Society (WNPS), on behalf of its 1,800 members, stated that ''the only real protection for rare plants is safeguarding of the specific location data and maps' (Debra Salstrom, WNPS Conservation Chair, *in litt.* 2001). In summary, the issue of long-term plant collection, and the high probability of continued and increased plant collection in the future support our determination to not designate critical habitat or publish associated maps for *H. venusta.*

We believe anything that increases the risk of losing individuals in this single population, such as publicizing its location, further imperils the species' survival and recovery. Based on the information provided in the comments, the recent, continued evidence of collection of the species, and the highly accessible and visible location of this showy plant, we have reconsidered our earlier decision that designation of critical habitat was prudent. We have determined that the designation of critical habitat is not prudent for *Hackelia venusta.* It would increase the threat of collection of the species and the associated degradation of its habitat.

Issue 2: Nine commenters were concerned that any increased visitation to the site resulting from designating critical habitat and publishing maps of the plant's location would increase erosion of the habitat and the potential for trampling *Hackelia venusta*. Dr. Ed Guerrant summarized this concern well by stating ''Even if the enthusiasts don't take whole plants (a common form of collection) or seeds, simply climbing up the very loose sandy hill on which they occur to photograph the plants will seriously erode and further damage their fragile habitat'' (E. Guerrant, *in litt.* 2000). Dr. Sheryl McDevitt, a local wildflower enthusiast, stated that the ''designation of critical habitat might be the most deleterious thing we could do. Aside from the possibility of rare plant collectors trudging up to grab their prize, a few amateur wildflower enthusiasts scrambling up the hill could do immeasurable damage to the existing plants and their habitat'' (Sheryl McDevitt, *in litt.* 2000). Other commenters having experience with *H. venusta* habitat were concerned that any activity occurring on the species' habitat would adversely impact the fragile, highly erodible, steep slope where the plants are found (Jane Wentworth, WDNR, *in litt.* 2001; T. Lillybridge, *in litt.* 2001; L. Malmquist, *in litt.* 2001).

Our Response: We agree with the commenters that the site is fragile and easily eroded. Just walking on the slope where the plants are found dislodges small rocks and boulders that can dislodge plants, crush or bury them by movement of the substrate. Any increased visitation would likely lead to increased disturbance of the habitat and trampling of the plants. Therefore, we have determined that designating critical habitat for *Hackelia venusta* is not prudent.

Issue 3: Four commenters expressed concern for public safety along the highway, which is highly constrained in this narrow and dangerous stretch of Tumwater Canyon (C. Antieau, *in litt.* 2000). Their major concern was that designating critical habitat would increase public interest in the species, thereby promoting increased pedestrian traffic to visit the site, causing safety issues for pedestrians and motorists, in addition to the increased threat of collection. WDOT also strongly opposes designation of critical habitat for *Hackelia venusta*, especially because of their concern that as more people walk on the steep, unstable slope, it will increase the probability that rocks and other debris will be dislodged and fall down the slope onto the highway, endangering auto traffic and their occupants or pedestrians on the roadway (F. Caplow, *in litt.* 2001).

Our Response: Public safety is not a factor in the evaluation of whether or not designation of critical habitat is prudent. However, we are concerned about public safety, and recognize the issues associated with this narrow stretch of highway. We have cooperated with WDOT on developing their ''Management Plan for Rare Plant Species in Tumwater Canyon'' (WDOT 2000).

WDOT constructed a small asphalt roadside turnout directly below and on the same side of the highway as the *Hackelia venusta* population during the spring of 2000. This turnout was constructed to provide a safe place for highway crews to park their vehicles in the narrow canyon when conducting road maintenance. However, because this turnout gave people greater access to the *H. venusta* population, the Forest Service coordinated with WDOT to remove the turnout in order to protect the plant species and its habitat (L. Malmquist, *in litt.* 2001). By removing the turnout, it also removed some of the danger to pedestrians who would stop to photograph the scenery or collect the plant.

Issue 4: Many commenters mentioned that because the species is found entirely on Federal land in an area under special management designation as the Tumwater Botanical Area, where the conservation and protection of *Hackelia venusta* and other rare plants is the primary management goal, it would be a redundant effort to designate critical habitat for the species. Consensus among these commenters was that the greatest benefit afforded to this species would be to determine that the designation of critical habitat is not prudent. Several of these commenters felt that the most effective use of funds would be for us to continue to cooperate with the Forest Service, WDOT, and WDNR on research and habitat restoration actions that would benefit the species and its habitat (R. Crawford, *in litt.* 2001; F. Caplow, *in litt.* 2001).

Our Response: We have determined that designation of critical habitat for *Hackelia venusta* is not prudent (see responses to Issue 1 and 2). Consideration of whether ongoing special management is sufficient to exempt a critical habitat designation is not necessary unless we determine that critical habitat is prudent. We do, however, encourage the cooperative endeavors of State and Federal agencies in their management of *H. venusta* and its habitat.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we have sought the expert opinions of at least three appropriate and independent specialists regarding our proposal to list *Hackelia venusta*. The purpose of these reviews is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We sent these peer reviewers copies of the

proposed rule immediately following its publication in the **Federal Register**. All the peer reviewers who responded agreed with listing, supported our determination that collection pressure is a serious threat, and opposed designation of critical habitat. We have incorporated their comments into this final determination (many are in the ''Summary of Comments'' section).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hackelia venusta* (showy stickseed) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The range of *Hackelia venusta* has been reduced to a scattered distribution occupying less than 1 ha (2.5 ac) in Tumwater Canyon, entirely on Federal lands of the Wenatchee National Forest. This restricted population consisted of approximately 500 plants in 2001 (L. Malmquist, pers. comm., 2001) and constitutes the sole population of *Hackelia venusta*.

The primary loss of habitat for *Hackelia venusta* has resulted from changes in habitat due to plant succession in the absence of fire. Fire suppression has been a factor in reducing the extent of the Tumwater Canyon population (Gamon 1988a; Gamon 1988b; D. Werntz, *in litt.* 2000). Wildfires play a role in maintaining open, sparsely vegetated sites as suitable habitat for *H. venusta*, a requirement of this shade-intolerant plant (R. Carr, pers. comm., 1998, *in litt.* 2000). The species prefers habitat that has been burned, has little competing vegetation (D. Werntz, *in litt.* 2000), and likely has soil low in organic matter (R. Carr, pers. comm., 1998). The species has expanded its distribution into canopy openings created by a wildfire in 1994, where it was not previously found (T. Thomas, pers. obs. 1998; P. Wagner, *in litt.* 2000). These plants are all found in close proximity to the original population and are probably offspring of the existing population. Seeds were likely carried to the open substrate by wind or gravity, and germination was aided by the increase in light and moisture within these canopy gaps where there is reduced competition from native trees and shrubs and noxious weeds.

Two nonnative, Washington State-listed noxious weeds (Ch. 16, WAC and Ch. 17.10 RWC 1997) occur within the habitat of *Hackelia venusta* in Tumwater Canyon. *Linaria dalmatica* (dalmatian toadflax) and *Centaurea diffusa* (diffuse knapweed) are present along the roadside, and have increased in their numbers and distribution during the 1990s, and have encroached into the population of *H. venusta* (J. Wentworth, *in litt.*, 2001). During visits to the *H. venusta* population in 1995, 1996, 1997, and 1998, the Service (T. Thomas, pers. obs.) noted that the cover and distribution of the noxious weeds had increased over this 1995–1998 time period. Without intervention, these species have the ability to completely outcompete *H. venusta* and replace native vegetation, and eventually dominate the site (J. Wentworth, *in litt.* 2001).

Highway maintenance activities are an ongoing threat. The highway is sanded during winter months, and occasionally a mixture of sand and salt is applied, affecting the immediate roadside habitat where *Hackelia venusta* is found. Highway maintenance activities involving the clearing of landslide material from the highway ROW resulted in the destruction of approximately 50 *H. venusta* individuals several years ago (R. Harrod, pers. comm., 1997, 2001). Although the roadsides have not been sprayed with herbicides in recent years by WDOT, spraying did occur for a considerable period of time prior to 1980. The residual effect of herbicide spraying on *H. venusta* is unknown. Some herbicides are known to be resident in the soil for long periods of time, affecting the plants that persist there. In 1999 and 2000, the application of herbicides by Forest Service personnel was used as a method for reducing the amount and distribution of nonnative, noxious weeds. Although they were used with great caution by Forest Service staff with knowledge of *H. venusta's* presence, the threat from herbicide drift and residue remains.

Small surface erosion events and large landslides of the unstable slope where the *Hackelia venusta* population is located are also a threat to the species. The steepness of the slope exceeds 100 percent (45 degree) inclination in many places, and the slope's instability constitutes a significant threat as a major landslide could bury the entire population (Gamon 1997). The threat of soil being dislodged and the burying, trampling, or dislodging of plants below these soil releases has been witnessed as more people visit the habitat to photograph or collect the plant (Pam Camp, *in litt.* 2000; Susan Ballinger, *in litt.* 2000; Joan Frazee, Washington Native Plant Society, *in litt.* 2000; F. Caplow, *in litt.* 2000; K. Robson, *in litt.* 2001). The potential for slumping (deep-seated mass movement) has increased since 1994, when wildfires burned through the forest in Tumwater Canyon where *H. venusta* is located. The reason for a higher potential for landslides is that water uptake by trees and other vegetation that were killed by the 1994 fire is reduced plus there is no transpiration from the vegetation, therefore there is more soil water. This is a case where the response to fire may have negative consequences. Another contributing factor is that when tree roots decompose, their ability to bind soil particles and water is decreased. When this happens, the potential for landslides increases. A large landslide in the location of the Tumwater Canyon population of *H. venusta* would severely degrade the habitat and reduce the plant population.

Although there are no data regarding the effects of automobile emissions on this species, such emissions should be considered a potential threat, given the proximity of the road to the population. The highway is heavily used, with 3,900 to 5,200 automobiles traveling daily through Tumwater Canyon, which is very narrow (WDOT 1996). According to population projections, 100,000 people will move into the State of Washington each year (Washington Office of Financial Management 1995). Trends for Chelan County indicate an increase from the current human population of 52,250 (1995) to more than 86,000 people in the year 2020, a 39 percent increase (Washington Office of Financial Management 1995). A larger human population will increase the demands for recreational activities and bring more people to central Washington. Automobile emissions are likely to increase along this heavily traveled corridor. These emissions, containing ozone and sulphur and nitrate oxides, negatively affect photosynthesis of coniferous and herbaceous plants (Forest Service 1979).

B. Overutilization for Commercial, Scientific, or Educational Purposes

The remaining known population is at risk of extirpation due to a variety of threats. The greatest threat to *Hackelia venusta* is the long history of collection pressure (R. Carr, *in litt.* 2000; Rex Crawford, Washington Department of Natural Resources (WDNR), *in litt.* 2001; L. Malmquist, *in litt.* 2000; Jennifer Brickey, University of Washington

graduate student, *in litt.* 2001; Kali Robson, Cowlitz County Soil and Water Conservation District, *in litt.* 2001; Ed Guerrant, Berry Botanic Garden, *in litt.* 2001) and associated physical disturbance to the habitat and the individual plants from people trampling the slope to monitor the population and photograph the plants (Clayton Antieau, WDOT, *in litt.* 2000). Regional and local botanical professionals and wildflower enthusiasts who are interested in observing the plant in its natural habitat visit the site, as well as curious individuals who have requested directions and information about the plant in response to numerous references about the rarity of the species, either in the local newspaper or broadcasts on the local radio station (L. Malmquist, *in litt.* 2001). The radio broadcast, which featured local rare plants, gave a lot of notoriety to *H. venusta*, and the local Forest Service district office experienced an increase in the number of people coming in to ask where they could find the species (L. Malmquist, pers. comm., 2001).

Wildflower collecting poses a serious threat, and future collecting could increase, especially if the *Hackelia venusta* site becomes known to the general public by the publication of maps or from media exposure (L. Malmquist, *in litt.* 2001). *H. venusta* has been collected by scientists, amateur wildflower enthusiasts, and random visitors to the population for more than 30 years (R. Carr, *in litt.* 2000; R. Harrod, *in litt.* 2000; F. Caplow, *in litt.* 2000; L. Malmquist, *in litt.* 2001; R. Crawford, *in litt.* 2001). The Tumwater Canyon population is easily accessible to the public because it is located near a heavily used highway with a turnout directly across the road. Amateur and professional botanists know of the location of the *H. venusta* population, and their collecting activities likely have reduced the number of plants in the population and have degraded the habitat (Gamon 1997; R. Carr, *in litt.* 2000; Glenn Hoffman, Forest Service, *in litt.* 2000; R. Harrod, *in litt.* 2000; R. Crawford, *in litt.* 2000, 2001, F. Caplow, *in litt.* 2001).

In May 1998, representatives from the Service, the Forest Service, and Eastern Washington University witnessed a person collecting the plant as they inspected the *Hackelia venusta* site (T. Thomas, pers. obs., 1998; Jon Gilstrom, *in litt.* 2000; R. Harrod, *in litt.* 2000). The species was also witnessed being collected while Forest Service personnel monitored the plant population in the spring of 2000 (L. Malmquist, pers. comm., 2000, *in litt.* 2001). Both incidents, and the large number of comments we received about collection of the plant, indicate that the species, when in bloom, is eye-catching and sufficiently attractive to cause someone to stop and remove the plant, presumably for personal use. Not only does the removal of plants cause a loss of reproductive potential, but trampling the site to access the plants could have a devastating effect on the remaining plants.

C. Disease or Predation

Disease is not currently known to be a threat to this species. No livestock or wildlife are known to graze on *Hackelia venusta.*

D. Inadequacy of Existing Regulatory Mechanisms

Although the known population of *Hackelia venusta* is located in an area designated as a special management area, the species remains vulnerable to threats. The Tumwater Canyon Botanical Area was designated by the Wenatchee National Forest in 1938 because of the occurrence of *Lewisia tweedyi. Lewisia tweedyi* has since been found to be more widespread than previously known and is no longer a species of concern for the area. The Wenatchee National Forest has maintained the Botanical Area designation and has implemented special management specifically targeted to conserve rare species, such as *H. venusta* and *Silene seelyi.* Both species are listed on the Forest Service Regional Forester's Sensitive Species List, which requires the Forest Service to maintain or enhance the viability of these species by considering the species in their project biological evaluations, and to mitigate actions that may adversely affect the species. The Forest Service also prohibits the collection of native plants without a permit, although this regulation has been difficult to enforce (R. Harrod, pers. comm., 1998). *Silene seelyi* grows in rock outcrop crevices near where *H. venusta* is located, but it does not occupy the talus habitat where *H. venusta* is found.

Management activities in the Botanical Area have emphasized botanical values (T. Lillybridge, pers. comm., 1998). In 2000, the Forest Service developed a habitat restoration plan in which they conducted an environmental analysis, conferenced with us, and implemented restoration activities to improve and restore *Hackelia venusta* and *Silene seelyi* habitat. The Botanical Area is also managed as a designated Late-Successional Reserve (LSR) under the Northwest Forest Plan, which permits some silvicultural and fire hazard reduction treatments (Forest Service and Bureau of Land Management 1994).

WDOT developed a management plan, ''Final Management Plan for Rare Plant Species in Tumwater Canyon, Wenatchee National Forest with associated Best Management Practices'' (BMPs) (WDOT 2000). This plan provides guidance and BMPs for road crews conducting maintenance activities that are undertaken along the stretch of the highway in Tumwater Canyon that *Hackelia venusta* occupies (WDOT 2000). Funding for maintenance activities is covered through base allocations to keep the highway cleared of snow, debris, and overhanging vegetation, the guidelines outlined in the plan are implemented during the course of routine maintenance operations. The management practices outlined in the plan enable WDOT crews to accomplish maintenance goals without harming the plant or its habitat. The plan was developed in coordination with the Forest Service, WDNR, and the Service. Funding for implementation of this plan cannot be assured on an annual basis.

The Washington Natural Heritage Program, in coordination with the Wenatchee National Forest, also developed management guidelines for *Hackelia venusta* in 1988 (Gamon 1988b). The plan contained recommendations that specific actions be taken to protect the plant on National Forest land. These guidelines included the recommendation that the Wenatchee National Forest develop a species management guide to provide management direction for the habitat of this species. The Wenatchee National Forest developed a draft management guide several years ago, but has not yet finalized it (T. Lillybridge, pers. comm., 1997).

The WDNR designated *Hackelia venusta* as endangered in 1981 (Washington Natural Heritage Program 1981), and the species designation has been retained in subsequent updates of the State's endangered species list. However, this listing does not provide any regulatory protection for the plant.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Low seed production, as well as low genetic variation, are factors in the decline of *Hackelia venusta.* At the Tumwater Canyon site, an estimated high proportion (60 to 70 percent) of *H. venusta* seeds did not develop in 1984 (Barrett *et al.* 1985). Fruit development was poor on many plants; only a few individuals exhibited mature fruit development. It is unknown why this occurred, but low genetic variation may

have contributed to poor reproduction success (R. Carr, *in litt.* 2000; D. Werntz, *in litt.* 2000). This reduced reproductive potential may be a major factor in the reduction of plants at the type locality. The age structure of the extant population at Tumwater Canyon, poor seed production and germination of new seedlings, and historical estimates of population size indicate that the population is declining (Barrett *et al.* 1985; Gamon 1997), although recent Forest Service monitoring of the population has shown that the population has increased during the period from 1995 to 2001 (L. Malmquist, pers. comm., 2000; *in litt.* 2001; P. Wagner, *in litt.* 2000). The increase in population size can likely be attributed to the improved habitat conditions brought on by restoration activities and the effects of a wildfire that burned through Tumwater Canyon in 1994 (see our response for Issue 4 in the (''Summary of Comments and Recommendations'')).

The small size of the *Hackelia venusta* population is a major problem. Seedling establishment is most critical, and trampling may significantly affect the germination of seedlings (R. Carr, pers. comm., 1998, *in litt.* 2000; K. Robson, *in litt.* 2001). Human activities along the roadside turnout at the Tumwater Canyon site represent a significant threat to plants nearest the turnout. Motorists use the area to view the Wenatchee River, often venturing over the guardrail and along the bank below the road. Plants on this bank are damaged by trampling, burial by loose rock, and root exposure as a result of human traffic on the unstable slopes (Gamon 1997).

Fire suppression during this century is likely a factor in the reduced spatial distribution of the Tumwater Canyon population. Historically, fuels in the forest type where *Hackelia venusta* is found were rarely at high levels because of the frequent fires that consumed forest floor fuels and pruned residual trees (Agee 1991). In the past, fires suppressed the encroachment of woody vegetation and maintained open areas more conducive to *H. venusta* reproduction and growth. Continued suppression of fires in this forest type could bring about additional losses to suitable habitat (Barrett *et al.* 1985; Gamon 1997; D. Werntz, *in litt.* 2000).

Competition from *Linaria dalmatica* (dalmatian toadflax) and *Centaurea diffusa* (diffuse knapweed) is a threat to *Hackelia venusta* (J. Wentworth, *in litt.* 2001). Both of these noxious weeds outcompete many native plant species through uptake of water and nutrients, interference with photosynthesis and respiration of associated species, and production of compounds that can directly affect seed germination and seedling growth and development. These noxious weeds co-occur with *H. venusta* at the Tumwater Canyon site and have become more widespread on the available habitat (J. Wentworth, *in litt.* 2001).

The species' habitat is threatened by plant succession in the absence of fire (D. Werntz, Northwest Ecosystem Alliance, *in litt.* 2000) and by competition with nonnative plants (R. Harrod, pers. comm., 1996, 2001; Ted Thomas, Service, pers. obs., 1995 through 1998), as well as from native trees and shrubs that have become established on the site. Other threats include the mass-wasting or erosion of soil that occurs on these unstable slopes and from highway maintenance activities. These erosion events (either small-scale surface erosion or large landslides) are not predictable in timing, frequency, or magnitude. However, large landslides have occurred within Tumwater Canyon in close proximity to the Hackelia venusta population. The last time a large landslide occurred, which was in 1992, the road was closed for emergency repairs by WDOT. The repairs undercut the slope and up to 50 *Hackelia venusta* plants were destroyed and removed from the habitat of Tumwater Canyon (R. Harrod, pers. comm., 2001).

The species previously occurred in the road ROW which, although maintained by WDOT, is Federal land. In the past, road salting and herbicide spraying were probable factors in reducing the vigor and number of *Hackelia venusta* in the ROW. Currently, WDOT maintenance crews rarely apply road salt and, when they do, they apply it in a diluted, 20:1 ratio with road sand (Luther Beaty, WDOT, pers. comm., 1995). Since 1998, however, WDOT has been using de-icers on the roadway during winter months. The disappearance of *H. venusta* along the roadcut and ROW corresponds to the WDOT's use of de-icers starting in 1998. We believe that the de-icers may be associated with the decline of individual plants in the ROW and we now consider it a threat to the species. The de-icer used by WDOT is called CalBan, a formulation of calcium chloride, which is a salt. Residue from the salts build up in the soil and are retained on soil particles. When plants emerge in the spring, the concentration of salt is greater in the soil than found in the plant, so any moisture that is in the plant or soil surrounding the plant is drawn to the calcium chloride crystals, which causes the plant to wilt and die (J. Brickey, pers. comm., 2002).

Herbicides have also been applied in the past by WDOT, which sprayed the roadside vegetation. Overspray and splatter of herbicides may have contributed to the reduced number of *Hackelia venusta* plants in the population. WDOT has discontinued the use of herbicides in Tumwater Canyon (L. Beaty, pers. comm., 1995).

In the narrow confines of Tumwater Canyon, automobile emissions may continue to be a cause for reduced vigor to the *Hackelia venusta* population because ozone and oxides of sulphur and nitrate emitted from vehicle tailpipes negatively affect photosynthesis of plants (Forest Service 1979). In addition, several individual plants occur on level ground near the roadside turnoff and are threatened with trampling and collecting.

The small number of individuals (about 500 plants) remaining in the sole population located in Tumwater Canyon makes *Hackelia venusta* vulnerable to extinction due to random events such as slope failure (mass-wasting or surface erosion) or drought. A single random environmental event could extirpate a substantial portion or all of the remaining individuals of this species and cause its extinction. Also, changes in gene frequencies within small, isolated populations can lead to a loss of genetic variability and a reduced likelihood of long-term viability (Franklin 1980; Soulé 1980; Lande and Barrowclough 1987; R. Carr, *in litt.* 2000).

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by *Hackelia venusta* in developing this final rule. Currently, only one known population of *H. venusta* exists. The plant is threatened by a long history of plant collection and the physical degradation of the habitat associated with people walking on the steep, easily eroded substrate where the species is found. Habitat modification associated with fire suppression, competition and shade from native shrubs and trees and nonnative noxious weeds, maintenance of the highway located near the population, poor seed development, low reproductive capacity, and incidental loss from human trampling, threaten the continued existence of this species. Also, the single, small population of this species is particularly susceptible to extinction from random environmental events such as rock slides. This species is in danger of extinction ''throughout all or a significant portion of its range'' (section 3(6) of the Act) and, therefore,

meets the Act's definition of endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as-(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not prudent for *Hackelia venusta.*

We are mindful that several court decisions have overturned determinations for a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). However, based on the standards provided in those judicial decisions, a not prudent critical habitat finding for *Hackelia venusta* is warranted.

Hackelia venusta consists of only one population made up of approximately 500 individual plants and cannot recolonize habitat quickly. Because this species occupies such a limited area, even a single person walking on the talus habitat where it occurs could cause significant damage to the species and its habitat that could lead to the extirpation of the entire population. Increased visits to the population location, stimulated by critical habitat designation and related maps and publicity, even without deliberate collecting, could adversely affect the species due to the associated increase in trampling of its fragile habitat. We believe that the designation of critical habitat, and the required public dissemination of maps and descriptions of the population site, would significantly increase the degree of threat to this species. Publicity could generate an increased demand and intensify collecting pressure or facilitate opportunities for vandalism. This species has already been subjected to excessive collecting by collectors. Increased publicity and a provision of specific location information associated with critical habitat designation could result in increased collection from the population. Although the taking and reduction to possession of endangered plants from land under Federal jurisdiction is prohibited by the Act, the taking prohibitions are difficult to enforce. We believe the publication of critical habitat descriptions would make *H. venusta* more vulnerable to collectors and curiosity-seekers and would increase enforcement problems for the Forest Service, and we have documented evidence that collecting and other human disturbance have already detrimentally affected this species.

Our concerns of increased human threats to the species from the publication of maps of the population site are based on specific experience. Another federally listed mountain plant (*Hudsonia montana*) for which critical habitat was designated was severely impacted by collectors immediately after the maps were published. This collection happened even though this plant was not previously known to be desired by rare plant collectors and had never been offered for sale in commercial trade. Some of the collectors appeared in the local Forest Service district offices, with the critical habitat map from the local newspaper in their hands, asking directions to the site (Nora Murdock, Service, pers. comm., 2000). Such incidents are extremely difficult to document. The only reason we were able to do so in this case was because, for this very rare and restricted plant, every individual was mapped. When plants vanished from our permanent plots, we were able to find the carefully covered excavations where they had been removed. Otherwise, we would have only observed a precipitous crash in the populations without knowing that the cause was directly attributable to collection, apparently stimulated by the publication of specific critical habitat maps. In the case of *Hackelia venusta,* a local radio station interviewed a professor from the University of Washington, Center for Urban Horticulture, which was fire bombed in spring, 2001. Apparently the professor repeated several times in the interview that propagated *H. venusta* plants were lost in the fire bombing. After this announcement, the local Forest Service Ranger District received requests to know the location of the plant (L. Malmquist, pers. comm., 2001). Also, a Tacoma newsreporter made several inquiries to our Western Washington Fish and Wildlife Office about visiting the plant population during the spring of 2001. We declined the request with the concern that additional news coverage would be detrimental to the species or its habitat.

It is our finding that the designation of critical habitat would increase threats to *Hackelia venusta,* and that a critical habitat designation would exacerbate these threats and possibly lead to extinction of the species; therefore a not prudent finding is warranted.

Because of the precarious status of the species, the small size of the only surviving population, the restricted range of the species, and the limited amount of suitable habitat available to the species, a Federal action subject to consultation under section 7 of the Act that triggers the standard for destruction or adverse modification of critical habitat for *H. venusta* would very likely also jeopardize the species' continued existence. Therefore, it is doubtful that additional protection would be provided to this species through the designation of critical habitat that would not already be provided through the jeopardy standard. We recognize that critical habitat designation in some situations may provide additional value to a species, for example, by identifying areas important for conservation. However, for *H. venusta,* we have weighed the potential benefits of designating critical habitat against the significant risks of doing so and find that the minor benefits of designating critical habitat do not outweigh the potential increased threats from collection and inadvertent habitat degradation caused by curiosity-seekers. Therefore, we have determined that the designation of critical habitat for *H. venusta* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions,

requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that the Service carry out recovery actions for all listed species. The protection required of Federal agencies, and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agencies whose actions may require consultation include the Forest Service, Federal Highway Administration, and U.S. Army Corps of Engineers (Corps). State highway activity, implemented by the State and partly funded by the Federal Government, includes highway maintenance activities such as roadside vegetation control, and may be subject to consultation under the Act. Forest Service activities that may require consultation under section 7 of the Act would include fire suppression, activities associated with fire suppression, timber harvest, and habitat restoration activities. The Corps may be required to consult with us on proposed actions planned on the Wenatchee River, which is adjacent and directly below the highway ROW. The distance from the base of the *Hackelia venusta* population to the Wenatchee River is less than 30 m (100 ft).

Listing *Hackelia venusta* as endangered will provide for the development of a recovery plan. Such a plan would bring together Federal, State, and local efforts for the conservation of the species. The plan will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities, assign responsibilities, and estimate costs of various tasks necessary to achieve conservation and survival of this species. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to the State of Washington for management actions promoting the protection and recovery of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction in areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such endangered plants in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, activities that likely would or would not be contrary to section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

With respect to *Hackelia venusta,* based upon the best available information, the following actions would not be likely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, and pipeline or utility line construction crossing suitable habitat), when such activity is conducted in accordance with any biological opinion issued by us under section 7 of the Act;

(2) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide or herbicide application when consistent with label restrictions;

(3) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break; and

(4) Casual, dispersed human activities (e.g., bird watching, sightseeing, photography, camping, hiking) in the habitat of the species.

With respect to *Hackelia venusta,* the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of *Hackelia venusta* on Federal lands;

(2) Application of pesticides/herbicides in violation of label restrictions;

(3) Interstate or foreign commerce, import, or export of this species without a valid permit; and

(4) Removal or destruction of the species on Federal land, or on non-Federal land if done in knowing violation of Washington State law or regulations, or in the course of any violation of a Washington State criminal trespass law.

Questions regarding whether specific activities risk violating section 9 should be directed to our Western Washington Fish and Wildlife Office (see **ADDRESSES** section). The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. Requests for copies of the regulations regarding listed species and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the

National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

A complete list of all references cited in this document, as well as others, may be requested from our Western Washington Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Ted Thomas, Western Washington Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, § 17.12 of part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations is amended, as set forth below.

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Hackelia venusta ...	Showy stickseed	U.S.A. (WA)	Boraginaceae-borage.	E	722	NA	NA
*	*	*	*	*	*	*	

Dated: January 30, 2002.

Marshall P. Jones, Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–2760 Filed 2–5–02; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 67, No. 25
Wednesday, February 6, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV02–928–1]

Papayas Grown in Hawaii; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Hawaiian papayas to determine whether they favor continuance of the marketing order regulating the handling of papayas grown in the production area.

DATES: The referendum will be conducted from March 4, through March 22, 2002. To vote in this referendum, growers must have been producing Hawaiian papayas during the period July 1, 2000, through June 30, 2001.

ADDRESSES: Copies of the marketing order may obtained from the office of the referendum agent at 2202 Monterey Street, Suite 102 B, Fresno, California, 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), US Department of Agriculture (USDA), 1400 Independence Avenue SW., Stop 0237, Washington, DC, 20250–0237.

FOR FURTHER INFORMATION CONTACT: J. Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, at 2202 Monterey Street, Suite 102 B, Fresno, California, 93721; telephone (559) 487–5901; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit & Vegetable Programs, AMS, USDA, 1400 Independence Ave SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 928 (7 CFR part 928), hereinafter referred to as the ''order'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by producers. The referendum shall be conducted during the period March 4, through March 22, 2002, among papaya growers in the production area. Only growers that were engaged in the production of Hawaiian papayas during the period of July 1, 2000, through June 30, 2001, may participate in the continuance referendum.

The USDA has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The USDA would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of Hawaiian papayas represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the USDA will consider the results of the referendum and other relevant information regarding operation of the order. The USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0102 for Hawaiian papayas. It has been estimated that it will take an average of 20 minutes for each of the approximately 400 growers of Hawaiian papayas to cast a ballot. Participation is voluntary. Ballots postmarked after March 22, 2002, will not be included in the vote tabulation.

J. Terry Vawter and Martin Engeler of the California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Department to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 *et. seq*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and Recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: January 31, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2845 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–46–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332L and AS332L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332L and AS332L1 helicopters. This proposal would require adding a supplement to the limitations section of the applicable Rotorcraft Flight Manual (RFM) for helicopters with ''SEFA'' skis installed. This proposal is prompted by the need to limit the taxi and Vne speed of those helicopters with skis. The actions specified by this proposed AD are intended to prevent structural failure of a ski and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 8, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region,

Attention: Rules Docket No. 2001–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–46–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS332L and L1 helicopters equipped with ''SEFA'' skis. ECF issued Supplements, SUP.10.14, Ski Installation, Normal Revision 2, Issue 2, dated June 2001 to the ECF Model AS332L and AS332L1 RFM. The DGAC classified these RFM supplements as mandatory and issued AD No. 2001–316–079(A), dated July 25, 2001. The DGAC advises incorporating the Ski Installation Supplement into the applicable RFM before the next flight and complying with the VNE and the maximum taxiing speed limitations to ensure the continued airworthiness of these helicopters in France.

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

We have identified an unsafe condition that is likely to exist or develop on other ECF Model AS332L and AS332L1 helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require adding the limitations contained in SUP.10.14, Ski Installation, to the limitations section of the RFM, requiring certain speed limitations for helicopters with skis installed.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 10 minutes per helicopter to add the flight manual supplement, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $30.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001–SW–46–AD.

Applicability: Model AS332L and AS332L1 helicopters with ''SEFA'' skis installed, certificated in any category.

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

Compliance: Required before further flight, unless accomplished previously.

To prevent structural failure of a ski and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the next flight with skis installed, add the limitations contained in SUP.10.14, Ski Installation, Normal Revision 2, Issue 2, dated June 2001 to the limitations section of the applicable Rotorcraft Flight Manual.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

Note 3: The subject of this AD is addressed in Direction General De L'Aviation Civile (France) AD 2001–316–079(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on January 17, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–2426 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–24]

Proposed Modification of Class E Airspace; Daggett, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace area at Daggett, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) RNAVV (GPS) Runway (RWY) 22 SIAP and a RNAV (GPS) RWY 26 SIAP to Barstow-Daggett Airport, Daggett, CA has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 22 SIAP and a RNAV (GPS) RWY 26 SIAP to Barstow-Daggett Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Barstow-Daggett Airport, Daggett, CA.

DATES: Comments must be received on or before March 15, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–24, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AWP–24.'' The postcard before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in the action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Daggett, CA. The establishment of a RNAV (GPS) RWY 22 SIAP and a RNAV (GPS) RWY 26 SIAP at Barstow-Daggett Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing RNAV (GPS) RWY 22 SIAP and a RNAV (GPS) RWY 26 SIAP to Barstow-Daggett Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 22 SIAP and a RNAV (GPS) 26 SIAP to Barstow-Daggett, Daggett, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significantly regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001 and effective September 16, 2001, is amended as follows:

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

* * * * *

AWP CA E5 Daggett, CA [REVISED]

Barstow-Daggett Airport, CA
(Lat. 34°51′13″ N, long. 116°47′12″W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Barstow-Daggett Airport and within 2.2 miles each side of the 057° bearing from the Barstow-Daggett Airport extending from 6.5-mile radius to 11.8 miles northeast of the airport.

* * * * *

Issued in Los Angeles, California, on January 3, 2002.

Stephen Lloyd,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–2278 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AAL–2]

Proposed Amendment of Class E Airspace; Cold Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Cold Bay, AK. Due to the development of an Area Navagation (RNAV) Global Positioning System (GPS) Runway (Rwy) 26 Instrument Approach Procedure for the Cold Bay airport, additional Class E airspace to protect Instrument Flight Rules (IFR) operations is needed. The additional Class E surface area airspace will ensure that aircraft executing the RNAV (GPS) Rwy 26 standard instrument approach procedure remain within controlled airspace. Adoption of this proposal would result in additional Class E airspace at Cold Bay, AK.

DATES: Comments must be received on or before March 25, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 01–AAL–2, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AAL–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register's** web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by adding Class E airspace at Cold Bay, AK. The intended effect of this proposal is to add Class E controlled airspace necessary to contain IFR operations at Cold Bay, AK.

The FAA is adding a standard instrument approach procedure to the Cold Bay airport, Runway 26. This runway did not previously have an instrument approach procedure, although there are standard instrument approach procedures to other runways. The airspace currently designated as Class E is sufficient for all existing approaches, but does not contain the new standard instrument approach procedure to Runway 26.

The proposed Class E Airspace would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in

paragraph 6005 in FAA Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Cold Bay, AK [REVISED]

Cold Bay Airport, AK

(Lat. 55°12′20″N., long. 162°43′27″W.)
Cold Bay VORTAC
(Lat. 55°16′03″N., long. 162°46′27″W.)
Elfee NDB
(Lat. 55°17′46″N., long. 162°47′21″W.)
Cold Bay Localizer
(Lat. 55°11″41′N., long. 162°43″07′W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Cold Bay VORTAC extending clockwise from the 253° radial to the 041° radial of the VORTAC and within 4 miles south of the 253° radial Cold Bay VORTAC extending from the VORTAC to 7.2 miles west of the Cold Bay Airport and within 4 miles south of the 041° radial extending from the VORTAC to 7.2 miles east of the airport and within 4.5 miles west and 8 miles east of the Elfee NDB 318° bearing extending from the NDB to 21.7 northwest of the airport and that airspace within 3 miles each side of the Cold Bay VORTAC 150° radial extending from the VORTAC to 18.2 miles south of the airport and within 2.8 miles west of the Cold Bay Localizer back course extending from the airport to 15.7 miles south of the airport; excluding that airspace more than 12 miles from the shoreline; and that airspace extending from 1,200 feet above the surface within 18.3 miles from the Cold Bay VORTAC extending clockwise from the Cold Bay VORTAC 085° radial to the Cold Bay VORTAC 142° radial.

* * * * *

Issued in Anchorage, AK, on January 18, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–2407 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–1]

Proposed Amendment of Class E Airspace; Merle K. (Mudhole) Smith Airport, Cordova, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Cordova, AK. An airspace review was conducted for the Merle K. (Mudhole) Smith airport as a result of the development of a new Area Navigation (RNAV) Global Positioning System (GPS)—B standard instrument approach procedure. Additional Class E surface area airspace is needed to protect instrument flight rules (IFR) operations at Cordova, AK. The additional Class E surface area airspace will ensure that aircraft executing straight-in standard instrument approach procedures to Runway 27 remain within controlled airspace. Adoption of this proposal would result in additional Class E airspace at Cordova, AK and in the re-designation of class E surface area extensions.

DATES: Comments must be received on or before March 25, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 02–AAL–1, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AAL–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed

in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by adding Class E surface area airspace at Cordova, AK. The intended effect of this proposal is to add Class E surface area airspace necessary to contain IFR operations at the Merle K. (Mudhole) Smith airport, Cordova, AK. In addition, extensions to the Class E surface area have been previously designated incorrectly. This proposal would re-designate those extensions from E2 surface area airspace to E4 surface area extension airspace.

The FAA is adding a standard instrument approach procedure to the Merle K. (Mudhole) Smith airport. The new approach name is ''RNAV (GPS)—B'' and is designed to be a circling approach to the airport. The ''RNAV (GPS)—B'' approach begins southwest of the Merle K. (Mudhole) Smith airport with an inbound course of 062§ true. Although the Class E airspace surrounding the Merle K. (Mudhole) Smith airport is sufficient to contain the ''RNAV (GPS)—B'' instrument approach procedure, it was found during the airspace review for the new approach that an extension to Class E surface area airspace must be made to ensure that the instrument approach procedures that are aligned with Runway 27 at the Merle K. (Mudhole) Smith airport are entirely contained within controlled airspace. In addition, it was found that airspace within a 4.1mile radius of the Merle K. (Mudhole) Smith airport is correctly designated as Class E2 airspace. However, all extensions here-to-fore designated as Class E2 surface areas beyond the 4.1 mile radius should be re-designated as Class E4 surface area airspace.

The proposed Class E surface area airspace would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E2 airspace areas designated as surface areas are published in paragraph 6002 in FAA Order 7400.9J; the Class E4 airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004 in FAA Order 7400.9J; *Airspace Designations and Reporting Points,* dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points,* dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Cordova, AK [REVISED]

Cordova, Merle K. (MUDHOLE) Smith Airport, AK
(Lat. 60°29′31″ N., long. 145°28′39″ W.)
Glacier River NDB
(Lat. 60°29′56″ N., long. 145°28′28″ W.)

Within a 4.1-mile radius of the Merle K. (MUDHOLE) Smith airport excluding that airspace north of a line from lat. 60°32′48″ N, long. 145°34′06″ W; to lat. 60°31′00″ N, long. 145°20′00″ W.

Paragraph 6004 Class E airspace designated as an extension to a class D or class E surface area.

* * * * *

AAL AK E4 Cordova, AK [NEW]

Cordova, Merle K. (MUDHOLE) Smith Airport, AK
(Lat. 60°29′31″ N., long. 145°28′39″ W.)]
Glacier River NDB
(Lat. 60°29′56″ N., long. 145°28′28″ W.)

That airspace from a 4.1-mile radius of the Merle K. (MUDHOLE) Smith airport and within 2.1 miles each side of the 222° bearing from the Glacier River NDB extending from the 4.1-mile radius to 10 miles southwest of the airport and within 2 miles either side of the 114° bearing from the Glacier River NDB extending from the 4.1-mile radius to 6 miles southeast of the airport and within 2.2 miles each side of the 142° bearing from the NDB extending from the 4.1-mile radius to 10.4 miles southeast of the airport.

* * * * *

Issued in Anchorage, AK, on January 18, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–2408 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

FHWA Docket No. FHWA–2001–11130

RIN 2125–AE29

Work Zone Safety

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA is seeking comments regarding improvements that can be made to its regulation on Traffic Safety in Highway and Street Work Zones to better address work zone mobility and safety concerns. The FHWA has identified goals for maximizing the availability of roadways during construction and maintenance, while minimizing impacts on road users and highway workers, and would like to ascertain whether the current provisions in our regulation are adequate to address the unique mobility and safety challenges posed by work zones. Therefore the FHWA is soliciting input to identify the key issues that should be considered if the regulation were to be updated.

DATES: Comments must be received on or before June 6, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Shelley Row, Office of Transportation Operations, HOTO–1, (202) 366–1993; or Mr. Raymond Cuprill, Office of the Chief Counsel, HCC–30, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code for Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site. An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

Highway construction and maintenance work zones cause mobility and safety problems for the traveling public, businesses, highway workers, and transportation agencies, resulting in an overall loss in productivity and growing frustration. Work zones are a necessary part of meeting the need to maintain and upgrade our aging highway infrastructure. However, with vehicle travel increasing significantly faster than miles of roadway, we also have a growing congestion problem that is further worsened by work zones.

Legislative and Regulatory History

Section 1051 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, 2001, December 18, 1991, required the Secretary of Transportation (Secretary) to develop and implement a highway work zone safety program to improve work zone safety at highway construction sites by enhancing the quality and effectiveness of traffic control devices, safety appurtenances, traffic control plans, and bidding practices for traffic control devices and services. The FHWA implemented this provision of ISTEA through non-regulatory action, by publishing a notice in the **Federal Register** on October 24, 1995 (60 FR 54562). (Hereinafter referred to as ''the notice.'')

The purpose of this notice was to establish the National Highway Work Zone Safety Program (NHWZSP) to enhance safety at highway construction, maintenance and utility sites. In this notice, the FHWA indicated that having appropriate National and State standards and guidelines would contribute to improved work zone safety. To attain these National and State standards and guidelines, the FHWA identified, among other things, the need to update its regulation on work zone safety, 23 CFR 630, subpart J.

The notice indicated that the FHWA would review current work zone problems and update the regulation to better reflect current needs including reinforcement of guidance on bidding practices, work zone accident data collection and analysis at both project and program levels, compliance with traffic control plans, and work zone speed limits. While the focus of this notice was work zone safety, it also identified the need ''to minimize disruptions to traffic during construction of highway projects.''

Work zone mobility and safety are major concerns to the traveling public, businesses and transportation agencies. The FHWA has identified National goals for maximizing the availability of the Nation's roads during road construction and maintenance while minimizing impacts on road users and workers. To facilitate the attainment of these goals and to better meet the needs of transportation agencies, the traveling public, and highway workers, the FHWA is considering a wide range of options, including revising and expanding the regulations in 23 CFR 630, subpart J; alternatively, the FHWA is considering policy guidance. Congress' continued interest in this subject is evidenced by the fact that the House Transportation and Infrastructure Committee, Subcommittee on Highway and Transit, held a hearing entitled Work Zone Safety in July 2001.

The FHWA is therefore seeking input into the consideration of revision of the current regulation.

Definitions/Explanation of Terms

The definitions and explanations for the key terms and phrases used in this ANPRM are provided below. Some are standard definitions as stated by various manuals/codes, trade organizations and public entities, while others are commonly understood explanations and interpretations.

Americans with Disabilities Act (ADA).[1] The Americans with Disabilities Act, Public Law 101–336 was enacted July 26, 1990. The ADA

[1] Americans with Disabilities Act (ADA) of 1990, Public Law 101–336, 104 Stat. 327 (July 26, 1990).

prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services. The term ''disability'' means, with respect to an individual—(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.

Constructibility Review. Refers to a process for assessing and improving highway construction project contract documents to ensure rational bids and to minimize problems during construction. Constructibility is defined as the optimum use of construction knowledge and experience in planning, design, procurement, and field operations to achieve overall project objectives.[2]

Disruption due to Work Zones. The deviation from normalcy caused by work zones resulting in impacts on mobility, safety and productivity of users, businesses and highway workers.

Incident. Part 6 of the Manual on Uniform Traffic Control Devices (MUTCD),[3] Temporary Traffic Control, defines an incident as an area of a highway where temporary traffic controls are imposed by authorized officials in response to a road user incident, natural disaster, or special event.

Mobility. A representation of the efficiency and convenience of transportation facilities and traffic flow. The commonly used performance measures for the assessment of mobility include delay, speed, travel time and queue lengths. With specific reference to work zones, mobility pertains to moving road users smoothly through or around a work zone area with a minimum delay compared to baseline travel when no work zone is present.

Mobility and Safety Audits. Refers to the process of evaluating work zone traffic control and management plans against the applicable mobility and safety standards, in order to obtain an estimate of the performance of the work zone with respect to the attainment of those mobility and safety standards.

Road User/Traveler. Part 1 of the MUTCD, General, defines road user to include all vehicle operators (private, public and commercial), bicyclists, pedestrians or disabled people within the highway, including workers in temporary traffic control zones.

Safety. A representation of the level of exposure to danger for users of transportation facilities. With specific reference to work zones, safety refers to minimizing the exposure to danger of road users in the vicinity of a work zone and road workers at the work zone interface with traffic. The commonly used measures for road safety are the number of crashes or the consequences of crashes (fatalities and injuries), at a given location or along a section of highway, during a period of time. Worker safety in work zones refers to the safety of workers at the work zone interface with traffic and the impacts of the work zone design on worker safety. The number of worker fatalities and injuries at a given location or along a section of highway, during a period of time is also used to depict the safety of work zones.

Temporary Traffic Control Zone. The MUTCD defines a temporary traffic control zone as an area of a highway where road user conditions are changed because of a work zone or traffic incident by the use of temporary traffic control devices, flaggers, police, or other authorized personnel.

User Cost. The cost of the disruptions due to work zones borne by road users, nearby residents and businesses, transportation agencies, and contractors. User costs primarily include travel delay costs (time value of money), additional fuel consumption costs, environmental impact costs, and accident costs. Consideration may also be given to lost sales, late deliveries/lost productivity, and costs of delayed construction.

Work Zone. The MUTCD defines a work zone in Part 6, Temporary Traffic Control, as an area of a highway with construction, maintenance, or utility work activities. A work zone is typically marked by signs, channelizing devices, barriers, pavement markings, and/or work vehicles. It extends from the first warning sign or rotating/strobe lights on a vehicle to the END ROAD WORK sign or the last temporary traffic control device.

The National Committee on Uniform Traffic Laws and Ordinances (NCUTLO)[4] adds to this definition in Section 4 of its Work Zone Model Law, by including the following: a work zone may be for short or long durations and may include stationary or moving activities, including: Long-term highway construction such as building a new bridge, adding travel lanes to the roadway, extending an existing roadway, etc; Short-term highway maintenance such as striping the roadway, median, and roadside grass mowing/landscaping, pothole repair, etc; and Short-term utility work, such as repairing electric, gas, or water lines within the roadway. The work zone does not include private construction, maintenance or utility work outside the highway.

The National Highway Traffic Safety Administration's (NHTSA) Model Minimum Uniform Crash Criteria (MMUCC)[5] states that a work zone is a segment of the roadway marked to indicate that construction, maintenance, or utility work is being done. A work zone extends from the first warning sign to the end construction (work) sign or the last traffic control device. Work zones may or may not involve workers or equipment on or near the road. A work zone may be stationary (such as repairing a water line) or moving (such as re-striping the centerline); it may be short term (such as pothole patching) or long term (such as building a new bridge).

The American National Standards Institute (ANSI), in its Manual on Classification of Motor Vehicle Traffic Accidents, American National Standard—ANSI D–16,[6] is proposing a definition for work zone, which is similar to the NCUTLO definition. It states that a work zone is an area of a

[2] From National Cooperative Highway Research Program (NCHRP) Project 20–24(12), Avoiding Delays During the Construction Phase of Highway Projects, Draft Report July 2001. This project is currently underway, with publication of the final results expected in early 2002. When completed, a copy of the final report may be obtained electronically at: *http://www4.nas.edu/trb/onlinepubs.nsf/web/crp* or by writing to the Transportation Research Board (TRB), Lockbox 289, Washington, DC 20055.

[3] Manual on Uniform Traffic Control Devices (MUTCD) Millenium Edition, December 2000. This document is available electronically at the following URL: *http://mutcd/kno-millenium.htm.*

[4] National Committee on Uniform Traffic Laws and Ordinances (NCUTLO), Work Zone Model Law, Section 4—Definitions (j). More information on the NCUTLO and its Work Zone Model Law may be obtained electronically at: *http://www.ncutlo.org* or by writing the NCUTLO at, 107 S. West Street, # 110, Alexandria, VA 22314, Ph—800–807–5290.

[5] Model Minimum Uniform Crash Criteria (MMUCC), National Highway Traffic Safety Administration (NHTSA), August 1998. Information about and copies of the Model Minimum Uniform Crash Criteria (MMUCC) may be obtained on the Internet at: *http://www.nhtsa.dot.gov* or by writing the NHTSA at 400 7th St. SW Washington, DC 20590, Phone: 888–327–4236.

[6] The purpose of this American National Standard is to provide a common language for collectors, classifiers, analysts and users of traffic accident data. The Manual promotes uniformity and comparability of motor vehicle traffic accident statistics developed in states and local jurisdictions. Information about this standard may be obtained by contacting the American National Standards Institute at 1819 L Street, NW, Washington, DC 20036, Telephone: 202.293.8020, Fax: 202.293.9287 or on the Internet at: *http://www.ansi.org.*

trafficway[7] with highway construction, maintenance or utility work activities. A work zone is typically marked by signs, channelizing devices, barriers, pavement markings, and/or work vehicles. It extends from the first warning sign or flashing lights on a vehicle to the END ROAD WORK sign or the last traffic control device. A work zone may be for short or long duration and may include stationary or moving activities. Inclusions: Long-term stationary highway construction such as building a new bridge, adding travel lanes to the roadway,[8] extending an existing trafficway, etc.; Mobile highway maintenance such as striping the roadway, median, and roadside grass mowing/landscaping, pothole repair, etc.; Short-term stationary utility work such as repairing electric, gas, or water lines within the trafficway, etc. Exclusions: Private construction, maintenance or utility work outside the trafficway.

Work Zone Duration. Refers to the length of time for which a work zone is needed to complete the required highway construction or maintenance activity.

Work Zone Frequency. Refers to either the number of work zones or distance between multiple work zones along a corridor or in a road network; or the time between recurrent work zones for performing road construction or maintenance work at the same location, along the same segment of a corridor, or in a road network.

Statement of the Problem

As much of the Nation's transportation infrastructure approaches its service life, preservation, rehabilitation, and maintenance become an increasing part of our transportation improvement program.[9] The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, enacted in June 1998, provides for a 40 percent increase in transportation funding over the total provided in the ISTEA.[10] Much of this funding is being spent on maintaining and operating existing roads, since comparatively few new roads are being built. At the same time, traffic volumes continue to grow and create more congestion.

From 1980 to 1999, the U.S. experienced a 76 percent increase in total vehicle-miles traveled, while total lane miles of public roads increased only by 1 percent.[11] Congestion is frustrating and costly to businesses and individuals. The Texas Transportation Institute (TTI) estimated that the cost of congestion was approximately $78 billion in 1999. The combination of heavier traffic volumes passing through a road network with more work zones increases the operational and safety impacts of those work zones on the road network.

Over the years, highway professionals have devised and implemented several strategies and innovative practices for minimizing the disruption caused by work zones, while ensuring successful project delivery. However, more effort is required to meet the needs and expectations of the American public, given the current and expected level of investment activity in highway infrastructure, a significant portion of which is for maintenance and reconstruction.

The results of a recent FHWA nationwide survey, reported in ''Moving Ahead: The American Public Speaks on Roadways and Transportation in Communities,''[12] illustrates the American public's frustration with work zones. Key findings include:

- Work zones were cited as second only to poor traffic flow in causing traveler dissatisfaction;
- The top three improvements indicated by the public as a ''great help'' to improve roadways and transportation are related to roadway repairs and work zones. They are:

a. More durable paving materials (67 percent);

b. Repairs made during non-rush hours (66 percent); and

c. Reducing repair time (52 percent);

- The use of better traffic signs showing expected roadwork, and better guide signs for re-routing traffic to avoid roadwork, were also cited as being of ''great help,'' by 40 percent and 35 percent of the respondents respectively; and
- Many travelers indicated a preference to have the road closed completely for moderate durations in exchange for long-lasting repairs.

The following facts illustrate the adverse impacts of work zones on traveler and construction worker safety:

- Work Zone fatalities reached a high of 872 in 1999,[13] while 39,000 Americans were injured in work zone related crashes in the same year;[14]
- From 1992 to 1999, about 106 to 136 highway workers died each year in road construction activities, as indicated by the Bureau of Labor Statistics' Census of Fatal Occupational Injuries.[15] On average, 23 percent of these fatalities were due to workers being struck by vehicles or mobile equipment in roadways.

Further, the contracting industry is under pressure to expedite construction and minimize disruption, and has expressed concerns that these pressures reduce productivity, and may compromise quality.

While mobility and safety are two distinct challenges posed by the circumstances we face on our highways, it is important to realize that both these elements are closely tied to one another. Studies and data analyses over time have proven that as congestion builds, crash rates increase; and as crashes increase, more congestion occurs. Therefore, it is important to develop comprehensive solutions and mitigation measures for work zones that address both mobility and safety of transportation and traffic flow from the perspective of reducing the impacts of work zones on users, businesses and highway workers, and ultimately improving mobility, safety and productivity.

In recognition of these facts and findings, the FHWA is seeking to identify and foster ways to make work zones function better. This requires looking at the full life of our transportation infrastructure and may require changing the way construction

[7] The American Association of State Highway Transportation Officials (AASHTO) equivalent of ''trafficway'' is ''highway, street or road.''

[8] The AASHTO term equivalent to ''roadway'' is ''traveled way.''

[9] FHWA report, ''Meeting the Customer's Needs for Mobility and Safety During Construction and Maintenance Operations,'' September 1998. This report is available electronically at: *http://safety.fhwa.dot.gov/fourthlevel/pro_res_wzs_links.htm* or may be obtained by writing the FHWA Safety Core Business Unit at FHWA, Safety, 400 7th Street, SW., Washington, DC 20590.

[10] Statement of Vincent F. Schimmoller, Deputy Executive Director, FHWA, USDOT, Before The House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, Hearing on Work Zone Safety, July 24, 2001. An electronic copy of this statement may be obtained at: *http://www.house.gov/transportation/press/press2001/release100.html.*

[11] ''Status of the Nation's Highways, Bridges, and Transit: Conditions & Performance (C&P) Report to Congress,'' FHWA, 1999. A copy of this report may be obtained electronically at: *http://www.fhwa.dot.gov/policy/1999cpr/.*

[12] The results of the survey are available in ''Moving Ahead: The American Public Speaks on Roadways and Transportation in Communities,'' FHWA Publication No. FHWA–OP–01–017, 2000. A copy of this publication is available electronically on the FHWA web page at: *http://www.fhwa.dot.gov/reports/movingahead.htm.*

[13] The statistics on work zone crashes for the year 2000 were not officially available at the time this ANPRM was drafted.

[14] Fatal Analysis Reporting System (FARS) maintained by the NHTSA. More information is available electronically at: *http://www-fars.nhtsa.dot.gov/.*

[15] The Bureau of Labor Statistics' Census of Fatal Occupational injuries is available electronically at *http://www.bls.gov/iif/oshcfoi1.htm.*

and maintenance projects are conceived, planned, designed and executed. Changes to the project development process may fundamentally include consideration of the mobility and safety impacts of work zones on road users and businesses, at the same time providing for worker safety and efficient construction. It is essential that all interested parties participate in developing any rules, regulations and/or guidelines to facilitate improved, comprehensive practices for road construction and maintenance projects.

Currently, the regulation has the broad purpose of providing guidance and establishing procedures to ensure that adequate consideration is given to motorists, pedestrians, and construction workers on all Federal-aid construction projects. However, the content of the current regulation is narrowly focused on the development of Traffic Control Plans (TCPs) and on the operations of two-lane, two-way roadways. The FHWA believes that the trends of increasing road construction, growing traffic and public frustration with work zones call for a more broad-based examination of the current regulations.

The FHWA is considering updating the current regulations to seek and facilitate comprehensive means and methods to reduce the need for recurrent road work, the duration of work zones, and the disruption caused by work zones. The FHWA hopes to receive substantial input from the transportation community in the development of new regulations and guidelines. Through this ANPRM, the FHWA seeks to initiate discussion with the transportation community and any interested parties by soliciting comments and input on several key questions. During the entire rulemaking consideration process, the FHWA will conduct outreach and solicit comments, suggestions and input from a variety of transportation stakeholders and will be grateful to all participants for their contributions. The FHWA will continue to file relevant information in the docket as it becomes available and interested persons should continue to examine the docket for new material.

General Discussion for Considering Policy and Regulation Change

To reduce the need for recurrent work zones, reduce the duration of work zones, and reduce the disruption due to work zones, the FHWA will consider updating the current regulation based on the following objectives of the FHWA's work zone mobility and safety program:

- Reduction of the impacts of highway work zones on road users, construction workers, businesses and society, at the same time maximizing the availability of the roadway for efficient traffic movement;
- Enhancement of the way construction projects are currently conceived, planned, designed and executed to bring about a focus shift to customer-oriented construction project planning;
- Identification of an exhaustive set of issues that govern work zone mobility and safety for possible consideration in an updated regulation;
- Consideration and incorporation of a range of innovative practices and technologies that can substantially improve work zone mobility and safety; and
- Extensive outreach and dialogue with a wide cross-section of transportation stakeholders and the community, characterized by a willingness to listen and respond to inputs and suggestions.

Request for Comments

Based on previous studies and the knowledge base accumulated over time through input from States, local agencies, and professional organizations, the FHWA has identified a set of issues that may be addressed as part of this rulemaking effort. We have posed these issues as questions to elicit comments, guidance and suggestions. The FHWA believes that the magnitude of the problem under consideration and the level of concern voiced by road users requires reconsideration of how we plan, design and construct roadway projects to shift our focus to the needs of road users and businesses while balancing the need for worker safety. A customer-oriented construction project planning and implementation approach necessitates that we examine the complete project development cycle. Therefore, we have grouped the questions into categories that generally correspond to the major steps in project development. These categories are:

- General (wide-ranging policy and regulatory considerations);
- Transportation Planning and Programming;
- Project Design for Construction and Maintenance;
- Managing for Mobility and Safety In and Around Work Zones;
- Public Outreach and Communications; and
- Analyzing Work Zone Performance.

Commenters are also encouraged to include discussion of any other issues they consider relevant to this effort.

General

1. Should there be a National policy to promote improved mobility and safety in highway construction and maintenance? If so, should the National policy be incorporated into the regulation or issued separately as guidance that outlines guidelines and best practices for implementation?

2. Are the current provisions of 23 CFR 630, subpart J adequate to meet the mobility and safety challenges of road construction and maintenance projects encountered at all stages of project evolution? If they are not adequate, what are the provisions and/or sections that need to be enhanced and/or modified to ensure mobility and safety in and around work zones?

3. Should work zone regulations be stratified to reflect varying levels and durations of risk to road users and workers, and disruptions to traffic? What would be the most appropriate stratification factors (*e.g.,* duration, length, lanes affected, Average Daily Traffic (ADT), road classification, expected capacity reduction, potential impacts on local network and businesses)?

4. Currently, there are several definitions for work zone, as defined by the MUTCD, ANSI D16 (proposed), NCUTLO and NHTSA. These definitions, even though similar in basic structure and implication, differ in length and the degree of detail addressed. Should there be a common National definition for work zone to bring about uniformity? If so, what should the common National definition be?

Transportation Planning and Programming

It is important to consider user mobility and safety impacts and worker safety requirements across the different stages of highway project development. Consideration of these impacts should begin early and be consistently coordinated across the planning processes and project development stages. The FHWA expects that such consideration will reduce the need for recurrent work zones, the duration of work zones, and the disruption caused by work zones.

5. How, if at all, are impacts to road users due to road construction and maintenance part of the management and operations considerations that are addressed in transportation plan development?

6. To what extent should the metropolitan and statewide transportation planning processes address cross-cutting policy issues that may contribute to increases in project costs (for example, the use of more durable materials, life-cycle costing, complete closure of facilities,

information sharing on utilities, etc.)? Is it appropriate to consider the impact of construction and maintenance projects to road users in planning for future roadway improvements at the metropolitan level? At the statewide level? At the corridor level?

7. What data and methods are currently available to address the above considerations? What else would be needed to support such considerations in the metropolitan and statewide transportation planning processes? At the corridor level?

Project Design for Construction and Maintenance

In making decisions on alternative project designs, project designers should consider different strategies and practices that may lead to reductions in the need for recurrent road construction and maintenance work, the duration of work zones and the disruption caused by work zones. Examples of such considerations include life-cycle cost analysis, alternative project scheduling and design strategies, such as, full road closures and night time work, using more durable materials, coordinating road construction, estimation of user costs/impacts, risk and reward sharing with contractors, and constructibility reviews for projects.

8. How can the FHWA encourage agencies to incorporate the above considerations (life-cycle cost analysis, alternative project scheduling and design strategies, etc.) in the decisionmaking process for evaluating alternative project designs? What are the most appropriate ways to include these considerations in project design?

9. Can user cost be a useful measure to assess alternative means to design and implement work zones? What weight should agencies assign to user costs as a decisionmaking factor in the alternatives evaluation process? Should analytical tools, such as QuickZone,[16] QUEWZ–98,[17] etc., be used for the evaluation of various design alternatives and their estimated impact to the public? What other impact measures (delay, speed, travel time, crashes) should agencies estimate and use for alternatives evaluation?

10. Given the fact that utility delays have been cited as roadblocks to efficient project delivery, what should be done to address this issue?

Managing for Mobility and Safety in and Around Work Zones

There are many methods that can be applied to managing traffic in and around work zones. The application of Intelligent Transportation Systems (ITS) for purposes, such as, traffic management, automated enforcement and traveler information is a useful method to improve transportation mobility and safety. The current and future mobility and safety challenges presented by work zones may require Traffic Control Plans (TCPs) to include traffic management, enforcement and operations considerations (such as ITS based traffic control and traveler information, speed management and enforcement, incident and emergency management, etc.), security considerations, and other considerations (for example, utility location and coordination information).

11. The current regulation specifies the requirement for TCPs for work zones, but does not address the issues of sustained traffic management and operations, or traffic enforcement methods and partnerships. Should the scope of TCPs be expanded to include such considerations? What are the most relevant practices or technologies that should be considered in planning for traffic management, enforcement and operations? What are the most appropriate ways to facilitate the inclusion of such considerations in traffic control planning?

12. Should TCPs address the security aspects of construction of critical transportation infrastructure? Should TCPs address the security aspects of work zone activities in the vicinity of critical transportation or other critical infrastructure?

13. How should TCPs address ADA requirements?

14. Should more flexibility be allowed on who develops TCPs—State DOTs, municipalities, contractors or law enforcement agencies—and how should the responsibility for developing TCPs be assigned? Should certification be required for TCP developers? How can the owners and contractors share the roles, risk and rewards in developing TCPs and implementing and operating work zones?

15. To ensure roadway mobility and safety and work area safety, should mobility and safety audits be required for work zones?

Public Outreach and Communications

To reduce the anxiety and frustration of the public, it is important to sustain effective communications and outreach with the public regarding road construction and maintenance activity, and the potential impacts of the activities. This also increases the public's awareness of such activities and their impacts on their lives. The lack of information is often cited as a key cause of frustration for the traveling public. Therefore, it is important to identify the key issues that need to be considered from a public outreach and information perspective.

16. How can we better communicate the anticipated work zone impacts and the associated mitigation measures to the public? Who—the State, local government, contractor, or other agency—should be responsible for informing the public?

17. Should projects with substantial disruption include a public communication plan in the project development process? If so, what should such a plan contain?

Analyzing Work Zone Performance

Evaluation is a necessary tool for analyzing failures and identifying successes in work zone operations. Work zone performance monitoring and reporting at a nationwide level has the potential to increase the knowledge base on work zones and help better plan, design and implement road construction and maintenance projects.

18. Should States and local transportation agencies report statistics on the characteristics of work zones (such as number of work zones, size, cost, duration, lanes affected, ADT, road classification, level of disruption and impacts on local network and businesses) to appropriate State or Federal agencies? If so, in what ways do you think this would be beneficial?

19. Should States and local transportation agencies report statistics on the mobility performance of work zones? Are typical mobility measures, such as, delay, travel time, traffic volumes, speed and queue lengths appropriate to analyze work zone mobility performance? What are the top three measures that are most appropriate?

20. Are the currently used measures for safety (typically, crashes, fatalities and injuries) appropriate to analyze work zone performance? If not, what other measures should be considered? Are current mechanisms for collecting this information adequate? If not, how can we improve them?

[16] QuickZone is a traffic analysis delay estimation tool designed by the FHWA to aid State and local design and construction staff, operations and planning staff, construction contractors and even utility contractors. This Microsoft Excel spreadsheet tool can be used to analyze both urban and inter-urban corridors. QuickZone 1.0 will soon be available. QuickZone Beta version 0.99 is available as a free download at *http://ops.fhwa.dot.gov/wz/workzone.htm.*

[17] QUEWZ–98 is a microcomputer analysis tool that estimates traffic impacts, emissions and additional road user costs resulting from short-term lane closures in work zones. More information about this tool may be obtained online at: *http://tti.tamu.edu/researcher/v36n2/quewz98.stm.*

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A notice of proposed rulemaking (NPRM) may be issued at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this action would be minimal. Any rulemaking action resulting from this ANPRM would propose to amend the current regulations and it is anticipated that any changes proposed would not affect any Federal funding available.

Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Based upon the information received in response to this ANPRM, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. If the rulemaking action contemplated in this ANPRM is promulgated, it is anticipated that the proposed action would not have a significant economic impact on a substantial number of small entities. The FHWA encourages commenters to evaluate any options addressed here with regard to the potential for impact, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

The actions being considered under this ANPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions being considered under this ANPRM would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA also anticipates that any action taken will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Any action that might be contemplated in subsequent phases of this proceeding will be evaluated for PRA requirements.

Executive Order 13175 (Tribal Consultation)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed under Executive Order 13175, dated November 6, 2000, and the FHWA believes that any proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, the FHWA anticipates that a tribal summary impact statement will not be required.

Executive Order 13211 (Energy Effects)

The FHWA will analyze any action that might be proposed in subsequent stages under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined that any action contemplated will not be a significant energy action under that order because any action contemplated will not be a significant regulatory action under Executive Order 12866 and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Therefore, the FHWA anticipates that a Statement of Energy Effects under Executive Order 13211 is not required.

National Environmental Policy Act

The agency will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

The FHWA will analyze any action that might be proposed in subsequent stages under Executive Order 12630, Governmental Actions and Interface with Consitutionally Protected Property Rights. The FHWA does not anticipate at this time that such action would effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

Any action that might be proposed in subsequent stages of this proceeding will meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA will analyze any action that might be proposed in subsequent stages under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA does not anticipate that such action would concern an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Highway safety, Highways and roads.

(Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; 49 CFR 1.48; sec. 1051, Pub. L. 102–240, 105 Stat. 2001; sec. 358(b), Pub.L. 104–59, 109 Stat. 625.)

Issued on: January 31, 2002.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–2822 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 161 and 167

[USCG–2001–10254]

RIN 2115–AG20

Traffic Separation Scheme: In Prince William Sound, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending the existing Traffic Separation Scheme (TSS) in Prince William Sound, Alaska. The proposed amendments are adopted by the International Maritime Organization and have been validated by a recent Port Access Route Study (PARS). Implementing these amendments would provide straight traffic lanes between the Bligh Reef Pilot Station and Cape Hinchinbrook and should reduce risk for vessels operating in the area. The rulemaking would incorporate the amended TSS into the Code of Federal Regulations.

DATES: Comments and related materials must reach the Docket Management Facility on or before March 8, 2002.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–10254), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

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

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in this docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call LT Keith Ropella, U.S. Coast Guard Marine Safety Office, Valdez, AK, telephone 907–835–7209, e-mail KRopella@cgalaska.uscg.mil; or George Detweiler, Coast Guard, Office of Vessel Traffic Management (G–MWV), at 202–267–0574, e-mail *GDetweiler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–10254), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Under the Ports and Waterways Safety Act (33 U.S.C. 1221–1232) (PWSA), the Coast Guard establishes Traffic Separation Schemes (TSS's), where necessary, to provide safe access routes for vessels proceeding to or from U.S. ports. Before implementing new TSS's or modifying existing ones, we conduct a port access route study (PARS). Through the PARS process, we consulted with affected parties to reconcile the need for safe access routes with the need to accommodate other reasonable uses of the waterway, such as oil and gas exploration, deepwater port construction, establishment of marine sanctuaries, and recreational and commercial fishing. If a study recommends a new or modified TSS, we must initiate a rulemaking to implement the TSS. Once a TSS is established, the right of navigation is considered paramount within the TSS.

Maritime trends have not significantly changed since the publication of a description of the Prince William Sound Oil Transportation System in 1996. However, minor changes have occurred since publication. These changes include the replacement of several new escort vessels in the ALYESKA/SERVS fleet and the removal of several tankers from service. In addition, ALYESKA began operation of a Vapor Control Recovery Loading System in March,

1998. This system is functional on berths 4 and 5 of the Trans-Alaska Pipeline Terminal. Originally, it was thought that vessel traffic congestion would result due to the shippers' preference to utilize these berths. However, most delays seem minimal and Knowles Head Anchorage remains adequate for vessels awaiting a berth.

Cruise ships continue to visit Valdez during May through September. Cruise ship traffic continues to grow in direct proportion to the increase in tourism throughout Alaska. These vessels frequently do not follow the traffic lanes within central Prince William Sound. Typically, cruise ships transit through Montague Strait up the west side of Prince William Sound to College Fiord. Those vessels that make a port call in Valdez join the existing traffic lane in the Valdez Arm.

Fishing vessels, most notably seiners, continue to harvest salmon during the summer. The Vessel Traffic Center at Valdez has gone to great efforts to educate all mariners about ways to share the waterway. Radio procedures have been established to further disseminate information to fishing vessels participating in the limited periods when fishing is allowed. Although Valdez Narrows still poses the greatest possibility of conflicts with fishing vessel and commercial vessel traffic, the prevailing attitude is one of cooperation among parties.

Recreational boating continues to abound within Prince William Sound. Areas of operation for these vessels are not predictable and generally follow current fishing trends. Charter vessels fish for halibut in the vicinity of Cape Hinchinbrook, and salmon fishing occurs within the port. Kayakers also make frequent excursions to nearby glaciers and recreational sites, however their transits typically follow close to the shoreline.

Existing Prince William Sound TSS. The current TSS in Prince William Sound, Alaska, runs from the vicinity of Cape Hinchinbrook through Prince William Sound and into the Valdez Arm (the entrance to Port Valdez). The International Maritime Organization (IMO) adopted the TSS in 1992. The TSS is reflected on National Oceanic and Atmospheric Administration (NOAA) nautical chart 16700 and in ''Ships Routeing,'' Seventh Edition 1999, International Maritime Organization.

Recent Port Access Route Study. We published a notice of study in the **Federal Register** on February 9, 1998 (63 FR 6502). This study was to review and evaluate the need for modifications to current vessel routing and traffic management measures in the approaches or departures within Prince William Sound, Alaska. The study considered the results and findings of several related studies. We published the study results in the **Federal Register** on August 26, 1999 (64 FR 4662). The PARS concluded that modifications to the current TSS were necessary to improve vessel traffic management and safety and reduce the risk of drift groundings.

Discussion of Proposed Rule

This rulemaking would amend the existing TSS in Prince William Sound, Alaska. The existing TSS is delineated in ''Ships Routeing,'' Seventh Edition 1999, International Maritime Organization, but not yet codified in the Code of Federal Regulations (CFR). The amendments are based on the recommendations of the 1999 PARS. We propose the following changes to the existing TSS:

- Establish a precautionary area southeast of Cape Hinchinbrook at the entrance to Prince William Sound.
- Straighten the Prince William Sound portion of the TSS to eliminate a course change.
- Establish a precautionary area at the Bligh Reef Pilot Station.

This precautionary area will divide the present TSS into two separate traffic separation schemes—a Prince William Sound traffic separation scheme and a Valdez Arm traffic separation scheme. In addition, the new Valdez Arm TSS will be slightly wider than the Valdez Arm portion of the present TSS.

Establish a precautionary area southeast of Cape Hinchinbrook at the entrance to Prince William Sound. Establishing a precautionary area southeast of Cape Hinchinbrook should reduce the potential for traffic congestion in this area. Some laden tankers departing from Cape Hinchinbrook do not follow the existing Prince William Sound Safety Fairway. Instead, the vessels use an alternate route to provide an extra measure of protection for the environmentally sensitive Copper River Flats Delta area. The recommended precautionary area would provide two distinct routes for departing and returning vessels, thereby improving vessel traffic management and safety.

Straighten the Prince William Sound portion of the TSS to eliminate a course change. The present course change in the Prince William Sound TSS was created to move traffic away from the Alaskan king crab fishing area (200 fathom curve). Since king crab is no longer fished in this area, the course change is not required. Eliminating the course change provides a straight traffic lane between the Bligh Reef Pilot Station and Cape Hinchinbrook and should reduce risk for vessels operating in the area. The length of transit in Prince William Sound is reduced, as well as overall exposure time for vessels. It should also result in a smoother flow of traffic and less traffic congestion. Further, with the course change removed, the minimum distance from the center of the southbound traffic lane to Naked Island would increase from 6 to 9 nautical miles, reducing the risk of drift groundings.

Establish a precautionary area at the Bligh Reef Pilot Station. Establishing a precautionary area at the Bligh Reef Pilot Station should reduce risk for vessels operating in the area. Several types of vessels converge in this area, including ferries, cruise ships, and tankers. Navigation can sometimes be difficult in this area because of outflows of ice from the Columbia Glacier. In addition, since the area offers little protection from the weather, vessels occasionally alter course to provide safe embarking and disembarking for pilots. The southbound traffic lane of the TSS within Valdez Arm would be widened to be tangent with the perimeter of the precautionary area.

We would amend the Valdez Narrows Vessel Traffic Service (VTS) Special Area to include the Valdez Arm portion of the TSS. This would give the Commanding Officer of the VTS the authority to direct vessels into the separation zone if, for example, the traffic lanes become partially blocked by ice from the Columbia Glacier.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The costs and benefits of this proposed rulemaking are summarized below.

Costs

Vessel operators would incur the minimal cost of plotting new coordinates on their existing charts or

purchasing updated charts when available.

Benefits

The proposed amendments to the TSS in Prince William Sound, Alaska, would increase the margin of safety for all vessels accessing the Port of Valdez. The new Precautionary Areas and amended traffic lanes would decrease the chance of collisions, allisions, and drift groundings were a vessel to become disabled. We expect that vessels transiting the Prince William Sound TSS would experience cost savings, through decreased operational costs, because the transit lanes in the Sound would be shorter.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule should have a reduced economic impact on vessels operated by small entities. The proposal amends an existing TSS. This action improves safety for commercial vessels using the TSS by reducing the risk of collisions, allisions, and drift groundings. Vessels voluntarily transiting the TSS will have to transit 1.5 to 2.5 nautical miles fewer per trip. The reduced transit distance results in decreased vessel operating costs. Vessels that tend to use the TSS's are commercial vessels, such as tankers. These vessels are usually large and capable of operating in an offshore environment. Because of their size, most of them are not owned by small entities. Even if such a large vessel were owned by a small business, decreased transit costs would positively affect the overall cost of the complete voyage.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult George Detweiler, Coast Guard, Marine Transportation Specialist, at 202–267–0574.

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

Collection of Information

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

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that it does not have implications for federalism under that Order.

Title I of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) (PWSA) authorizes the Secretary to promulgate regulations to designate and amend traffic separation schemes (TSS's) to protect the marine environment. In enacting PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSS in Prince William Sound, Alaska, we have consulted with the Valdez Marine Operators Committee (VMOC), the affected state and Federal pilot's associations, vessel operators, users, and all affected stakeholders. The VMOC includes individuals who represent the interests of local commercial shipping and industry, as well as members from the Regional Citizens Advisory Council, and the State of Alaska. The VMOC was an active participant in various meetings with the Coast Guard and has contributed to this rulemaking.

Presently, there are no Alaska State laws or regulations concerning the same subjects as are contained in this proposed rule. We understand the state does not contemplate issuing any such rules. However, it should be noted, that by virtue of the PWSA authority, the TSS proposed in this rule would preempt any state rule on the same subject.

In order to be effective against foreign flag vessels on the high seas, TSS's must be submitted to, approved by, and implemented by IMO. Individual states are not represented at IMO; that is the role of the Federal government. The Coast Guard is the principal United States agency responsible for advancing the interests of the United States at IMO. We recognize, however, the interest of all local stakeholders as we work at IMO to advance the goals of this TSS. We will continue to work closely with stakeholders to implement the final rule to ensure that the waters in Prince William Sound affected by this proposed rule are made safer and more environmentally secure.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to

safety that might disproportionately affect children.

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(i), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule proposes adjusting an existing traffic separation scheme. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, and Waterways.

33 CFR Part 167

Harbors, Marine safety, Navigation (water), and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 161 and 167 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1221; 33 U.S.C. 1223; 49 CFR 1.46.

2. Revise § 161.60 (b) to read as follows:

§ 161.60 Vessel Traffic Service Prince William Sound.

* * * * *

(b) The Valdez Narrows VTS Special Area consists of those waters of the Valdez Arm Traffic Separation Scheme as defined in 33 CFR part 167; those waters of Valdez Arm and Valdez Narrows bounded by the points 61°02.10′ N, 146°40.00′ W; 60°58.04′ N, 146°46.52′ W; 60°58.93′ N, 146°48.86′ W; 61°03.40′ N, 146°41.80′ W; and those waters of Port Valdez southwest of a line bearing 307° True from Entrance Island Light at 61°05.10′ N, 146°36.70′ W, through Valdez Narrows to a line between the points 61°02.10′ N, 146°40.00′ W and 61°03.40′ N, 146°41.80′ W.

* * * * *

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

3. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

4. Add §§ 167.1700 through 167.1703 to read as follows:

§ 167.1700 In Prince William Sound: General.

The Prince William Sound Traffic Separation Scheme consists of four parts: Prince William Sound Traffic Separation Scheme, Valdez Arm Traffic Separation Scheme, and two Precautionary Areas. The specific parts are described in §§ 167.1701 through 167.1703. The geographic coordinates in §§ 167.1701 through 167.1703 are defined using North American Datum 1983 (NAD 83).

§ 167.1701 In Prince William Sound: Precautionary Areas.

(a) *Cape Hinchinbrook:* A precautionary area is established, bounded by a line connecting the following geographical positions:

Latitude	Longitude
60°20.59′ N	146°48.18′ W
60°12.67′ N	146°40.43′ W
60°11.01′ N	146°28.65′ W
60°05.47′ N	146°00.01′ W
60°00.81′ N	146°03.53′ W
60°05.44′ N	146°27.58′ W
59°51.80′ N	146°37.51′ W
59°53.52′ N	146°46.84′ W
60°07.76′ N	146°36.24′ W
60°11.51′ N	146°46.64′ W
60°20.60′ N	146°54.31′ W

(b) Bligh Reef: A precautionary area of radius 1.5 miles is centered upon geographical position 60°49.63′ N, 147°01.33′ W.

(c) A pilot boarding area is located near the center of the Bligh Reef precautionary area. Specific regulations pertaining to vessels operating in these areas are contained in 33 CFR 165.1109(d).

§ 167.1702 In Prince William Sound: Prince William Sound Traffic Separation Scheme.

(a) A separation zone is bounded by a line connecting the following geographic positions:

Latitude	Longitude
60°20.77′ N	146°52.31′ W
60°48.12′ N	147°01.78′ W
60°48.29′ N	146°59.77′ W
60°20.93′ N	146°50.32′ W

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
60°20.59′ N	146°48.18′ W
60°49.49′ N	146°58.19′ W

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
60°49.10′ N	147°04.19′ W
60°20.60′ N	146°54.31′ W

§ 167.1703 In Prince William Sound: Valdez Arm Traffic Separation Scheme.

(a) A separation zone is bounded by a line connecting the following geographic positions:

Latitude	Longitude
60°51.08′ N	147°00.33′ W
60°58.60′ N	146°48.10′ W
60°58.30′ N	146°47.10′ W
60°50.45′ N	146°58.75′ W

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
60°49.39′ N	146°58.19′ W
60°58.04′ N	146°46.52′ W

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
60°58.93′ N	146°48.86′ W
60°50.61′ N	147°03.60′ W

Dated: December 5, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–2756 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1206

RIN 3095–AA93

National Historical Publications and Records Commission Grant Regulations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: The proposed rule updates and clarifies the National Historical Publications and Records Commission (NHPRC or ''the Commission'') regulations using plain language. We are removing outdated information, and expanding sections for greater clarity and conformity with our current guidelines. This revised regulation applies to all NHPRC applicants and grantees.

DATES: Comments are due by April 8, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL). Our postal address is Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, and our fax number is 301–713–7270.You may also submit comments via email to *comments@nara.gov.* If you send an email, see **SUPPLEMENTARY INFORMATION** for detailed instructions.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: If you send comments via email, please submit comments in the body of your message or as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 3095–AA93'' in the subject line of the email and your name and return address in your email message. If you do not receive a message confirming that we have received your email, contact the Regulation Comment desk at 301–713–7360, ext. 226.

The terms ''we'', ''I'', and ''our'' as used in this preamble refer to NHPRC and ''you'' and ''your'' refer to the reader.

The NHPRC makes grants to State and local government archives, colleges and universities, libraries, historical societies, nonprofit organizations, and individuals in the United States to help identify, preserve, publish, and provide public access to records, photographs, and other materials that document United States history.

We are proposing the following substantive changes. Delete outdated or unnecessary information. Remove the definitions for ''regional'' and ''national'' projects in § 1206.2 because we no longer use them. Update the requirements for subvention grants (proposed § 1206.18) to conform to our guidelines, adding the requirement that the grantee send ten complimentary copies of the volume to the project director or editor in addition to the five copies sent to the NHPRC.

Remove § 1206.20, Microform publication standards because we no longer have our own specifications. We now refer applicants and grantees to accepted industry standards. Reduce the number of copies of the guides required for microform projects, from five copies to three.

Add additional information on our relationship with the State historical records advisory boards, including a statement that recognizes planning as a function of all State boards. Also, in the case where there is no active State board in a State, we provide that applicants, other than State government agencies, may apply directly to the NHPRC. We cite ''The Manual of Suggested Practices for State Historical Records Coordinators and State Historical Records Advisory Boards'' for additional guidance, replacing ''Guidelines for State Historical Records Coordinators and State Historical Records Advisory Boards.'' In addition, we specify that either the governor or the State coordinator may designate a deputy State historical records coordinator.

Remove the definition for ''combined grants'' because it was confusing and redundant. Clarify cost sharing arrangements and policies. Expand our explanation of the review and evaluation process.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. In fiscal year 2000 the NHPRC made grants to only 72 organizations and entities as defined in the Act, from the 84 applications submitted.

List of Subjects in 36 CFR Part 1206

Archives and records, Grant programs-education, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, NARA proposes to revise part 1206 of title 36, Code of Federal Regulations to read as follows:

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

Subpart A—General

Sec.

1206.1 How do you use pronouns in this part?
1206.2 What does this part cover?
1206.3 What terms have you defined?
1206.4 What is the purpose of the Commission?
1206.5 Who is on the Commission?
1206.6 How do you organize the grant program?
1206.8 How do you operate the grant program?

Subpart B—Publications Grants

1206.10 What are the scope and purpose of publications grants?
1206.12 What type of proposal is eligible for a publications grant?
1206.14 What type of proposal is ineligible for a publications grant?
1206.16 What are my responsibilities once I have received a publications grant?
1206.18 What is a subvention grant, and am I eligible for one?

Subpart C—Records Grants

1206.20 What are the scope and purpose of records grants?
1206.22 What type of proposal is eligible for a records grant?
1206.24 What type of proposal is ineligible for a records grant?

Subpart D—State Historical Records Advisory Boards

1206.30 What is a State historical records advisory board?

1206.32 What is a State historical records coordinator?
1206.34 What are the duties of the deputy State historical records coordinator?

Subpart E—Applying for NHPRC Grants

1206.40 What types of funding and cost sharing arrangements does the Commission make?
1206.42 Does the Commission ever place conditions on its grants?
1206.44 Who may apply for NHPRC grants?
1206.46 When are applications due?
1206.48 How do I apply for a grant?
1206.50 What must I provide as a formal grant application?
1206.52 Who reviews and evaluates grant proposals?
1206.54 What formal notification will I receive and will it contain other information?

Subpart F—Grant Administration

1206.60 Who is responsible for administration of NHPRC grants?
1206.62 Where can I find the regulatory requirements that apply to NHPRC grants?
1206.64 When do I need prior written approval for changes in the grant project?
1206.66 How do I obtain written approval for changes in my grant project?
1206.68 Are there any changes for which I do not need approval?
1206.70 What reports am I required to make?
1206.72 What is the format and content of the financial report?
1206.74 What is the format and content of the narrative report?
1206.76 What additional materials must I submit with the final narrative report?
1206.78 Does the NHPRC have any liability under a grant?
1206.80 Must I acknowledge NHPRC grant support?

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

Subpart A—General

§ 1206.1 How do you use pronouns in this part?

In the section heading questions we use the pronouns ''I'' and ''my'' to refer to the reader, and ''you'' to refer to the National Historical Publications and Records Commission (''NHPRC'' or ''the Commission'') as if you, the reader, were asking us, the Commission, these questions. In the section body, we use the pronouns ''you'' and ''yours'' to refer to the reader and ''we'' and ''our'' to refer to the Commission as we answer the questions posed.

§ 1206.2 What does this part cover?

This part prescribes the procedures and rules governing the operation of the grant program of the National Historical Publications and Records Commission.

§ 1206.3 What terms have you defined?

(a) The term *Commission* means the National Historical Publications and Records Commission or the Chairman of the Commission or the Executive Director of the Commission, acting on the Commission's behalf.

(b) The term *historical records* means record material having permanent or enduring value regardless of physical form or characteristics, including, but not limited to, manuscripts, archives, personal papers, official records, maps, audiovisual materials, and electronic files.

(c) In §§ 1206.30 and 1206.32, the term *State* means all 50 States of the Union, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territories of the Pacific.

(d) The term *State projects* means records projects involving records or activities directed by organizations operating within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(e) The term *cost sharing* means the financial contribution the applicant pledges to the cost of a project. Cost sharing can include both direct and indirect expenses, in-kind contributions, third-party contributions, and any income earned directly by the project (e.g., registration fees).

(f) The term *direct costs* means expenses that are attributable directly to the cost of a project, such as salaries, project supplies, travel expenses, and equipment rented or purchased for the project.

(g) The term *indirect costs* means costs incurred for common or joint objectives and therefore not attributable to a specific project or activity. Typically, indirect costs include items such as overhead for facilities maintenance and accounting services.

(h) The term *board* refers to a State historical records advisory board.

(i) The term *coordinator* means the coordinator of a State historical records advisory board.

§ 1206.4 What is the purpose of the Commission?

The National Historical Publications and Records Commission, a statutory body affiliated with the National Archives and Records Administration, supports a wide range of activities to preserve, publish, and encourage the use of primary documentary sources. These sources can be in every medium, created with tools ranging from quill pen to computer, relating to the history of the United States. Through our grant programs, training programs, and special projects, we offer advice and assistance to non-Federal, non-profit organizations, agencies, and institutions, including Federally-acknowledged or State-recognized Native American tribes or groups, and to individuals committed to the preservation, publication, and use of United States documentary resources.

§ 1206.5 Who is on the Commission?

Established by Congress in 1934, the Commission is a 15-member body, chaired by the Archivist of the United States and comprised of representatives of the three branches of the Federal Government and of professional associations of archivists, historians, documentary editors, and records administrators.

§ 1206.6 How do you organize the grant program?

We primarily offer grants through a program supporting publications projects (Subpart B) and records projects (Subpart C). We also offer fellowships for individuals in archival administration and documentary editing, as well as an annual institute for the editing of historical documents.

§ 1206.8 How do you operate the grant program?

(a) The Executive Director and staff manage the program under guidance from the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

(b) To assure fair treatment of every application, all members of the Commission and its staff follow conflict-of-interest rules.

(c) The purpose and work plan of all NHPRC funded grant projects must be in accord with current NHPRC guidelines and funding can be released only upon the recommendation of the Commission to the Archivist.

Subpart B—Publications Grants

§ 1206.10 What are the scope and purpose of publications grants?

Publications projects are intended to make documentary source material that is important to the study and understanding of United States history widely available. Historical records must have national value and interest.

§ 1206.12 What type of proposal is eligible for a publications grant?

We provide support for:

(a) Documentary editing projects consisting of either the papers of a United States leader in a significant phase of life in the United States or historical records relating to outstanding

events or topics or themes of national significance in United States history. These projects involve collecting, compiling, transcribing, editing, annotating, and publishing, either selectively or comprehensively, the papers or historical records.

(b) Fellowships in historical documentary editing at editorial projects supported by the NHPRC.

(c) Subvention grants to nonprofit presses to help defray publication costs of NHPRC-supported or endorsed editions.

§ 1206.14 What type of proposal is ineligible for a publications grant?

We do not support:

(a) Historical research apart from the editing of documentary publications; or

(b) Documentary editing projects to publish the papers of someone who has been deceased for fewer than ten years.

§ 1206.16 What are my responsibilities once I have received a publications grant?

(a) *Printed publications.*

(1) *With no subvention grant.* You, the project director, must send three copies of each book publication to: National Historical Publications and Records Commission (NHPRC), National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001.

(2) *With subvention grant.* You, the publisher, must submit five copies of each book publication to the NHPRC at the address in paragraph (a)(1) of this section and ten copies to the project director or editor. The project director need not provide any copies to the NHPRC. (See § 1206.18.)

(b) *Microform publications.* For microform projects, you, the grantee, must make positive micrographics and all finding aids available to institutions, scholars, or students through interlibrary loan and for purchase. You must also send three complimentary copies of the microform guides and indexes to the NHPRC at the address in paragraph (a)(1) of this section.

(c) *Electronic documentary publications.* If you publish a documentary edition in electronic form, you must produce a copy of the edition in an archivally-recognized format for long-term preservation.

§ 1206.18 What is a subvention grant, and am I eligible for one?

(a) A subvention grant is a subsidy of printing costs.

(b) We use subvention grants to encourage the widest possible distribution of NHPRC-supported and endorsed documentary editions and the highest archival permanence standards of paper, printing, and binding.

(c) The Commission considers grant applications from nonprofit presses for the subvention of part of the costs of manufacturing and distributing volumes that we have funded or formally endorsed.

(d) You, the publisher, must send five complimentary copies to NHPRC, and ten complimentary copies to the project director or editor for each published volume for which we gave you a subvention grant.

Subpart C—Records Grants

§ 1206.20 What are the scope and purpose of records grants?

Records projects are supported by the National Historical Publications and Records Commission to preserve and make available State government, local government, and non-government historical records of national and State significance for the purpose of furthering an understanding and appreciation of United States history.

§ 1206.22 What type of proposal is eligible for a records grant?

We provide support for:

(a) Locating, preserving and making available records of State, local, and other governmental units; and other private collections maintained in non-Federal, non-profit repositories and special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women;

(b) Advancing the state of the art in archival and records management; and in the long-term maintenance and easy access of authentic electronic records;

(c) Promoting cooperative efforts among institutions and organizations in archival and records management;

(d) Improving the knowledge, performance, and professional skills of those who work with historical records; and

(e) Fellowships in archival administration, a training program in various aspects of archival management held at host institutions.

§ 1206.24 What type of proposal is ineligible for a records grant?

We do not support proposals:

(a) To construct, renovate, furnish, or purchase a building or land;

(b) To purchase manuscripts or other historical records;

(c) To conserve archaeological artifacts, museum objects, or works of art;

(d) To exhibit archaeological artifacts, museum objects, works of art, and documents;

(e) To acquire, preserve, or describe books, periodicals, or other library materials;

(f) To acquire, preserve, or describe art objects, sheet music, or other works primarily of value as works of art or entertainment;

(g) To support celebrations, reenactments, and other observations of historical events.

(h) To conduct a records project centered on the papers of an appointed or elected public official who remains in major office, or is politically active, or the majority of whose papers have not yet been accessioned into a repository;

(i) To process historical records, most of which will be closed to researchers for more than five years, or not be accessible to all users on equal terms, or will be in a repository that denies public access;

(j) To conduct an arrangement, description, or preservation project in which the pertinent historical records are privately owned or deposited in an institution subject to withdrawal upon demand for reasons other than requirements of law; and

(k) To conduct an arrangement, description, or preservation project involving Federal government records that are:

(1) In the custody of the National Archives and Records Administration (NARA) or an archives officially affiliated with NARA;

(2) In the custody of another Federal agency; or

(3) Deposited in a non-Federal institution without an agreement authorized by NARA.

Subpart D—State Historical Records Advisory Boards

§ 1206.30 What is a State historical records advisory board?

(a) Each State actively participating in the NHPRC records program must adopt an appointment process and appoint a State historical records advisory board (the board) consisting of at least seven members, including the State historical records coordinator (see § 1206.32), who chairs the board, unless otherwise specified in State statute or regulation. The board coordinator must provide the Commission with a description of the appointment process. A majority of the members should have recognizable experience in the administration of government records, manuscripts, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be

officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years. They may be re-appointed to serve additional terms. Preferably their terms should be staggered so that one-third of the board is newly appointed or re-appointed each year. If the board is not established in State law, members may continue to serve until replacements are appointed. The board may adopt standards for attendance and may declare membership positions open if those standards are not met. The Board should adopt a conflict-of-interest policy, unless otherwise provided for in State statute or regulation.

(b) The board is the central advisory body for historical records planning and for Commission-funded records projects carried out within the State. The board helps historical records repositories and other information agencies coordinate activities within the State. The board reviews State records grant proposals for State projects as defined in the NHPRC guidelines and makes recommendations to the Commission. The board also engages in planning activities by developing, revising, and submitting to the Commission priorities for State historical records projects following the NHPRC guidelines. The board may also provide various other services. For example, it may sponsor and publish surveys of the conditions and needs of historical records in the State; solicit or develop proposals for projects to be carried out in the State with NHPRC grants or regrants; promote an understanding of the role and value of historical records; and review the operation and progress of projects in the State financed by NHPRC grants.

(c) The NHPRC will not consider a grant proposal from a State government agency until a board is appointed and all appointments are current. If an active board is not in place within a State, local governments, nonprofit organizations or institutions, and individuals within that state may apply directly to the Commission for support.

§ 1206.32 What is a State historical records coordinator?

(a) *Appointment.* In order to actively participate in the NHPRC records program, your governor must appoint a State historical records coordinator (coordinator), the full-time professional official in charge of the State archival program or agency, unless otherwise specified in state statute or regulation. If your State has another State government historical agency or agencies with archival and/or records responsibilities, the official(s) in charge of at least one of these must be a member of the State historical records advisory board (board).

(b) *Duties.* The coordinator is appointed to a minimum four-year term, but may continue to serve until replaced by the governor or until resignation. The coordinator will be the central coordinating officer for the historical records grant program in the State and should serve as chair of the board unless otherwise specified in the State statute or regulation. The coordinator is not deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The ''Manual of Suggested Practices for State Historical Records Coordinators and State Historical Records Advisory Boards'' which is available from the Commission and from State historical records coordinators, provides further information on the role of the coordinator. For a copy, write to NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue NW., Washington, DC 20408–0001, or contact us by email at *nhprc@nara.gov.*

(c) *Replacement.* In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting coordinator until the governor makes an appointment. In the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator, selected by the State board, who will serve until the governor appoints a coordinator in order to conduct the necessary business of the board.

§ 1206.34 What are the duties of the deputy State historical records coordinator?

The governor or coordinator may designate a deputy State historical records coordinator to assist in carrying out the duties and responsibilities of the coordinator and to serve as an acting coordinator at the coordinator's direction or upon the coordinator's resignation or other inability to serve.

Subpart E—Applying for NHPRC Grants

§ 1206.40 What types of funding and cost sharing arrangements does the Commission make?

(a) *Types of grants.*

(1) *Matching grant.* A matching grant is a way to demonstrate shared Federal/non-Federal support for projects. We will only match funds raised from non-Federal sources, either monies provided by the applicant's own institution specifically for the project or from a non-Federal third-party source.

(2) *Outright grant.* Outright grants are those awards we make without any matching component.

(b) *Cost sharing arrangements.*

(1) For publications projects that first received NHPRC funding prior to 1992, the Commission will supply as much as 75 percent of the direct costs.

(2) For publications projects funded after 1992, the Commission will provide no more than 50 percent of direct costs. We will give preference to projects for which the sponsoring institution bears at least 25 percent of the direct costs. For short-term (i.e., 3 years or less) publications projects, we will give preference to applicants that provide at least 50 percent of the project's total direct and indirect costs.

(3) For records projects, the Commission will give preference to projects in which the applicants provide at least 50 percent of the project's total direct and indirect costs.

(4) We prefer the applicant cover indirect costs through cost sharing.

§ 1206.42 Does the Commission ever place conditions on its grants?

In making its decisions on grants, the Commission may place certain conditions on its grants. We describe those possible conditions in the booklet *Grant Guidelines: How to Apply for NHPRC Grants, How to Administer NHPRC Grants.* For a copy, write to NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue NW., Washington, DC 20408–0001, or contact us by email at *nhprc@nara.gov.*

§ 1206.44 Who may apply for NHPRC grants?

The Commission will consider applications from State and local government agencies (Federal agencies are *not* eligible to apply), U.S. non-profit organizations and institutions, including institutions of higher education, Federally acknowledged or state-recognized Native American tribes or groups, United States citizens applying as individuals rather than for an organization, and State historical records advisory boards. Most NHPRC grants to individuals are awarded under its fellowship programs. In general, we prefer projects operating within a host institution.

§ 1206.46 When are applications due?

The Commission generally meets twice a year, and we consider grant proposals during our meetings. For current application deadlines contact the NHPRC staff or your State historical records coordinators (for records grant proposals). Some State boards have

established pre-submission review deadlines for records proposals; further information is available from your State coordinator(s). We will publish deadlines once a year in the **Federal Register**. All proposals must be postmarked by those deadlines.

§ 1206.48 How do I apply for a grant?

(a) *Contact the NHPRC staff.* We encourage you to discuss your proposal through correspondence, by phone, or in person with Commission staff and/or, in the case of records proposals, with the appropriate State historical records coordinator before you submit the proposal and at all stages of your proposal's development.

(b) *Contact your State Historical Records Advisory Board.*

(1) Contact is not necessary if:

(i) Your proposal is for documentary editing and publication subvention projects;

(ii) You are a Native American applicant; or

(iii) Your project will largely take place in more than one state.

(2) Staff contacts and a list of State historical records coordinators may be found on our Web site at *http://www.nara.gov/nhprc.*

§ 1206.50 What must I provide as a formal grant application?

You must submit the following materials as part of your grant application:

(a) *Application forms.* You can obtain copies of the following application forms from the Commission:

If you are an applicant for . . .	Then you must submit . . .
(1) NHPRC publication and records grants	''Application for Federal Assistance'' (Standard Form 424) and ''Budget Form'' (NA Form 17001; OMB Control Number 3095–0004);
(2) Subvention grants	NHPRC subvention grant application (OMB Control Number 3095–0021), ''Application for Federal Assistance'' (Standard Form 424) and ''Budget Form'' (NA Form 17001);
(3) Archival or historical documentary editing fellowship host institutions	NHPRC ''Application for Host Institutions of Archival Administration or Historical Documentary Editing Fellowships'' (OMB Control Number 3095–0015)
(4) NHPRC-sponsored fellowships	''Application for Archival Administration or Historical Documentary Editing Fellowships'' (OMB Control Number 3095–0014);
(5) NHPRC-sponsored editing institute	''Application for Attendance at the Institute for the Editing of Historical Documents'' (OMB Control Number 3095–0012).

(b) *Assurances and certifications.* You must submit the following assurances and certifications, signed by an authorized representative of your institution, or if you are an individual applicant, by you:

(1) ''Assurances—Non-Construction Programs'' (Standard Form 424B).

(2) ''Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-free Workplace Requirements.''

(c) *Project summary.* You must submit a project summary. A description of the project summary is found in the booklet *Grant Guidelines: How to Apply for NHPRC Grants, How to Administer NHPRC Grants* that is available from the NHPRC and from State historical records coordinators.

(d) *List of performance objectives.* You must list in the proposal from four to seven quantifiable objectives by which the project can be evaluated following the submission of the final report and the closing of the grant. NHPRC evaluates the project to determine whether it produces the results promised in grant applications.

(e) *Submission requirements.* Send the original, signed copy of your application to the NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001. Your properly completed application and any materials you send with it (such as pamphlets and photographic prints) will not be returned to you. Additional copies must be sent as follows:

If you are applying for . . .	Then you must send . . .
(1) A documentary editing project that has previously been supported by the Commission.	Two additional copies to the NHPRC;
(2) A subvention grant	Two additional copies to the NHPRC;
(3) A new documentary editing project	Two additional copies to the NHPRC;
(4) A records grant and you are a Native American applicant	Two additional copies to the NHPRC;
(5) A records that is being done in a state where there is a State historical records advisory board.	One additional copy to the NHPRC and one copy to the State historical records coordinator. In order to help facilitate the review process, however, it is recommended a state where that applicants send a copy for each member of the state board;
(6) A records grant whose work will take place in more than one State	Two additional copies to the NHPRC.

§ 1206.52 Who reviews and evaluates grant proposals?

(a) *State boards.* State historical records advisory boards evaluate records proposals on technical merits as well as on their relation to State-plan priorities. The board can return proposals it finds inappropriate or incomplete, with recommendations for revision, on which we will not act unless the applicant submits a revision for consideration in a later cycle. The Board may also recommend that the Commission reject the proposal.

(b) *Peer reviewers.* The NHPRC asks from five to ten external peer reviewers, some of whom may be selected from a list provided by you, to evaluate the proposal if the proposal:

(1) Requests NHPRC funds of $75,000 or more;

(2) Requests a grant period of two years or more;

(3) Involves complex technological processes and issues with which the NHPRC staff may be unfamiliar;

(4) Is a resubmission that the NHPRC invited; or

(5) Is not reviewed by a State historical records advisory board.

(c) *Other reviewers.* We may subject on-going documentary editions to

special review by NHPRC staff and outside specialists, particularly when:

(1) You propose to change the project director/editor;

(2) Your sponsoring institution encounters difficulties or you propose a change in that institution;

(3) Your major search for materials has been completed;

(4) Your project finishes publication in one medium and plans to begin publication in another; or

(5) You change your project's estimate of quantity of publications and/or time needed to complete the project.

(d) *NHPRC staff.* NHPRC staff will analyze the reviewer's comments, State board evaluations, the appropriateness of the project toward Commission goals, the proposal's completeness and conformity to application requirements. The staff will, through a questions letter to you, raise important issues or concerns and allow you the opportunity to respond. The staff will then make recommendations to the Commission.

(e) *The Commission.* After individually reviewing the proposal and recommendations on it from State boards, peer reviewers, and NHPRC staff, Commission members will deliberate on all eligible proposals and recommend to the Archivist of the United States what action to take on each (fund, partially fund, endorse, reject, resubmit, etc.). By statute the Archivist chairs the Commission and has final authority to make or deny a grant.

§ 1206.54 What formal notification will I receive, and will it contain other information?

(a) The grant award document is a letter from the Archivist of the United States to you, the grantee. The letter and attachments specify terms of the grant. NHPRC staff notifies project directors informally of awards and any conditions soon after the Commission recommends the grant to the Archivist of the United States. Unsuccessful applicants will be notified within two weeks by letter.

(b) The grant period begins and ends on the dates specified in the award document. Grant periods must begin on the first day of a month and end on the last day of a month.

Subpart F—Grant Administration

§ 1206.60 Who is responsible for administration of NHPRC grants?

The grantee institution and the project director designated by the institution share primary responsibility for the administration of grants. In the case of grants made to individuals, the individual named as project director has primary responsibility for the administration of the grant.

§ 1206.62 Where can I find the regulatory requirements that apply to NHPRC grants?

(a) In addition to this part 1206, NARA has issued other regulations that apply to NHPRC grants in 36 CFR ch. XII, subchapter A. NARA also applies the principles and standards in the following Office of Management and Budget (OMB) Circulars for NHPRC grants:

(1) OMB Circular A–21, ''Cost Principles for Educational Institutions'';

(2) OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments'';

(3) OMB Circular A–122, ''Cost Principles for Non-Profit Organizations''; and

(4) OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) These regulations and circulars are available on our web site at www.nara.gov/nhprc. Our regulations may also be found at http://www.nara.gov/nara/cfr/subch-a.html, and OMB Circulars at http://www.whitehouse.gov/omb/grants/.

(c) Additional policy guidance related to Title VI of the Civil Rights Act of 1964, regarding persons with limited English proficiency, is provided in our guidelines.

§ 1206.64 When do I need prior written approval for changes to the grant project?

You must obtain prior written approval from the Commission for any changes in the grant project and terms of the grant, including:

(a) Revising the scope or objectives of the project;

(b) Changing the project director or other key project personnel who are specifically named in the grant application or award or related correspondence;

(c) Contracting out, sub-granting, or otherwise obtaining the services of a third party to perform activities central to the purposes of the grant, unless specified in the grant proposal;

(d) Changing the beginning date of the grant or extending the grant period;

(e) Re-budgeting of grants of $100,000 or more, when cumulative transfers among direct cost categories total more than 10 percent of the total project budget (i.e., grant funds plus other funds). With written approval from the Executive Director of the Commission, grantees may adjust the amounts allocated to existing budget lines for both grant funds and cost sharing and may transfer grant funds among existing NHPRC-funded direct cost categories that appear in the final project budget approved by the Commission at the time of the grant award. Cost-sharing funds may also be shifted among existing cost-sharing categories; and

(f) Creating the following new cost categories:

You must obtain approval from . . .	When your new cost category was not in the final approved budget where . . .
(1) The Executive Director of the Commission or the Executive Director's designee.	(i) such action seems appropriate for the fulfillment of the original purposes of the grant; and (ii) the amount of funds involved does not exceed 10 percent of the amount of the award, or $5,000, whichever is less.
(2) The full Commission	The amount of funds involved exceeds the amount in paragraph (f)(1)(ii) of this section.

§ 1206.66 How do I obtain written approval for changes in my grant project?

(a) You must make all requests for changes in the form of a letter. The grant-receiving institution's authorized representative, as indicated on the grant application form (SF 424), must sign the letter. The signed, written response of the Commission's Executive Director, or the Executive Director's designee, will constitute approval for the change.

(b) You must make requests for extension of the grant period not more than two months before the scheduled end of the grant period. We will not allow extensions unless you are up-to-date in your submission of financial and narrative reports.

§ 1206.68 Are there any changes for which I do not need approval?

You do not need approval for re-budgeting of grants of less than $100,000. For such grants:

(a) You may adjust the amounts allocated to existing budget lines for both grant funds and cost sharing;

(b) You may transfer grant funds among existing NHPRC-funded direct cost categories that appear in the final project budget approved by the Commission at the time of the grant award; and

(c) You may also shift cost-sharing funds among existing cost-sharing categories.

§ 1206.70 What reports am I required to make?

(a) Grant recipients are generally required to submit annual financial status reports and semi-annual narrative progress reports, as well as final financial and narrative reports at the conclusion of the grant period. The grant award document will specify the dates your reports are due.

(b) Send the original reports to the NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue NW., Washington, DC 20408–0001. One copy of each records project narrative report must be sent to the State historical records coordinator if the board reviewed the proposal. Other records projects should send courtesy copies of narrative reports to State coordinators whose States are involved in or affected by the project. Provide the names of individuals to whom copies of the report have been sent when submitting the original report to the NHPRC.

§ 1206.72 What is the format and content of the financial report?

You must submit financial reports on Standard Form 269 and have them signed by the grantee's authorized representative or by an appropriate institutional fiscal officer. If cost sharing figures are 20 percent less than anticipated in the project budget you must explain the reason for the difference.

§ 1206. 74 What is the format and content of the narrative report?

(a) Interim narrative reports should summarize briefly the objectives and activities for the entire grant and then focus on those accomplished during the reporting period. The report should include a summary of project activities; whether the project proceeded on schedule; any revisions of the work plan, staffing pattern, or budget; and any web address created by the project. It should include an analysis of the goals met during the reporting period and any goals for the period that were not accomplished. For documentary editing projects, it also must include information about the publication of volumes and the completion of finding aids, as well as any work that is pending with publishers.

(b) The final report must provide a detailed assessment of the project, following the format in paragraph (a) of this section, including whether the goals set in the original proposal were realistic; whether there were unpredicted results or outcomes; whether the project encountered unexpected problems and how you faced them; and how you could have improved the project. You must discuss the project's impact, if any, on the grant-receiving institution and others. You must indicate whether all or part of the project activities will be continued after the end of the grant, whether any of these activities will be supported by institutional funds or by grant funds, and if the NHPRC grant was instrumental in obtaining these funds.

(c) The project director must sign narrative reports.

§ 1206.76 What additional materials must I submit with the final narrative report?

(a) For records-related projects, you are required to send the NHPRC three copies of any finding aids, reports, manuals, guides, forms, articles about the project, and other materials produced about or based on the grant project at the time that the final narrative report is submitted.

(b) Documentary editing projects must send the NHPRC three copies of any book edition unless support for their publication was provided by an NHPRC subvention grant. For those volumes, presses rather than projects are responsible for submitting the required number of volumes (see § 1206.18(d)). Projects with microform editions must send the NHPRC three copies of the microform guides and indexes produced by the project.

§ 1206.78 Does the NHPRC have any liability under a grant?

No, the National Archives and Records Administration (NARA) and the Commission cannot assume any liability for accidents, illnesses, or claims arising out of any work undertaken with the assistance of the grant.

§ 1206.80 Must I acknowledge NHPRC grant support?

Yes, grantee institutions, grant project directors, or grant staff personnel may publish results of any work supported by an NHPRC grant without review by the Commission; however, publications or other products resulting from the project must acknowledge the assistance of the NHPRC grant.

Dated: October 17, 2001.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–2758 Filed 1–29–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301203; FRL–6817–4]

RIN 2070–AC18

Oxadixyl; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke specific tolerances for residues of the fungicide oxadixyl because this pesticide is no longer registered for those uses in the United States. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act of 1996 (FQPA). By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of 14 tolerances which would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

DATES: Comments, identified by docket control number OPP–301203, must be received on or before April 8, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301203 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules, '' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301203. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301203 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301203. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I Do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any

needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

On April 23, 2001, and on May 11, 2001, Gustafson LLC (end use product registrant) and Syngenta Crop Protection, Inc. (technical and end use product registrant), respectively, requested voluntary cancellation of all of their oxadixyl product registrations. On August 15, 2001, EPA published a notice in the **Federal Register** (66 FR 42854) (FRL–6796–4) under section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) announcing its receipt of these requests. Also, the registrants requested and EPA agreed to waive the 180–day public comment period contained in FIFRA section 6(f)(1)(C)(ii). Therefore, EPA provided a 30–day public comment period which ended on September 14, 2001. No public comments were received during the 30–day comment period. EPA approved the registrants' requests for voluntary cancellation of oxadixyl registrations. EPA also inadvertently erroneously included oxadixyl in a batch 6(f)(1) notice published on August 22, 2001 (66 FR 44131) (FRL–6795–5) that listed the comment period as 180 days. The 30–day comment period associated with the August 15, 2001 notice was the correct one. The cancellations were effective September 27, 2001, and announced in a cancellation order published in the **Federal Register** on November 1, 2001 (66 FR 55158) (FRL–6808–4).

In a June 1, 2001 letter to EPA, Syngenta stated that the last known production of oxadixyl was prior to January 1, 1997. Syngenta is also not aware of any stocks of the products in the channels of trade. Likewise, in their June 1, 2001 letter, Gustafson noted that the last date of manufacture was January 6, 1993, and the last remaining product which they had on hand was disposed of on April 4, 2001. Although the manufacture of oxadixyl products ended years ago and the registrants know of no products in channels of trade, the cancellation order allowed a period of 1–year from September 27, 2001, to permit all sale and distribution of existing stocks. The Agency believes that existing stocks of oxadixyl will be exhausted by spring of 2003.

It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crops for which there are no active registered uses under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. Because the Agency approved the registrants' requests for voluntary cancellation, oxadixyl is not registered under FIFRA for use on those commodities. Therefore, EPA is proposing in 40 CFR 180.456 to revoke all tolerances for residues of oxadixyl and its desmethyl metabolite, with an expiration/revocation date of September 27, 2003. The Agency believes that this date allows sufficient time for any oxadixyl-treated food commodities to pass through the channels of trade.

For FQPA reassessment purposes, EPA counts ''Grass, forage, fodder and hay, group'' as three tolerances (grass, forage; grass, fodder; and grass, hay) and expects in a final rule to count a total of 14 tolerances as reassessed. In the interim, before the tolerance expires and to conform to current Agency practice, EPA is proposing to revise tolerance commodity terminology names in 40 CFR 180.456 as follows: for ''Brassica (cole) leafy vegetables group'' to ''vegetable, Brassica, leafy, group;'' ''cereal grains group (except wheat)'' to ''grain, cereal, except wheat, group;'' ''cotton seed'' to ''cotton, undelinted seed;'' ''cucurbit vegetables group'' to ''vegetable, cucurbit, group;'' ''fruiting vegetables (except cucurbits) group'' to ''vegetable, fruiting, group;'' ''leafy vegetables (except Brassica vegetables) group'' to ''vegetable, leafy, except Brassica, group;'' ''nongrass animal feeds (forage, fodder, straw, and hay) group'' to ''animal feed, nongrass, group;'' ''peas'' to ''pea,'' ''root and tuber vegetables group'' to ''vegetable, root and tuber, group;'' ''soybeans'' to ''soybean, seed;'' and ''sunflower seed'' to ''sunflower, seed.''

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore, ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be ''adulterated,'' you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe

based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When Do These Actions Become Effective?

EPA is proposing that the tolerances for oxadixyl be revoked as of September 27, 2003. EPA is proposing this revocation/expiration date because EPA believes that by this date all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation will have been exhausted and that there is ample time for any treated food commodities to clear trade channels. Therefore, EPA believes the revocation/expiration date proposed in this document is reasonable. However, if EPA is presented with information that existing stocks of oxadixyl would still be available for use after the expiration date and that information is verified, EPA will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date accounts for these stocks, please submit comments as described under Unit I.E.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of January 22, 2002, EPA has reassessed over 3,830 tolerances. This document proposes to revoke 14 tolerances which would be counted as reassessments in a final rule toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by FFDCA. The same food safety standards apply to domestically-produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support June 1, 2000 (65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section

12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule 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 proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 18, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.456 is revised to read as follows:

§ 180.456 Oxadixyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide oxadixyl [2-methoxy-*N*-(2-oxo-1,3-oxazolidin-3-yl)-acet-2′,6′-xylidide] and its desmethyl (*M*-3) metabolite (2-hydroxy-*N*-(2-oxo-1,3-oxazolidin-3-yl)-acet-2′,6′-xylidide), calculated as oxadixyl in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/ Revocation Date
Animal feed, nongrass, group	0.1	9/27/03
Cotton, undelinted seed	0.1	9/27/03
Grain, cereal, except wheat, group	0.1	9/27/03
Grass, forage, fodder and hay, group	0.1	9/27/03
Pea	0.1	9/27/03
Soybean, seed	0.1	9/27/03
Sunflower, seed	0.1	9/27/03
Vegetable, Brassica, leafy, group	0.1	9/27/03
Vegetable, cucurbit, group	0.1	9/27/03
Vegetable, fruiting, group	0.1	9/27/03
Vegetable, leafy, except Brassica, group	0.1	9/27/03
Vegetable, root and tuber, group	0.1	9/27/03

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–2512 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0007b, WY–001–0008b, WY–001–0009b; FRL–7130–4]

Clean Air Act Approval and Promulgation of State Implementation Plan; Wyoming; Revisions to Air Pollution Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action partially approving and partially disapproving revisions to the State Implementation Plan (SIP) submitted by the designee of the Governor of Wyoming on August 9, 2000; August 7, 2001; and August 13, 2001. These revisions are intended to restructure and modify the State's air quality rules so that they will allow for more organized expansion and revision and are up to date with Federal

requirements. The August 9, 2000 revisions include a complete restructuring of the Wyoming Air Quality Standards and Regulations (WAQSR) from a single chapter into thirteen separate chapters. In addition to restructuring the regulations, the State's August 9, 2000 revisions also update the definition in Chapter 3, Section 6 Volatile organic compounds (previously Chapter 1, Section 9) and include revisions to Chapter 6, Section 4 Prevention of significant deterioration (PSD) (previously Chapter 1, Section 24). The August 7, 2001 revisions include the addition of a credible evidence provision and another update to the definition of VOC. The August 13, 2001 revisions include changes to the State's particulate matter regulations. EPA is proposing to partially approve these SIP revisions because they are consistent with Federal requirements. EPA is proposing to partially disapprove the provisions of the State's submittal that allow the Administrator of the Wyoming Air Quality Division (WAQD) to approve alternative test methods in place of those required in the SIP, because such provisions are inconsistent with section 110(i) of the Clean Air Act (Act) and the requirement that SIP provisions can only be modified through revisions to the plan that must be approved by EPA. EPA is proposing these actions under section 110 of the Act. We are not acting on Chapter 8, Section 4 Transportation Conformity (part of the August 9, 2000 submittal) or on the $PM_{2.5}$ revisions in Chapter 1 and Chapter 2 of the State's August 13, 2001 submittal. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing on or before March 8, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Division, Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming, 82002.

FOR FURTHER INFORMATION CONTACT: Megan Williams, EPA, Region VIII, (303) 312–6431.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 3, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–2707 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301195; FRL–6815–1]

RIN 2070–AC18

Methyl Parathion and Ethyl Parathion; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke certain tolerances for residues found for methyl parathion and for ethyl parathion. These actions are being taken because there are no registered uses for methyl parathion or ethyl parathion on these commodities. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. These tolerances would be counted among reassessments made toward the August 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. These tolerances were established under section 408 of the FFDCA. EPA is proposing to revoke these tolerances because the Agency has canceled the pesticide registrations under FIFRA associated with them.

DATES: Comments, identified by docket control number OPP–301195, must be received on or before April 8, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301195 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 305–5776; e-mail address: *parsons.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply

to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301195. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301195 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI.. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301195. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the proposed revocation of 73 tolerances of which 66 would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline. The remaining seven tolerances are not found in the current baseline total of tolerances to be reassessed.

EPA is proposing to revoke certain tolerances established under section 408 of FFDCA for residues of methyl parathion and ethyl parathion. The Agency is proposing to revoke these tolerances by amending 40 CFR 180.121 to list only the remaining tolerances for methyl parathion and by creating 40 CFR 180.122 to list the remaining tolerances for ethyl parathion until they expire on December 31, 2005.

Parathion (methyl and ethyl) tolerances to be revoked 90 days after the publication of the final rule: apricots; avocados; blackberries; blueberries; boysenberries; clover; cranberries; cucumbers; currants; dates; dewberries; eggplants; endive, escarole; figs; filberts, garlic; gooseberries; guar beans; guavas; loganberries; mangos; melons; mustard seed; okra; olives;

parsnips, with or without tops; parsnip greens; peppers; pineapples; pumpkins; quinces; radishes, with or without tops; radish tops; raspberries; safflower seed; squash; strawberries; summer squash; Swiss chard; and youngberries. The tolerances for sorghum; sorghum, grain, stover; sorghum, grain, forage are proposed to be revoked from methyl parathion 90 days after publication of the final rule and for ethyl parathion on December 31, 2005. Please note that the tolerance for loganberries was inadvertently removed from the parathion tolerance listings by 66 FR 1241 (FRL–6752–6).

Methyl parathion tolerances to be revoked 90 days after the publication of the final rule: guar beans and parsley.

Ethyl parathion tolerances to be revoked 90 days after the publication of the final rule: apples; artichokes; beets, greens; beets, with or without tops; broccoli, Brussel sprouts; carrots; cauliflower; celery; cherries; collards; grapes; kale; kohlrabi; lettuce; mustard greens; nectarines; peaches; pears; plums, fresh prunes; rutabaga tops; rutabagas, with or without tops; spinach; tomatoes; turnip greens; turnips, with or without tops; and vetch. Please note that these commodities were removed from the methyl parathion listing by 66 FR 1241 (FRL–6752–6).

Ethyl parathion tolerances to be removed 90 days after the publication of the final rule, but tolerances for methyl parathion will remain: almonds; almond hulls; beets, sugar; beets, sugar, tops; cabbage; dried beans; dried peas; peas, forage; grass, forage; hops; oats; onions; peanuts; pecans; rape seed (canola); rice; rye; sweet potatoes; walnuts; and white potatoes.

Ethyl parathion tolerances to be removed on December 31, 2005: alfalfa, fresh; alfalfa, hay; barley; corn; corn, forage; cotton, undelinted seed; rapeseed; sorghum; sorghum, grain, stover; sorghum, grain, forage; soybean; soybean, hay; sunflower, seed; and wheat. Except for the tolerances on sorghum products as noted above, these tolerances remain for methyl parathion.

B. Why is this Action being Proposed?

EPA is proposing to revoke tolerances for residues of methyl parathion and ethyl parathion on certain commodities listed in 40 CFR 180.121 for which FIFRA registrations no longer exist. The tolerances have been expressed as ''joint'' tolerances; therefore, the tolerance on each commodity must be revoked for both pesticides. Unit II.C. provides a list of tolerances which will be maintained for methyl parathion. All tolerances of ethyl parathion are proposed for revocation by or before December 31, 2005.

The uses of ethyl parathion were canceled for all but nine crops per the 1991 Ethyl Parathion Settlement Agreement (December 13, 1991 (56 FR 65061) (FRL–4003–9), January 29, 1992 (57 FR 3296) (FRL–4044–9) and February 20, 1992 (57 FR 6168) (FRL–4049–2)). Use on the remaining nine crops was canceled with the 2000 Memorandum of Agreement between the registrants and EPA (September 13, 2001 (66 FR 47667) (FRL–6801–9)). EPA believes that no one needs these tolerances for domestic use and has no information on the need for these tolerances for imported foods.

Several uses of methyl parathion were canceled as per the August 2, 1999, Agreement between the EPA and the registrants. The notice of these cancellations was published in the **Federal Register** October 27, 1999 (64 FR 57877) (FRL–6387–8). Since these cancellations were based on dietary risk, the tolerances for the commodities were revoked in accordance with section 408(l)(2) of FFDCA January 5, 2001 (66 FR 1241) (FRL–6752–6). The tolerances proposed for revocation in this notice are generally the result of the ''joint tolerances'' with ethyl parathion; there have been no domestic registrations for many years. Tolerances for the commodities listed in Unit II.C. are not affected by this proposal.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues providing the Agency is able to make the appropriate safety finding under FFDCA. However, where there is no need to retain a tolerance solely for import purposes, the Agency believes it is appropriate to propose to revoke such tolerances.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain or retain needed tolerances or to register needed new uses. To avoid these trade-restricting situations, the Agency is proposing to revoke tolerances for residues on crop uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should note that additional data may be needed to support retention. In the case of ethyl parathion, there are several gaps in the Agency's data base including the developmental neurotoxicity study; these data gaps must be fulfilled in order to retain ethyl parathion tolerances. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require the submission of the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerances at issue.

C. What Tolerances are Not Proposed for Revocation?

The registrations of methyl parathion for use on several commodities were canceled in the **Federal Register** of October 27, 1999 (64 FR 57877), pursuant to the August 2, 1999 Settlement Agreement between EPA and the registrants. The Settlement Agreement allowed only the following uses to be maintained: Alfalfa, almonds, barley, cabbage, corn, cotton, dried beans, dried peas, grass, hops, lentils, oats, onions, peanuts, pecans, rape seed (canola), rice, rye, soybeans, sugar beets, sunflower, sweet potatoes, walnuts, wheat, and white potatoes. The 29 tolerances associated with these methyl parathion uses are not proposed for revocation.

D. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be ''adulterated,'' you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under section 3, section 5, or section 18 of FIFRA (7 U.S.C. *et seq.*) Food-use pesticides not registered in the United States (U.S.) have tolerances for residues of pesticides in or on commodities imported into the U.S..

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the U.S..

E. What Can I Do If I Wish the Agency to Maintain a Tolerance that the Agency Is Proposing to Revoke?

Consistent with FFDCA section 408, EPA will consider maintaining any of the tolerances that EPA is proposing to revoke in this proposed rule if the Agency determines that there is a need for such tolerance. If you wish that the Agency maintain any of the tolerances that are proposed for revocation in this document, submit to the Agency comments explaining the need for the tolerance(s). All comments must be submitted within 60 days of issuance of this proposal.

If EPA receives a timely comment explaining a need for a tolerance in response to this proposal and determines that there is a need for such tolerance, EPA will not proceed to revoke the tolerance based on the current proposal and will reassess what regulatory action, if any, is appropriate. Further, EPA will determine, based on the information provided in the comments and any other available information, whether additional data and/or information are needed to support continuation of the tolerance. If so, the Agency will take steps to ensure the submission of any necessary data and/or information and may issue an order in the **Federal Register** in accordance with FFDCA section 408(f), if needed. The order would specify the deadline by which an interested party must submit to EPA a written notice that it will submit the necessary data and/or information. The order would also specify the necessary data and/or information and time frames for their submissions. If any of the submissions required in the order is not made by the specified deadlines, EPA would likely issue a final rule revoking the tolerance in question.

If EPA does not receive any indication of a need for one or more tolerances proposed for revocation in this document, EPA will consider the comments that are submitted in response to this proposal and, if appropriate, issue a final rule revoking such tolerance(s). You may file an objection within 60 days of EPA's issuance of a final rule revoking the tolerance(s). If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule in any subsequent proceedings.

F. When Do These Actions Become Effective?

EPA is proposing to make revocations of these tolerances effective 90 days following publication of a final rule in the **Federal Register** except for the 14 ethyl parathion tolerances for which EPA is proposing an effective revocation/expiration date of December 31, 2005. EPA intends to delay the effectiveness of the final revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's action. EPA believes that the affected commodities should have cleared the channels of trade before the effective date of the proposed revocations. However, if EPA is presented with information that there would be existing stocks still available for use after the expiration date and that the information is verified, EPA will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks, please submit comments as described in Unit I. of this proposal.

G. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of November 19, 2001, EPA has assessed over 3,830 tolerances. The regulatory actions in this document pertain to the proposed revocation of 73 tolerances of which 66 would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline. The remaining seven tolerances are not found in the current baseline total of tolerances to be reassessed.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. How Do the Regulatory Assessment Requirements Apply to this Proposed Rule?

This rule is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, of Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Public Law 104–113), section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with cancelled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule 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.''

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 18, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. By revising § 180.121 paragraph (a) to read as follows:

§ 180.121 Methyl parathion; tolerances for residues.

(a) Tolerances are established for residues of the insecticide parathion O, O-Dimethyl-O-p-nitrophenyl thiophosphate (the methyl homolog of parathion) in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa (fresh)	1.25
Alfalfa (hay)	5
Almonds	0.1
Almond hulls	3
Barley	1
Beans, dried	1
Beets, sugar	0.1
Beets, sugar, (tops)	0.1
Cabbage	1
Corn	1
Corn, forage	1
Cotton, seed	0.75
Grass (forage)	1
Hops	1
Oats	1
Onions	1
Peanuts	1
Peas, dried	1
Pea, forage	1
Pecans	0.1
Potatoes	0.1
Rape, seed	0.2
Rice	1
Soybeans	0.1
Soybean hay	1
Sunflower seed	0.2
Sweet potatoes	0.1

Commodity	Parts per million
Walnuts	0.1
Wheat	1

* * * * *

3. By adding § 180.122 to read as follows:

§ 180.122 Parathion; tolerances for residues.

(a) *General*. Tolerances are established for residues of the insecticide parathion (O, O-Diethyl-O-p-nitrophenyl thiophosphate) in or on the following raw agricultural commodities:

Commodity	Parts per million	Date of expiration
Alfalfa (fresh)	1.25	12/31/05
Alfalfa (hay)	5	12/31/05
Barley	1	12/31/05
Corn	1	12/31/05
Corn, forage	1	12/31/05
Cotton, seed	0.75	12/31/05
Rape, seed	0.2	12/31/05
Sorghum	0.1	12/31/05
Sorghum, fodder	3	12/31/05
Sorghum forage	3	12/31/05
Soybeans	0.1	12/31/05
Soybean hay	1	12/31/05
Sunflower seed	0.2	12/31/05
Wheat	1	12/31/05

(b) *Section 18 emergency exemptions*. [Reserved]

(c) *Tolerances with regional registrations*. [Reserved]

(d) *Indirect or inadvertent residues*. [Reserved]

* * * * *

[FR Doc. 02–2513 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 012802C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Regional Administrator proposes to issue EFPs that would allow up to four federally permitted vessels in the limited access multispecies fishery to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. The vessels would collect catch data to support the development of trawl mesh selectivity curves for the Southern New England (SNE) yellowtail flounder fishery. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before February 21, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Rhode Island EFP Proposal''. Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978) 281-9221, e-mail regina.l.spallone@noaa.gov.

SUPPLEMENTARY INFORMATION: The State of Rhode Island Department of Environmental Management, Division of Fish and Wildlife (applicant) submitted an application for EFPs on December 20, 2001. The EFPs will facilitate the collection of additional catch data that will support the development of trawl mesh selectivity curves for the SNE yellowtail flounder fishery. The catch data will supplement the data collected under EFPs in 2001, which were determined to be inconclusive due to the temporal nature of SNE yellowtail abundance in the study area and the resulting small sample size. The applicant intends to provide the trawl mesh selectivity curves to fisheries managers as a tool for matching the minimum legal yellowtail flounder size with the size of yellowtail flounder retained by the appropriate mesh size.

In June 2001, NMFS granted a request for EFPs to the State of Rhode Island Department of Environmental Management (applicant). The applicant investigated the selectivity of 6.0-inch (15.2–cm) diamond, 6.5–inch (16.5–cm) square, 6.5-inch (16.5–cm) diamond, and 7.0-inch (17.8–cm) square mesh codends using alternate tow methods for yellowtail flounder in southern Rhode Island waters during the summer of 2001. The applicant's intent was to investigate alternative measures that would achieve the mortality reductions for this stock of fish needed to achieve Sustainable Fisheries Act objectives to be met in the Northeast Multispecies Fishery Management Plan. The New England Fishery Management Council's (Council) Plan Development Team (PDT) has indicated that, in order to rebuild this stock of yellowtail flounder, fishing mortality must be reduced 50 to 70 percent from its current level. To address these reductions, the PDT and the Council's Groundfish Oversight Committee (Committee) have developed a wide range of management measures, including trip limits, increases in the minimum fish and/or mesh sizes, year-round and/or seasonal area closures, and day-at-sea (DAS) reductions. Of those measures being considered, the applicant has expressed specific concern over the potential implementation of area closures as such closures would likely have a severe impact on the SNE commercial fishing community. Therefore, the applicant is seeking additional information that may support minimum fish and/or mesh size measures as alternatives to closures.

Under the EFP approved last year, the applicant developed selectivity curves upon which to base the lengths for yellowtail flounder at 50-percent retention (L50's). In summary, they were:

Shape	Mesh size, inches (cm)	Retention size, inches (cm)
Diamond	6.0 (15.2)	14.7 (37.3)
	6.5 (16.5)	15.6 (39.6)
Square	6.5 (16.5)	13.0 (33.0)
	7.0 (17.8)	14.3 (36.3)

However, additional analyses of the mean number of yellowtail flounder retained that were in compliance with

the minimum size requirements under 50 CFR part 648.83 (a), indicate no significant differences between each experimental codend. The applicant compared length frequency distributions of the catches retained in the codends, which indicated some similarities in the catch performance of the experimental codends. The applicant attributes the equivocal results of the 2001 study to low catch numbers (26) of yellowtail flounder per tow. The applicant further explains that the summer months (June-July) during which the 2001 study was conducted typically exhibit low catches of yellowtail flounder. While the study suggests potential fishery benefits by increasing mesh size for yellowtail, the small sample size led to inconclusive results upon which fishery managers could rely. The applicant would therefore like to repeat the mesh selectivity study during March and April 2002, when yellowtail flounder would be in the nearshore waters and adequate sample sizes could be obtained.

As in 2001, the applicant proposes to examine differences between the mesh selectivity of 6–inch (15.2cm) diamond and 6.5–inch (16.5–cm) square mesh to 6.5–inch (16.5–cm) diamond and 7–inch (17.8-cm) square mesh. To accomplish this, the applicant will use an alternate tow design for a comparison of mesh selectivity. Each net configuration will be tested with and without a 3–inch (7.6–cm) liner.

The applicant will charter up to four federally permitted vessels in the limited access multispecies fishery. Participating vessels will take 4–5 day trips (totaling 16–20 trips). The applicant will select participating vessels based on their owners' or operators' knowledge of the trawl fishery for yellowtail flounder, familiarity with local fishing methodology, familiarity with the survey area, and possession of trawl gear (except netting). The applicant will provide the proper mesh configuration.

All trips will be completed during daylight hours and must include at least two scientific personnel. A minimum of 12 comparisons per codend are required, for a total of 48 experimental comparisons. Five tows at a duration of 1.5 hours will be conducted during each sampling day, for a total of three experimental comparisons per day.

Vessels would be required to comply with all conditions of the EFP. The EFPs would allow participating vessels to be exempt from the multispecies minimum mesh size restrictions (§ 648.80 (b)(2)(i)) in order to permit the vessels to use a 3– inch (7.6–cm) mesh liner for the purposes of comparing catch. All other regulations specified under 50 CFR part 648 would apply. Vessels would be fishing under the multispecies DAS program, and thus would be authorized to retain and sell all groundfish and non-targeted species up to the regulatory amounts for each species that meet the minimum size requirements under 50 CFR part 648. The proceeds generated from the sale of the fish will help defray the cost associated with the experimental fishing. The experimental fishing will be conducted in areas open to commercial fishing within statistical areas 537 and 539 from the date of issuance of the EFPs through April 30, 2002.

Participating vessels would be required to fish in accordance with a sampling plan designed by the applicant, maintain logbooks documenting fishing activities, carry on-board observers trained in fish taxonomy, and allow biological information to be collected from the catches.

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

Dated: February 1, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–2879 Filed 2–5–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 25
Wednesday, February 6, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV02–928–1]

Papayas Grown in Hawaii; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Hawaiian papayas to determine whether they favor continuance of the marketing order regulating the handling of papayas grown in the production area.

DATES: The referendum will be conducted from March 4, through March 22, 2002. To vote in this referendum, growers must have been producing Hawaiian papayas during the period July 1, 2000, through June 30, 2001.

ADDRESSES: Copies of the marketing order may obtained from the office of the referendum agent at 2202 Monterey Street, Suite 102 B, Fresno, California, 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), US Department of Agriculture (USDA), 1400 Independence Avenue SW., Stop 0237, Washington, DC, 20250–0237.

FOR FURTHER INFORMATION CONTACT: J. Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, at 2202 Monterey Street, Suite 102 B, Fresno, California, 93721; telephone (559) 487–5901; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit & Vegetable Programs, AMS, USDA, 1400 Independence Ave SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 928 (7 CFR part 928), hereinafter referred to as the ''order'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by producers. The referendum shall be conducted during the period March 4, through March 22, 2002, among papaya growers in the production area. Only growers that were engaged in the production of Hawaiian papayas during the period of July 1, 2000, through June 30, 2001, may participate in the continuance referendum.

The USDA has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The USDA would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of Hawaiian papayas represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the USDA will consider the results of the referendum and other relevant information regarding operation of the order. The USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0102 for Hawaiian papayas. It has been estimated that it will take an average of 20 minutes for each of the approximately 400 growers of Hawaiian papayas to cast a ballot. Participation is voluntary. Ballots postmarked after March 22, 2002, will not be included in the vote tabulation.

J. Terry Vawter and Martin Engeler of the California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Department to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 *et. seq*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and Recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: January 31, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–2845 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–46–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332L and AS332L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332L and AS332L1 helicopters. This proposal would require adding a supplement to the limitations section of the applicable Rotorcraft Flight Manual (RFM) for helicopters with ''SEFA'' skis installed. This proposal is prompted by the need to limit the taxi and Vne speed of those helicopters with skis. The actions specified by this proposed AD are intended to prevent structural failure of a ski and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 8, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region,

Attention: Rules Docket No. 2001–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–46–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–46–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS332L and L1 helicopters equipped with ''SEFA'' skis. ECF issued Supplements, SUP.10.14, Ski Installation, Normal Revision 2, Issue 2, dated June 2001 to the ECF Model AS332L and AS332L1 RFM. The DGAC classified these RFM supplements as mandatory and issued AD No. 2001–316–079(A), dated July 25, 2001. The DGAC advises incorporating the Ski Installation Supplement into the applicable RFM before the next flight and complying with the VNE and the maximum taxiing speed limitations to ensure the continued airworthiness of these helicopters in France.

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

We have identified an unsafe condition that is likely to exist or develop on other ECF Model AS332L and AS332L1 helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require adding the limitations contained in SUP.10.14, Ski Installation, to the limitations section of the RFM, requiring certain speed limitations for helicopters with skis installed.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 10 minutes per helicopter to add the flight manual supplement, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $30.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001–SW–46–AD.

Applicability: Model AS332L and AS332L1 helicopters with ''SEFA'' skis installed, certificated in any category.

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

Compliance: Required before further flight, unless accomplished previously.

To prevent structural failure of a ski and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the next flight with skis installed, add the limitations contained in SUP.10.14, Ski Installation, Normal Revision 2, Issue 2, dated June 2001 to the limitations section of the applicable Rotorcraft Flight Manual.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

Note 3: The subject of this AD is addressed in Direction General De L'Aviation Civile (France) AD 2001–316–079(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on January 17, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–2426 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–24]

Proposed Modification of Class E Airspace; Daggett, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace area at Daggett, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) RNAVV (GPS) Runway (RWY) 22 SIAP and a RNAV (GPS) RWY 26 SIAP to Barstow-Daggett Airport, Daggett, CA has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 22 SIAP and a RNAV (GPS) RWY 26 SIAP to Barstow-Daggett Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Barstow-Daggett Airport, Daggett, CA.

DATES: Comments must be received on or before March 15, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–24, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AWP–24.'' The postcard before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in the action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Daggett, CA. The establishment of a RNAV (GPS) RWY 22 SIAP and a RNAV (GPS) RWY 26 SIAP at Barstow-Daggett Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing RNAV (GPS) RWY 22 SIAP and a RNAV (GPS) RWY 26 SIAP to Barstow-Daggett Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 22 SIAP and a RNAV (GPS) 26 SIAP to Barstow-Daggett, Daggett, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significantly regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001 and effective September 16, 2001, is amended as follows:

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

* * * * *

AWP CA E5 Daggett, CA [REVISED]

Barstow-Daggett Airport, CA
(Lat. 34°51′13″ N, long. 116°47′12″W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Barstow-Daggett Airport and within 2.2 miles each side of the 057° bearing from the Barstow-Daggett Airport extending from 6.5-mile radius to 11.8 miles northeast of the airport.

* * * * *

Issued in Los Angeles, California, on January 3, 2002.

Stephen Lloyd,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–2278 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AAL–2]

Proposed Amendment of Class E Airspace; Cold Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Cold Bay, AK. Due to the development of an Area Navagation (RNAV) Global Positioning System (GPS) Runway (Rwy) 26 Instrument Approach Procedure for the Cold Bay airport, additional Class E airspace to protect Instrument Flight Rules (IFR) operations is needed. The additional Class E surface area airspace will ensure that aircraft executing the RNAV (GPS) Rwy 26 standard instrument approach procedure remain within controlled airspace. Adoption of this proposal would result in additional Class E airspace at Cold Bay, AK.

DATES: Comments must be received on or before March 25, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 01–AAL–2, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AAL–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register's** web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by adding Class E airspace at Cold Bay, AK. The intended effect of this proposal is to add Class E controlled airspace necessary to contain IFR operations at Cold Bay, AK.

The FAA is adding a standard instrument approach procedure to the Cold Bay airport, Runway 26. This runway did not previously have an instrument approach procedure, although there are standard instrument approach procedures to other runways. The airspace currently designated as Class E is sufficient for all existing approaches, but does not contain the new standard instrument approach procedure to Runway 26.

The proposed Class E Airspace would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in

paragraph 6005 in FAA Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Cold Bay, AK [REVISED]

Cold Bay Airport, AK

(Lat. 55°12′20″N., long. 162°43′27″W.)
Cold Bay VORTAC
(Lat. 55°16′03″N., long. 162°46′27″W.)
Elfee NDB
(Lat. 55°17′46″N., long. 162°47′21″W.)
Cold Bay Localizer
(Lat. 55°11″41′N., long. 162°43″07′W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Cold Bay VORTAC extending clockwise from the 253° radial to the 041° radial of the VORTAC and within 4 miles south of the 253° radial Cold Bay VORTAC extending from the VORTAC to 7.2 miles west of the Cold Bay Airport and within 4 miles south of the 041° radial extending from the VORTAC to 7.2 miles east of the airport and within 4.5 miles west and 8 miles east of the Elfee NDB 318° bearing extending from the NDB to 21.7 northwest of the airport and that airspace within 3 miles each side of the Cold Bay VORTAC 150° radial extending from the VORTAC to 18.2 miles south of the airport and within 2.8 miles west of the Cold Bay Localizer back course extending from the airport to 15.7 miles south of the airport; excluding that airspace more than 12 miles from the shoreline; and that airspace extending from 1,200 feet above the surface within 18.3 miles from the Cold Bay VORTAC extending clockwise from the Cold Bay VORTAC 085° radial to the Cold Bay VORTAC 142° radial.

* * * * *

Issued in Anchorage, AK, on January 18, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–2407 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–1]

Proposed Amendment of Class E Airspace; Merle K. (Mudhole) Smith Airport, Cordova, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Cordova, AK. An airspace review was conducted for the Merle K. (Mudhole) Smith airport as a result of the development of a new Area Navigation (RNAV) Global Positioning System (GPS)—B standard instrument approach procedure. Additional Class E surface area airspace is needed to protect instrument flight rules (IFR) operations at Cordova, AK. The additional Class E surface area airspace will ensure that aircraft executing straight-in standard instrument approach procedures to Runway 27 remain within controlled airspace. Adoption of this proposal would result in additional Class E airspace at Cordova, AK and in the re-designation of class E surface area extensions.

DATES: Comments must be received on or before March 25, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 02–AAL–1, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AAL–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed

in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by adding Class E surface area airspace at Cordova, AK. The intended effect of this proposal is to add Class E surface area airspace necessary to contain IFR operations at the Merle K. (Mudhole) Smith airport, Cordova, AK. In addition, extensions to the Class E surface area have been previously designated incorrectly. This proposal would re-designate those extensions from E2 surface area airspace to E4 surface area extension airspace.

The FAA is adding a standard instrument approach procedure to the Merle K. (Mudhole) Smith airport. The new approach name is ''RNAV (GPS)—B'' and is designed to be a circling approach to the airport. The ''RNAV (GPS)—B'' approach begins southwest of the Merle K. (Mudhole) Smith airport with an inbound course of 062§ true. Although the Class E airspace surrounding the Merle K. (Mudhole) Smith airport is sufficient to contain the ''RNAV (GPS)—B'' instrument approach procedure, it was found during the airspace review for the new approach that an extension to Class E surface area airspace must be made to ensure that the instrument approach procedures that are aligned with Runway 27 at the Merle K. (Mudhole) Smith airport are entirely contained within controlled airspace. In addition, it was found that airspace within a 4.1mile radius of the Merle K. (Mudhole) Smith airport is correctly designated as Class E2 airspace. However, all extensions here-to-fore designated as Class E2 surface areas beyond the 4.1 mile radius should be re-designated as Class E4 surface area airspace.

The proposed Class E surface area airspace would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E2 airspace areas designated as surface areas are published in paragraph 6002 in FAA Order 7400.9J; the Class E4 airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004 in FAA Order 7400.9J; *Airspace Designations and Reporting Points,* dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points,* dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Cordova, AK [REVISED]

Cordova, Merle K. (MUDHOLE) Smith Airport, AK
(Lat. 60°29′31″ N., long. 145°28′39″ W.)
Glacier River NDB
(Lat. 60°29′56″ N., long. 145°28′28″ W.)

Within a 4.1-mile radius of the Merle K. (MUDHOLE) Smith airport excluding that airspace north of a line from lat. 60°32′48″ N, long. 145°34′06″ W; to lat. 60°31′00″ N, long. 145°20′00″ W.

Paragraph 6004 Class E airspace designated as an extension to a class D or class E surface area.

* * * * *

AAL AK E4 Cordova, AK [NEW]

Cordova, Merle K. (MUDHOLE) Smith Airport, AK
(Lat. 60°29′31″ N., long. 145°28′39″ W.)]
Glacier River NDB
(Lat. 60°29′56″ N., long. 145°28′28″ W.)

That airspace from a 4.1-mile radius of the Merle K. (MUDHOLE) Smith airport and within 2.1 miles each side of the 222° bearing from the Glacier River NDB extending from the 4.1-mile radius to 10 miles southwest of the airport and within 2 miles either side of the 114° bearing from the Glacier River NDB extending from the 4.1-mile radius to 6 miles southeast of the airport and within 2.2 miles each side of the 142° bearing from the NDB extending from the 4.1-mile radius to 10.4 miles southeast of the airport.

* * * * *

Issued in Anchorage, AK, on January 18, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–2408 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

FHWA Docket No. FHWA–2001–11130

RIN 2125–AE29

Work Zone Safety

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA is seeking comments regarding improvements that can be made to its regulation on Traffic Safety in Highway and Street Work Zones to better address work zone mobility and safety concerns. The FHWA has identified goals for maximizing the availability of roadways during construction and maintenance, while minimizing impacts on road users and highway workers, and would like to ascertain whether the current provisions in our regulation are adequate to address the unique mobility and safety challenges posed by work zones. Therefore the FHWA is soliciting input to identify the key issues that should be considered if the regulation were to be updated.

DATES: Comments must be received on or before June 6, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Shelley Row, Office of Transportation Operations, HOTO–1, (202) 366–1993; or Mr. Raymond Cuprill, Office of the Chief Counsel, HCC–30, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code for Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site. An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

Highway construction and maintenance work zones cause mobility and safety problems for the traveling public, businesses, highway workers, and transportation agencies, resulting in an overall loss in productivity and growing frustration. Work zones are a necessary part of meeting the need to maintain and upgrade our aging highway infrastructure. However, with vehicle travel increasing significantly faster than miles of roadway, we also have a growing congestion problem that is further worsened by work zones.

Legislative and Regulatory History

Section 1051 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, 2001, December 18, 1991, required the Secretary of Transportation (Secretary) to develop and implement a highway work zone safety program to improve work zone safety at highway construction sites by enhancing the quality and effectiveness of traffic control devices, safety appurtenances, traffic control plans, and bidding practices for traffic control devices and services. The FHWA implemented this provision of ISTEA through non-regulatory action, by publishing a notice in the **Federal Register** on October 24, 1995 (60 FR 54562). (Hereinafter referred to as ''the notice.'')

The purpose of this notice was to establish the National Highway Work Zone Safety Program (NHWZSP) to enhance safety at highway construction, maintenance and utility sites. In this notice, the FHWA indicated that having appropriate National and State standards and guidelines would contribute to improved work zone safety. To attain these National and State standards and guidelines, the FHWA identified, among other things, the need to update its regulation on work zone safety, 23 CFR 630, subpart J.

The notice indicated that the FHWA would review current work zone problems and update the regulation to better reflect current needs including reinforcement of guidance on bidding practices, work zone accident data collection and analysis at both project and program levels, compliance with traffic control plans, and work zone speed limits. While the focus of this notice was work zone safety, it also identified the need ''to minimize disruptions to traffic during construction of highway projects.''

Work zone mobility and safety are major concerns to the traveling public, businesses and transportation agencies. The FHWA has identified National goals for maximizing the availability of the Nation's roads during road construction and maintenance while minimizing impacts on road users and workers. To facilitate the attainment of these goals and to better meet the needs of transportation agencies, the traveling public, and highway workers, the FHWA is considering a wide range of options, including revising and expanding the regulations in 23 CFR 630, subpart J; alternatively, the FHWA is considering policy guidance. Congress' continued interest in this subject is evidenced by the fact that the House Transportation and Infrastructure Committee, Subcommittee on Highway and Transit, held a hearing entitled Work Zone Safety in July 2001.

The FHWA is therefore seeking input into the consideration of revision of the current regulation.

Definitions/Explanation of Terms

The definitions and explanations for the key terms and phrases used in this ANPRM are provided below. Some are standard definitions as stated by various manuals/codes, trade organizations and public entities, while others are commonly understood explanations and interpretations.

Americans with Disabilities Act (ADA).[1] The Americans with Disabilities Act, Public Law 101–336 was enacted July 26, 1990. The ADA

[1] Americans with Disabilities Act (ADA) of 1990, Public Law 101–336, 104 Stat. 327 (July 26, 1990).

prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services. The term ''disability'' means, with respect to an individual—(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.

Constructibility Review. Refers to a process for assessing and improving highway construction project contract documents to ensure rational bids and to minimize problems during construction. Constructibility is defined as the optimum use of construction knowledge and experience in planning, design, procurement, and field operations to achieve overall project objectives.[2]

Disruption due to Work Zones. The deviation from normalcy caused by work zones resulting in impacts on mobility, safety and productivity of users, businesses and highway workers.

Incident. Part 6 of the Manual on Uniform Traffic Control Devices (MUTCD),[3] Temporary Traffic Control, defines an incident as an area of a highway where temporary traffic controls are imposed by authorized officials in response to a road user incident, natural disaster, or special event.

Mobility. A representation of the efficiency and convenience of transportation facilities and traffic flow. The commonly used performance measures for the assessment of mobility include delay, speed, travel time and queue lengths. With specific reference to work zones, mobility pertains to moving road users smoothly through or around a work zone area with a minimum delay compared to baseline travel when no work zone is present.

Mobility and Safety Audits. Refers to the process of evaluating work zone traffic control and management plans against the applicable mobility and safety standards, in order to obtain an estimate of the performance of the work zone with respect to the attainment of those mobility and safety standards.

Road User/Traveler. Part 1 of the MUTCD, General, defines road user to include all vehicle operators (private, public and commercial), bicyclists, pedestrians or disabled people within the highway, including workers in temporary traffic control zones.

Safety. A representation of the level of exposure to danger for users of transportation facilities. With specific reference to work zones, safety refers to minimizing the exposure to danger of road users in the vicinity of a work zone and road workers at the work zone interface with traffic. The commonly used measures for road safety are the number of crashes or the consequences of crashes (fatalities and injuries), at a given location or along a section of highway, during a period of time. Worker safety in work zones refers to the safety of workers at the work zone interface with traffic and the impacts of the work zone design on worker safety. The number of worker fatalities and injuries at a given location or along a section of highway, during a period of time is also used to depict the safety of work zones.

Temporary Traffic Control Zone. The MUTCD defines a temporary traffic control zone as an area of a highway where road user conditions are changed because of a work zone or traffic incident by the use of temporary traffic control devices, flaggers, police, or other authorized personnel.

User Cost. The cost of the disruptions due to work zones borne by road users, nearby residents and businesses, transportation agencies, and contractors. User costs primarily include travel delay costs (time value of money), additional fuel consumption costs, environmental impact costs, and accident costs. Consideration may also be given to lost sales, late deliveries/lost productivity, and costs of delayed construction.

Work Zone. The MUTCD defines a work zone in Part 6, Temporary Traffic Control, as an area of a highway with construction, maintenance, or utility work activities. A work zone is typically marked by signs, channelizing devices, barriers, pavement markings, and/or work vehicles. It extends from the first warning sign or rotating/strobe lights on a vehicle to the END ROAD WORK sign or the last temporary traffic control device.

The National Committee on Uniform Traffic Laws and Ordinances (NCUTLO)[4] adds to this definition in Section 4 of its Work Zone Model Law, by including the following: a work zone may be for short or long durations and may include stationary or moving activities, including: Long-term highway construction such as building a new bridge, adding travel lanes to the roadway, extending an existing roadway, etc; Short-term highway maintenance such as striping the roadway, median, and roadside grass mowing/landscaping, pothole repair, etc; and Short-term utility work, such as repairing electric, gas, or water lines within the roadway. The work zone does not include private construction, maintenance or utility work outside the highway.

The National Highway Traffic Safety Administration's (NHTSA) Model Minimum Uniform Crash Criteria (MMUCC)[5] states that a work zone is a segment of the roadway marked to indicate that construction, maintenance, or utility work is being done. A work zone extends from the first warning sign to the end construction (work) sign or the last traffic control device. Work zones may or may not involve workers or equipment on or near the road. A work zone may be stationary (such as repairing a water line) or moving (such as re-striping the centerline); it may be short term (such as pothole patching) or long term (such as building a new bridge).

The American National Standards Institute (ANSI), in its Manual on Classification of Motor Vehicle Traffic Accidents, American National Standard—ANSI D–16,[6] is proposing a definition for work zone, which is similar to the NCUTLO definition. It states that a work zone is an area of a

[2] From National Cooperative Highway Research Program (NCHRP) Project 20–24(12), Avoiding Delays During the Construction Phase of Highway Projects, Draft Report July 2001. This project is currently underway, with publication of the final results expected in early 2002. When completed, a copy of the final report may be obtained electronically at: *http://www4.nas.edu/trb/onlinepubs.nsf/web/crp* or by writing to the Transportation Research Board (TRB), Lockbox 289, Washington, DC 20055.

[3] Manual on Uniform Traffic Control Devices (MUTCD) Millenium Edition, December 2000. This document is available electronically at the following URL: *http://mutcd/kno-millenium.htm.*

[4] National Committee on Uniform Traffic Laws and Ordinances (NCUTLO), Work Zone Model Law, Section 4—Definitions (j). More information on the NCUTLO and its Work Zone Model Law may be obtained electronically at: *http://www.ncutlo.org* or by writing the NCUTLO at, 107 S. West Street, # 110, Alexandria, VA 22314, Ph—800–807–5290.

[5] Model Minimum Uniform Crash Criteria (MMUCC), National Highway Traffic Safety Administration (NHTSA), August 1998. Information about and copies of the Model Minimum Uniform Crash Criteria (MMUCC) may be obtained on the Internet at: *http://www.nhtsa.dot.gov* or by writing the NHTSA at 400 7th St. SW Washington, DC 20590, Phone: 888–327–4236.

[6] The purpose of this American National Standard is to provide a common language for collectors, classifiers, analysts and users of traffic accident data. The Manual promotes uniformity and comparability of motor vehicle traffic accident statistics developed in states and local jurisdictions. Information about this standard may be obtained by contacting the American National Standards Institute at 1819 L Street, NW, Washington, DC 20036, Telephone: 202.293.8020, Fax: 202.293.9287 or on the Internet at: *http://www.ansi.org.*

trafficway[7] with highway construction, maintenance or utility work activities. A work zone is typically marked by signs, channelizing devices, barriers, pavement markings, and/or work vehicles. It extends from the first warning sign or flashing lights on a vehicle to the END ROAD WORK sign or the last traffic control device. A work zone may be for short or long duration and may include stationary or moving activities. Inclusions: Long-term stationary highway construction such as building a new bridge, adding travel lanes to the roadway,[8] extending an existing trafficway, etc.; Mobile highway maintenance such as striping the roadway, median, and roadside grass mowing/landscaping, pothole repair, etc.; Short-term stationary utility work such as repairing electric, gas, or water lines within the trafficway, etc. Exclusions: Private construction, maintenance or utility work outside the trafficway.

Work Zone Duration. Refers to the length of time for which a work zone is needed to complete the required highway construction or maintenance activity.

Work Zone Frequency. Refers to either the number of work zones or distance between multiple work zones along a corridor or in a road network; or the time between recurrent work zones for performing road construction or maintenance work at the same location, along the same segment of a corridor, or in a road network.

Statement of the Problem

As much of the Nation's transportation infrastructure approaches its service life, preservation, rehabilitation, and maintenance become an increasing part of our transportation improvement program.[9] The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, enacted in June 1998, provides for a 40 percent increase in transportation funding over the total provided in the ISTEA.[10] Much of this funding is being spent on maintaining and operating existing roads, since comparatively few new roads are being built. At the same time, traffic volumes continue to grow and create more congestion.

From 1980 to 1999, the U.S. experienced a 76 percent increase in total vehicle-miles traveled, while total lane miles of public roads increased only by 1 percent.[11] Congestion is frustrating and costly to businesses and individuals. The Texas Transportation Institute (TTI) estimated that the cost of congestion was approximately $78 billion in 1999. The combination of heavier traffic volumes passing through a road network with more work zones increases the operational and safety impacts of those work zones on the road network.

Over the years, highway professionals have devised and implemented several strategies and innovative practices for minimizing the disruption caused by work zones, while ensuring successful project delivery. However, more effort is required to meet the needs and expectations of the American public, given the current and expected level of investment activity in highway infrastructure, a significant portion of which is for maintenance and reconstruction.

The results of a recent FHWA nationwide survey, reported in ''Moving Ahead: The American Public Speaks on Roadways and Transportation in Communities,''[12] illustrates the American public's frustration with work zones. Key findings include:

- Work zones were cited as second only to poor traffic flow in causing traveler dissatisfaction;
- The top three improvements indicated by the public as a ''great help'' to improve roadways and transportation are related to roadway repairs and work zones. They are:

a. More durable paving materials (67 percent);

b. Repairs made during non-rush hours (66 percent); and

c. Reducing repair time (52 percent);

- The use of better traffic signs showing expected roadwork, and better guide signs for re-routing traffic to avoid roadwork, were also cited as being of ''great help,'' by 40 percent and 35 percent of the respondents respectively; and
- Many travelers indicated a preference to have the road closed completely for moderate durations in exchange for long-lasting repairs.

The following facts illustrate the adverse impacts of work zones on traveler and construction worker safety:

- Work Zone fatalities reached a high of 872 in 1999,[13] while 39,000 Americans were injured in work zone related crashes in the same year;[14]
- From 1992 to 1999, about 106 to 136 highway workers died each year in road construction activities, as indicated by the Bureau of Labor Statistics' Census of Fatal Occupational Injuries.[15] On average, 23 percent of these fatalities were due to workers being struck by vehicles or mobile equipment in roadways.

Further, the contracting industry is under pressure to expedite construction and minimize disruption, and has expressed concerns that these pressures reduce productivity, and may compromise quality.

While mobility and safety are two distinct challenges posed by the circumstances we face on our highways, it is important to realize that both these elements are closely tied to one another. Studies and data analyses over time have proven that as congestion builds, crash rates increase; and as crashes increase, more congestion occurs. Therefore, it is important to develop comprehensive solutions and mitigation measures for work zones that address both mobility and safety of transportation and traffic flow from the perspective of reducing the impacts of work zones on users, businesses and highway workers, and ultimately improving mobility, safety and productivity.

In recognition of these facts and findings, the FHWA is seeking to identify and foster ways to make work zones function better. This requires looking at the full life of our transportation infrastructure and may require changing the way construction

[7] The American Association of State Highway Transportation Officials (AASHTO) equivalent of ''trafficway'' is ''highway, street or road.''

[8] The AASHTO term equivalent to ''roadway'' is ''traveled way.''

[9] FHWA report, ''Meeting the Customer's Needs for Mobility and Safety During Construction and Maintenance Operations,'' September 1998. This report is available electronically at: *http://safety.fhwa.dot.gov/fourthlevel/pro_res_wzs_links.htm* or may be obtained by writing the FHWA Safety Core Business Unit at FHWA, Safety, 400 7th Street, SW., Washington, DC 20590.

[10] Statement of Vincent F. Schimmoller, Deputy Executive Director, FHWA, USDOT, Before The House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, Hearing on Work Zone Safety, July 24, 2001. An electronic copy of this statement may be obtained at: *http://www.house.gov/transportation/press/press2001/release100.html.*

[11] ''Status of the Nation's Highways, Bridges, and Transit: Conditions & Performance (C&P) Report to Congress,'' FHWA, 1999. A copy of this report may be obtained electronically at: *http://www.fhwa.dot.gov/policy/1999cpr/.*

[12] The results of the survey are available in ''Moving Ahead: The American Public Speaks on Roadways and Transportation in Communities,'' FHWA Publication No. FHWA–OP–01–017, 2000. A copy of this publication is available electronically on the FHWA web page at: *http://www.fhwa.dot.gov/reports/movingahead.htm.*

[13] The statistics on work zone crashes for the year 2000 were not officially available at the time this ANPRM was drafted.

[14] Fatal Analysis Reporting System (FARS) maintained by the NHTSA. More information is available electronically at: *http://www-fars.nhtsa.dot.gov/.*

[15] The Bureau of Labor Statistics' Census of Fatal Occupational injuries is available electronically at *http://www.bls.gov/iif/oshcfoi1.htm.*

and maintenance projects are conceived, planned, designed and executed. Changes to the project development process may fundamentally include consideration of the mobility and safety impacts of work zones on road users and businesses, at the same time providing for worker safety and efficient construction. It is essential that all interested parties participate in developing any rules, regulations and/or guidelines to facilitate improved, comprehensive practices for road construction and maintenance projects.

Currently, the regulation has the broad purpose of providing guidance and establishing procedures to ensure that adequate consideration is given to motorists, pedestrians, and construction workers on all Federal-aid construction projects. However, the content of the current regulation is narrowly focused on the development of Traffic Control Plans (TCPs) and on the operations of two-lane, two-way roadways. The FHWA believes that the trends of increasing road construction, growing traffic and public frustration with work zones call for a more broad-based examination of the current regulations.

The FHWA is considering updating the current regulations to seek and facilitate comprehensive means and methods to reduce the need for recurrent road work, the duration of work zones, and the disruption caused by work zones. The FHWA hopes to receive substantial input from the transportation community in the development of new regulations and guidelines. Through this ANPRM, the FHWA seeks to initiate discussion with the transportation community and any interested parties by soliciting comments and input on several key questions. During the entire rulemaking consideration process, the FHWA will conduct outreach and solicit comments, suggestions and input from a variety of transportation stakeholders and will be grateful to all participants for their contributions. The FHWA will continue to file relevant information in the docket as it becomes available and interested persons should continue to examine the docket for new material.

General Discussion for Considering Policy and Regulation Change

To reduce the need for recurrent work zones, reduce the duration of work zones, and reduce the disruption due to work zones, the FHWA will consider updating the current regulation based on the following objectives of the FHWA's work zone mobility and safety program:

- Reduction of the impacts of highway work zones on road users, construction workers, businesses and society, at the same time maximizing the availability of the roadway for efficient traffic movement;
- Enhancement of the way construction projects are currently conceived, planned, designed and executed to bring about a focus shift to customer-oriented construction project planning;
- Identification of an exhaustive set of issues that govern work zone mobility and safety for possible consideration in an updated regulation;
- Consideration and incorporation of a range of innovative practices and technologies that can substantially improve work zone mobility and safety; and
- Extensive outreach and dialogue with a wide cross-section of transportation stakeholders and the community, characterized by a willingness to listen and respond to inputs and suggestions.

Request for Comments

Based on previous studies and the knowledge base accumulated over time through input from States, local agencies, and professional organizations, the FHWA has identified a set of issues that may be addressed as part of this rulemaking effort. We have posed these issues as questions to elicit comments, guidance and suggestions. The FHWA believes that the magnitude of the problem under consideration and the level of concern voiced by road users requires reconsideration of how we plan, design and construct roadway projects to shift our focus to the needs of road users and businesses while balancing the need for worker safety. A customer-oriented construction project planning and implementation approach necessitates that we examine the complete project development cycle. Therefore, we have grouped the questions into categories that generally correspond to the major steps in project development. These categories are:

- General (wide-ranging policy and regulatory considerations);
- Transportation Planning and Programming;
- Project Design for Construction and Maintenance;
- Managing for Mobility and Safety In and Around Work Zones;
- Public Outreach and Communications; and
- Analyzing Work Zone Performance.

Commenters are also encouraged to include discussion of any other issues they consider relevant to this effort.

General

1. Should there be a National policy to promote improved mobility and safety in highway construction and maintenance? If so, should the National policy be incorporated into the regulation or issued separately as guidance that outlines guidelines and best practices for implementation?

2. Are the current provisions of 23 CFR 630, subpart J adequate to meet the mobility and safety challenges of road construction and maintenance projects encountered at all stages of project evolution? If they are not adequate, what are the provisions and/or sections that need to be enhanced and/or modified to ensure mobility and safety in and around work zones?

3. Should work zone regulations be stratified to reflect varying levels and durations of risk to road users and workers, and disruptions to traffic? What would be the most appropriate stratification factors (*e.g.,* duration, length, lanes affected, Average Daily Traffic (ADT), road classification, expected capacity reduction, potential impacts on local network and businesses)?

4. Currently, there are several definitions for work zone, as defined by the MUTCD, ANSI D16 (proposed), NCUTLO and NHTSA. These definitions, even though similar in basic structure and implication, differ in length and the degree of detail addressed. Should there be a common National definition for work zone to bring about uniformity? If so, what should the common National definition be?

Transportation Planning and Programming

It is important to consider user mobility and safety impacts and worker safety requirements across the different stages of highway project development. Consideration of these impacts should begin early and be consistently coordinated across the planning processes and project development stages. The FHWA expects that such consideration will reduce the need for recurrent work zones, the duration of work zones, and the disruption caused by work zones.

5. How, if at all, are impacts to road users due to road construction and maintenance part of the management and operations considerations that are addressed in transportation plan development?

6. To what extent should the metropolitan and statewide transportation planning processes address cross-cutting policy issues that may contribute to increases in project costs (for example, the use of more durable materials, life-cycle costing, complete closure of facilities,

information sharing on utilities, etc.)? Is it appropriate to consider the impact of construction and maintenance projects to road users in planning for future roadway improvements at the metropolitan level? At the statewide level? At the corridor level?

7. What data and methods are currently available to address the above considerations? What else would be needed to support such considerations in the metropolitan and statewide transportation planning processes? At the corridor level?

Project Design for Construction and Maintenance

In making decisions on alternative project designs, project designers should consider different strategies and practices that may lead to reductions in the need for recurrent road construction and maintenance work, the duration of work zones and the disruption caused by work zones. Examples of such considerations include life-cycle cost analysis, alternative project scheduling and design strategies, such as, full road closures and night time work, using more durable materials, coordinating road construction, estimation of user costs/impacts, risk and reward sharing with contractors, and constructibility reviews for projects.

8. How can the FHWA encourage agencies to incorporate the above considerations (life-cycle cost analysis, alternative project scheduling and design strategies, etc.) in the decisionmaking process for evaluating alternative project designs? What are the most appropriate ways to include these considerations in project design?

9. Can user cost be a useful measure to assess alternative means to design and implement work zones? What weight should agencies assign to user costs as a decisionmaking factor in the alternatives evaluation process? Should analytical tools, such as QuickZone,[16] QUEWZ–98,[17] etc., be used for the evaluation of various design alternatives and their estimated impact to the public? What other impact measures (delay, speed, travel time, crashes) should agencies estimate and use for alternatives evaluation?

10. Given the fact that utility delays have been cited as roadblocks to efficient project delivery, what should be done to address this issue?

Managing for Mobility and Safety in and Around Work Zones

There are many methods that can be applied to managing traffic in and around work zones. The application of Intelligent Transportation Systems (ITS) for purposes, such as, traffic management, automated enforcement and traveler information is a useful method to improve transportation mobility and safety. The current and future mobility and safety challenges presented by work zones may require Traffic Control Plans (TCPs) to include traffic management, enforcement and operations considerations (such as ITS based traffic control and traveler information, speed management and enforcement, incident and emergency management, etc.), security considerations, and other considerations (for example, utility location and coordination information).

11. The current regulation specifies the requirement for TCPs for work zones, but does not address the issues of sustained traffic management and operations, or traffic enforcement methods and partnerships. Should the scope of TCPs be expanded to include such considerations? What are the most relevant practices or technologies that should be considered in planning for traffic management, enforcement and operations? What are the most appropriate ways to facilitate the inclusion of such considerations in traffic control planning?

12. Should TCPs address the security aspects of construction of critical transportation infrastructure? Should TCPs address the security aspects of work zone activities in the vicinity of critical transportation or other critical infrastructure?

13. How should TCPs address ADA requirements?

14. Should more flexibility be allowed on who develops TCPs—State DOTs, municipalities, contractors or law enforcement agencies—and how should the responsibility for developing TCPs be assigned? Should certification be required for TCP developers? How can the owners and contractors share the roles, risk and rewards in developing TCPs and implementing and operating work zones?

15. To ensure roadway mobility and safety and work area safety, should mobility and safety audits be required for work zones?

Public Outreach and Communications

To reduce the anxiety and frustration of the public, it is important to sustain effective communications and outreach with the public regarding road construction and maintenance activity, and the potential impacts of the activities. This also increases the public's awareness of such activities and their impacts on their lives. The lack of information is often cited as a key cause of frustration for the traveling public. Therefore, it is important to identify the key issues that need to be considered from a public outreach and information perspective.

16. How can we better communicate the anticipated work zone impacts and the associated mitigation measures to the public? Who—the State, local government, contractor, or other agency—should be responsible for informing the public?

17. Should projects with substantial disruption include a public communication plan in the project development process? If so, what should such a plan contain?

Analyzing Work Zone Performance

Evaluation is a necessary tool for analyzing failures and identifying successes in work zone operations. Work zone performance monitoring and reporting at a nationwide level has the potential to increase the knowledge base on work zones and help better plan, design and implement road construction and maintenance projects.

18. Should States and local transportation agencies report statistics on the characteristics of work zones (such as number of work zones, size, cost, duration, lanes affected, ADT, road classification, level of disruption and impacts on local network and businesses) to appropriate State or Federal agencies? If so, in what ways do you think this would be beneficial?

19. Should States and local transportation agencies report statistics on the mobility performance of work zones? Are typical mobility measures, such as, delay, travel time, traffic volumes, speed and queue lengths appropriate to analyze work zone mobility performance? What are the top three measures that are most appropriate?

20. Are the currently used measures for safety (typically, crashes, fatalities and injuries) appropriate to analyze work zone performance? If not, what other measures should be considered? Are current mechanisms for collecting this information adequate? If not, how can we improve them?

[16] QuickZone is a traffic analysis delay estimation tool designed by the FHWA to aid State and local design and construction staff, operations and planning staff, construction contractors and even utility contractors. This Microsoft Excel spreadsheet tool can be used to analyze both urban and inter-urban corridors. QuickZone 1.0 will soon be available. QuickZone Beta version 0.99 is available as a free download at *http://ops.fhwa.dot.gov/wz/workzone.htm.*

[17] QUEWZ–98 is a microcomputer analysis tool that estimates traffic impacts, emissions and additional road user costs resulting from short-term lane closures in work zones. More information about this tool may be obtained online at: *http://tti.tamu.edu/researcher/v36n2/quewz98.stm.*

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A notice of proposed rulemaking (NPRM) may be issued at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this action would be minimal. Any rulemaking action resulting from this ANPRM would propose to amend the current regulations and it is anticipated that any changes proposed would not affect any Federal funding available.

Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Based upon the information received in response to this ANPRM, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. If the rulemaking action contemplated in this ANPRM is promulgated, it is anticipated that the proposed action would not have a significant economic impact on a substantial number of small entities. The FHWA encourages commenters to evaluate any options addressed here with regard to the potential for impact, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

The actions being considered under this ANPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions being considered under this ANPRM would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA also anticipates that any action taken will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Any action that might be contemplated in subsequent phases of this proceeding will be evaluated for PRA requirements.

Executive Order 13175 (Tribal Consultation)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed under Executive Order 13175, dated November 6, 2000, and the FHWA believes that any proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, the FHWA anticipates that a tribal summary impact statement will not be required.

Executive Order 13211 (Energy Effects)

The FHWA will analyze any action that might be proposed in subsequent stages under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined that any action contemplated will not be a significant energy action under that order because any action contemplated will not be a significant regulatory action under Executive Order 12866 and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Therefore, the FHWA anticipates that a Statement of Energy Effects under Executive Order 13211 is not required.

National Environmental Policy Act

The agency will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

The FHWA will analyze any action that might be proposed in subsequent stages under Executive Order 12630, Governmental Actions and Interface with Consitutionally Protected Property Rights. The FHWA does not anticipate at this time that such action would effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

Any action that might be proposed in subsequent stages of this proceeding will meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA will analyze any action that might be proposed in subsequent stages under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA does not anticipate that such action would concern an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Highway safety, Highways and roads.

(Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; 49 CFR 1.48; sec. 1051, Pub. L. 102–240, 105 Stat. 2001; sec. 358(b), Pub.L. 104–59, 109 Stat. 625.)

Issued on: January 31, 2002.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–2822 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 161 and 167

[USCG–2001–10254]

RIN 2115–AG20

Traffic Separation Scheme: In Prince William Sound, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending the existing Traffic Separation Scheme (TSS) in Prince William Sound, Alaska. The proposed amendments are adopted by the International Maritime Organization and have been validated by a recent Port Access Route Study (PARS). Implementing these amendments would provide straight traffic lanes between the Bligh Reef Pilot Station and Cape Hinchinbrook and should reduce risk for vessels operating in the area. The rulemaking would incorporate the amended TSS into the Code of Federal Regulations.

DATES: Comments and related materials must reach the Docket Management Facility on or before March 8, 2002.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–10254), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

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

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in this docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call LT Keith Ropella, U.S. Coast Guard Marine Safety Office, Valdez, AK, telephone 907–835–7209, e-mail KRopella@cgalaska.uscg.mil; or George Detweiler, Coast Guard, Office of Vessel Traffic Management (G–MWV), at 202–267–0574, e-mail *GDetweiler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–10254), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Under the Ports and Waterways Safety Act (33 U.S.C. 1221–1232) (PWSA), the Coast Guard establishes Traffic Separation Schemes (TSS's), where necessary, to provide safe access routes for vessels proceeding to or from U.S. ports. Before implementing new TSS's or modifying existing ones, we conduct a port access route study (PARS). Through the PARS process, we consulted with affected parties to reconcile the need for safe access routes with the need to accommodate other reasonable uses of the waterway, such as oil and gas exploration, deepwater port construction, establishment of marine sanctuaries, and recreational and commercial fishing. If a study recommends a new or modified TSS, we must initiate a rulemaking to implement the TSS. Once a TSS is established, the right of navigation is considered paramount within the TSS.

Maritime trends have not significantly changed since the publication of a description of the Prince William Sound Oil Transportation System in 1996. However, minor changes have occurred since publication. These changes include the replacement of several new escort vessels in the ALYESKA/SERVS fleet and the removal of several tankers from service. In addition, ALYESKA began operation of a Vapor Control Recovery Loading System in March,

1998. This system is functional on berths 4 and 5 of the Trans-Alaska Pipeline Terminal. Originally, it was thought that vessel traffic congestion would result due to the shippers' preference to utilize these berths. However, most delays seem minimal and Knowles Head Anchorage remains adequate for vessels awaiting a berth.

Cruise ships continue to visit Valdez during May through September. Cruise ship traffic continues to grow in direct proportion to the increase in tourism throughout Alaska. These vessels frequently do not follow the traffic lanes within central Prince William Sound. Typically, cruise ships transit through Montague Strait up the west side of Prince William Sound to College Fiord. Those vessels that make a port call in Valdez join the existing traffic lane in the Valdez Arm.

Fishing vessels, most notably seiners, continue to harvest salmon during the summer. The Vessel Traffic Center at Valdez has gone to great efforts to educate all mariners about ways to share the waterway. Radio procedures have been established to further disseminate information to fishing vessels participating in the limited periods when fishing is allowed. Although Valdez Narrows still poses the greatest possibility of conflicts with fishing vessel and commercial vessel traffic, the prevailing attitude is one of cooperation among parties.

Recreational boating continues to abound within Prince William Sound. Areas of operation for these vessels are not predictable and generally follow current fishing trends. Charter vessels fish for halibut in the vicinity of Cape Hinchinbrook, and salmon fishing occurs within the port. Kayakers also make frequent excursions to nearby glaciers and recreational sites, however their transits typically follow close to the shoreline.

Existing Prince William Sound TSS. The current TSS in Prince William Sound, Alaska, runs from the vicinity of Cape Hinchinbrook through Prince William Sound and into the Valdez Arm (the entrance to Port Valdez). The International Maritime Organization (IMO) adopted the TSS in 1992. The TSS is reflected on National Oceanic and Atmospheric Administration (NOAA) nautical chart 16700 and in ''Ships Routeing,'' Seventh Edition 1999, International Maritime Organization.

Recent Port Access Route Study. We published a notice of study in the **Federal Register** on February 9, 1998 (63 FR 6502). This study was to review and evaluate the need for modifications to current vessel routing and traffic management measures in the approaches or departures within Prince William Sound, Alaska. The study considered the results and findings of several related studies. We published the study results in the **Federal Register** on August 26, 1999 (64 FR 4662). The PARS concluded that modifications to the current TSS were necessary to improve vessel traffic management and safety and reduce the risk of drift groundings.

Discussion of Proposed Rule

This rulemaking would amend the existing TSS in Prince William Sound, Alaska. The existing TSS is delineated in ''Ships Routeing,'' Seventh Edition 1999, International Maritime Organization, but not yet codified in the Code of Federal Regulations (CFR). The amendments are based on the recommendations of the 1999 PARS. We propose the following changes to the existing TSS:

- Establish a precautionary area southeast of Cape Hinchinbrook at the entrance to Prince William Sound.
- Straighten the Prince William Sound portion of the TSS to eliminate a course change.
- Establish a precautionary area at the Bligh Reef Pilot Station.

This precautionary area will divide the present TSS into two separate traffic separation schemes—a Prince William Sound traffic separation scheme and a Valdez Arm traffic separation scheme. In addition, the new Valdez Arm TSS will be slightly wider than the Valdez Arm portion of the present TSS.

Establish a precautionary area southeast of Cape Hinchinbrook at the entrance to Prince William Sound. Establishing a precautionary area southeast of Cape Hinchinbrook should reduce the potential for traffic congestion in this area. Some laden tankers departing from Cape Hinchinbrook do not follow the existing Prince William Sound Safety Fairway. Instead, the vessels use an alternate route to provide an extra measure of protection for the environmentally sensitive Copper River Flats Delta area. The recommended precautionary area would provide two distinct routes for departing and returning vessels, thereby improving vessel traffic management and safety.

Straighten the Prince William Sound portion of the TSS to eliminate a course change. The present course change in the Prince William Sound TSS was created to move traffic away from the Alaskan king crab fishing area (200 fathom curve). Since king crab is no longer fished in this area, the course change is not required. Eliminating the course change provides a straight traffic lane between the Bligh Reef Pilot Station and Cape Hinchinbrook and should reduce risk for vessels operating in the area. The length of transit in Prince William Sound is reduced, as well as overall exposure time for vessels. It should also result in a smoother flow of traffic and less traffic congestion. Further, with the course change removed, the minimum distance from the center of the southbound traffic lane to Naked Island would increase from 6 to 9 nautical miles, reducing the risk of drift groundings.

Establish a precautionary area at the Bligh Reef Pilot Station. Establishing a precautionary area at the Bligh Reef Pilot Station should reduce risk for vessels operating in the area. Several types of vessels converge in this area, including ferries, cruise ships, and tankers. Navigation can sometimes be difficult in this area because of outflows of ice from the Columbia Glacier. In addition, since the area offers little protection from the weather, vessels occasionally alter course to provide safe embarking and disembarking for pilots. The southbound traffic lane of the TSS within Valdez Arm would be widened to be tangent with the perimeter of the precautionary area.

We would amend the Valdez Narrows Vessel Traffic Service (VTS) Special Area to include the Valdez Arm portion of the TSS. This would give the Commanding Officer of the VTS the authority to direct vessels into the separation zone if, for example, the traffic lanes become partially blocked by ice from the Columbia Glacier.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The costs and benefits of this proposed rulemaking are summarized below.

Costs

Vessel operators would incur the minimal cost of plotting new coordinates on their existing charts or

purchasing updated charts when available.

Benefits

The proposed amendments to the TSS in Prince William Sound, Alaska, would increase the margin of safety for all vessels accessing the Port of Valdez. The new Precautionary Areas and amended traffic lanes would decrease the chance of collisions, allisions, and drift groundings were a vessel to become disabled. We expect that vessels transiting the Prince William Sound TSS would experience cost savings, through decreased operational costs, because the transit lanes in the Sound would be shorter.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule should have a reduced economic impact on vessels operated by small entities. The proposal amends an existing TSS. This action improves safety for commercial vessels using the TSS by reducing the risk of collisions, allisions, and drift groundings. Vessels voluntarily transiting the TSS will have to transit 1.5 to 2.5 nautical miles fewer per trip. The reduced transit distance results in decreased vessel operating costs. Vessels that tend to use the TSS's are commercial vessels, such as tankers. These vessels are usually large and capable of operating in an offshore environment. Because of their size, most of them are not owned by small entities. Even if such a large vessel were owned by a small business, decreased transit costs would positively affect the overall cost of the complete voyage.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult George Detweiler, Coast Guard, Marine Transportation Specialist, at 202–267–0574.

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

Collection of Information

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

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that it does not have implications for federalism under that Order.

Title I of the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*) (PWSA) authorizes the Secretary to promulgate regulations to designate and amend traffic separation schemes (TSS's) to protect the marine environment. In enacting PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSS in Prince William Sound, Alaska, we have consulted with the Valdez Marine Operators Committee (VMOC), the affected state and Federal pilot's associations, vessel operators, users, and all affected stakeholders. The VMOC includes individuals who represent the interests of local commercial shipping and industry, as well as members from the Regional Citizens Advisory Council, and the State of Alaska. The VMOC was an active participant in various meetings with the Coast Guard and has contributed to this rulemaking.

Presently, there are no Alaska State laws or regulations concerning the same subjects as are contained in this proposed rule. We understand the state does not contemplate issuing any such rules. However, it should be noted, that by virtue of the PWSA authority, the TSS proposed in this rule would preempt any state rule on the same subject.

In order to be effective against foreign flag vessels on the high seas, TSS's must be submitted to, approved by, and implemented by IMO. Individual states are not represented at IMO; that is the role of the Federal government. The Coast Guard is the principal United States agency responsible for advancing the interests of the United States at IMO. We recognize, however, the interest of all local stakeholders as we work at IMO to advance the goals of this TSS. We will continue to work closely with stakeholders to implement the final rule to ensure that the waters in Prince William Sound affected by this proposed rule are made safer and more environmentally secure.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to

safety that might disproportionately affect children.

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(i), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule proposes adjusting an existing traffic separation scheme. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, and Waterways.

33 CFR Part 167

Harbors, Marine safety, Navigation (water), and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 161 and 167 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1221; 33 U.S.C. 1223; 49 CFR 1.46.

2. Revise § 161.60 (b) to read as follows:

§ 161.60 Vessel Traffic Service Prince William Sound.

* * * * *

(b) The Valdez Narrows VTS Special Area consists of those waters of the Valdez Arm Traffic Separation Scheme as defined in 33 CFR part 167; those waters of Valdez Arm and Valdez Narrows bounded by the points 61°02.10′ N, 146°40.00′ W; 60°58.04′ N, 146°46.52′ W; 60°58.93′ N, 146°48.86′ W; 61°03.40′ N, 146°41.80′ W; and those waters of Port Valdez southwest of a line bearing 307° True from Entrance Island Light at 61°05.10′ N, 146°36.70′ W, through Valdez Narrows to a line between the points 61°02.10′ N, 146°40.00′ W and 61°03.40′ N, 146°41.80′ W.

* * * * *

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

3. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

4. Add §§ 167.1700 through 167.1703 to read as follows:

§ 167.1700 In Prince William Sound: General.

The Prince William Sound Traffic Separation Scheme consists of four parts: Prince William Sound Traffic Separation Scheme, Valdez Arm Traffic Separation Scheme, and two Precautionary Areas. The specific parts are described in §§ 167.1701 through 167.1703. The geographic coordinates in §§ 167.1701 through 167.1703 are defined using North American Datum 1983 (NAD 83).

§ 167.1701 In Prince William Sound: Precautionary Areas.

(a) *Cape Hinchinbrook:* A precautionary area is established, bounded by a line connecting the following geographical positions:

Latitude	Longitude
60°20.59′ N	146°48.18′ W
60°12.67′ N	146°40.43′ W
60°11.01′ N	146°28.65′ W
60°05.47′ N	146°00.01′ W
60°00.81′ N	146°03.53′ W
60°05.44′ N	146°27.58′ W
59°51.80′ N	146°37.51′ W
59°53.52′ N	146°46.84′ W
60°07.76′ N	146°36.24′ W
60°11.51′ N	146°46.64′ W
60°20.60′ N	146°54.31′ W

(b) Bligh Reef: A precautionary area of radius 1.5 miles is centered upon geographical position 60°49.63′ N, 147°01.33′ W.

(c) A pilot boarding area is located near the center of the Bligh Reef precautionary area. Specific regulations pertaining to vessels operating in these areas are contained in 33 CFR 165.1109(d).

§ 167.1702 In Prince William Sound: Prince William Sound Traffic Separation Scheme.

(a) A separation zone is bounded by a line connecting the following geographic positions:

Latitude	Longitude
60°20.77′ N	146°52.31′ W
60°48.12′ N	147°01.78′ W
60°48.29′ N	146°59.77′ W
60°20.93′ N	146°50.32′ W

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
60°20.59′ N	146°48.18′ W
60°49.49′ N	146°58.19′ W

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
60°49.10′ N	147°04.19′ W
60°20.60′ N	146°54.31′ W

§ 167.1703 In Prince William Sound: Valdez Arm Traffic Separation Scheme.

(a) A separation zone is bounded by a line connecting the following geographic positions:

Latitude	Longitude
60°51.08′ N	147°00.33′ W
60°58.60′ N	146°48.10′ W
60°58.30′ N	146°47.10′ W
60°50.45′ N	146°58.75′ W

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
60°49.39′ N	146°58.19′ W
60°58.04′ N	146°46.52′ W

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
60°58.93′ N	146°48.86′ W
60°50.61′ N	147°03.60′ W

Dated: December 5, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–2756 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1206

RIN 3095–AA93

National Historical Publications and Records Commission Grant Regulations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: The proposed rule updates and clarifies the National Historical Publications and Records Commission (NHPRC or ''the Commission'') regulations using plain language. We are removing outdated information, and expanding sections for greater clarity and conformity with our current guidelines. This revised regulation applies to all NHPRC applicants and grantees.

DATES: Comments are due by April 8, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL). Our postal address is Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, and our fax number is 301–713–7270.You may also submit comments via email to *comments@nara.gov.* If you send an email, see **SUPPLEMENTARY INFORMATION** for detailed instructions.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: If you send comments via email, please submit comments in the body of your message or as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 3095–AA93'' in the subject line of the email and your name and return address in your email message. If you do not receive a message confirming that we have received your email, contact the Regulation Comment desk at 301–713–7360, ext. 226.

The terms ''we'', ''I'', and ''our'' as used in this preamble refer to NHPRC and ''you'' and ''your'' refer to the reader.

The NHPRC makes grants to State and local government archives, colleges and universities, libraries, historical societies, nonprofit organizations, and individuals in the United States to help identify, preserve, publish, and provide public access to records, photographs, and other materials that document United States history.

We are proposing the following substantive changes. Delete outdated or unnecessary information. Remove the definitions for ''regional'' and ''national'' projects in § 1206.2 because we no longer use them. Update the requirements for subvention grants (proposed § 1206.18) to conform to our guidelines, adding the requirement that the grantee send ten complimentary copies of the volume to the project director or editor in addition to the five copies sent to the NHPRC.

Remove § 1206.20, Microform publication standards because we no longer have our own specifications. We now refer applicants and grantees to accepted industry standards. Reduce the number of copies of the guides required for microform projects, from five copies to three.

Add additional information on our relationship with the State historical records advisory boards, including a statement that recognizes planning as a function of all State boards. Also, in the case where there is no active State board in a State, we provide that applicants, other than State government agencies, may apply directly to the NHPRC. We cite ''The Manual of Suggested Practices for State Historical Records Coordinators and State Historical Records Advisory Boards'' for additional guidance, replacing ''Guidelines for State Historical Records Coordinators and State Historical Records Advisory Boards.'' In addition, we specify that either the governor or the State coordinator may designate a deputy State historical records coordinator.

Remove the definition for ''combined grants'' because it was confusing and redundant. Clarify cost sharing arrangements and policies. Expand our explanation of the review and evaluation process.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. In fiscal year 2000 the NHPRC made grants to only 72 organizations and entities as defined in the Act, from the 84 applications submitted.

List of Subjects in 36 CFR Part 1206

Archives and records, Grant programs-education, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, NARA proposes to revise part 1206 of title 36, Code of Federal Regulations to read as follows:

PART 1206—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

Subpart A—General

Sec.

1206.1 How do you use pronouns in this part?
1206.2 What does this part cover?
1206.3 What terms have you defined?
1206.4 What is the purpose of the Commission?
1206.5 Who is on the Commission?
1206.6 How do you organize the grant program?
1206.8 How do you operate the grant program?

Subpart B—Publications Grants

1206.10 What are the scope and purpose of publications grants?
1206.12 What type of proposal is eligible for a publications grant?
1206.14 What type of proposal is ineligible for a publications grant?
1206.16 What are my responsibilities once I have received a publications grant?
1206.18 What is a subvention grant, and am I eligible for one?

Subpart C—Records Grants

1206.20 What are the scope and purpose of records grants?
1206.22 What type of proposal is eligible for a records grant?
1206.24 What type of proposal is ineligible for a records grant?

Subpart D—State Historical Records Advisory Boards

1206.30 What is a State historical records advisory board?

1206.32 What is a State historical records coordinator?
1206.34 What are the duties of the deputy State historical records coordinator?

Subpart E—Applying for NHPRC Grants

1206.40 What types of funding and cost sharing arrangements does the Commission make?
1206.42 Does the Commission ever place conditions on its grants?
1206.44 Who may apply for NHPRC grants?
1206.46 When are applications due?
1206.48 How do I apply for a grant?
1206.50 What must I provide as a formal grant application?
1206.52 Who reviews and evaluates grant proposals?
1206.54 What formal notification will I receive and will it contain other information?

Subpart F—Grant Administration

1206.60 Who is responsible for administration of NHPRC grants?
1206.62 Where can I find the regulatory requirements that apply to NHPRC grants?
1206.64 When do I need prior written approval for changes in the grant project?
1206.66 How do I obtain written approval for changes in my grant project?
1206.68 Are there any changes for which I do not need approval?
1206.70 What reports am I required to make?
1206.72 What is the format and content of the financial report?
1206.74 What is the format and content of the narrative report?
1206.76 What additional materials must I submit with the final narrative report?
1206.78 Does the NHPRC have any liability under a grant?
1206.80 Must I acknowledge NHPRC grant support?

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

Subpart A—General

§ 1206.1 How do you use pronouns in this part?

In the section heading questions we use the pronouns ''I'' and ''my'' to refer to the reader, and ''you'' to refer to the National Historical Publications and Records Commission (''NHPRC'' or ''the Commission'') as if you, the reader, were asking us, the Commission, these questions. In the section body, we use the pronouns ''you'' and ''yours'' to refer to the reader and ''we'' and ''our'' to refer to the Commission as we answer the questions posed.

§ 1206.2 What does this part cover?

This part prescribes the procedures and rules governing the operation of the grant program of the National Historical Publications and Records Commission.

§ 1206.3 What terms have you defined?

(a) The term *Commission* means the National Historical Publications and Records Commission or the Chairman of the Commission or the Executive Director of the Commission, acting on the Commission's behalf.

(b) The term *historical records* means record material having permanent or enduring value regardless of physical form or characteristics, including, but not limited to, manuscripts, archives, personal papers, official records, maps, audiovisual materials, and electronic files.

(c) In §§ 1206.30 and 1206.32, the term *State* means all 50 States of the Union, plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territories of the Pacific.

(d) The term *State projects* means records projects involving records or activities directed by organizations operating within one State. Records or activities of such projects will typically be under the administrative control of the organization applying for the grant. The records or activities need not relate to the history of the State.

(e) The term *cost sharing* means the financial contribution the applicant pledges to the cost of a project. Cost sharing can include both direct and indirect expenses, in-kind contributions, third-party contributions, and any income earned directly by the project (e.g., registration fees).

(f) The term *direct costs* means expenses that are attributable directly to the cost of a project, such as salaries, project supplies, travel expenses, and equipment rented or purchased for the project.

(g) The term *indirect costs* means costs incurred for common or joint objectives and therefore not attributable to a specific project or activity. Typically, indirect costs include items such as overhead for facilities maintenance and accounting services.

(h) The term *board* refers to a State historical records advisory board.

(i) The term *coordinator* means the coordinator of a State historical records advisory board.

§ 1206.4 What is the purpose of the Commission?

The National Historical Publications and Records Commission, a statutory body affiliated with the National Archives and Records Administration, supports a wide range of activities to preserve, publish, and encourage the use of primary documentary sources. These sources can be in every medium, created with tools ranging from quill pen to computer, relating to the history of the United States. Through our grant programs, training programs, and special projects, we offer advice and assistance to non-Federal, non-profit organizations, agencies, and institutions, including Federally-acknowledged or State-recognized Native American tribes or groups, and to individuals committed to the preservation, publication, and use of United States documentary resources.

§ 1206.5 Who is on the Commission?

Established by Congress in 1934, the Commission is a 15-member body, chaired by the Archivist of the United States and comprised of representatives of the three branches of the Federal Government and of professional associations of archivists, historians, documentary editors, and records administrators.

§ 1206.6 How do you organize the grant program?

We primarily offer grants through a program supporting publications projects (Subpart B) and records projects (Subpart C). We also offer fellowships for individuals in archival administration and documentary editing, as well as an annual institute for the editing of historical documents.

§ 1206.8 How do you operate the grant program?

(a) The Executive Director and staff manage the program under guidance from the Commission and the immediate administrative direction of its chairman, the Archivist of the United States.

(b) To assure fair treatment of every application, all members of the Commission and its staff follow conflict-of-interest rules.

(c) The purpose and work plan of all NHPRC funded grant projects must be in accord with current NHPRC guidelines and funding can be released only upon the recommendation of the Commission to the Archivist.

Subpart B—Publications Grants

§ 1206.10 What are the scope and purpose of publications grants?

Publications projects are intended to make documentary source material that is important to the study and understanding of United States history widely available. Historical records must have national value and interest.

§ 1206.12 What type of proposal is eligible for a publications grant?

We provide support for:

(a) Documentary editing projects consisting of either the papers of a United States leader in a significant phase of life in the United States or historical records relating to outstanding

events or topics or themes of national significance in United States history. These projects involve collecting, compiling, transcribing, editing, annotating, and publishing, either selectively or comprehensively, the papers or historical records.

(b) Fellowships in historical documentary editing at editorial projects supported by the NHPRC.

(c) Subvention grants to nonprofit presses to help defray publication costs of NHPRC-supported or endorsed editions.

§ 1206.14 What type of proposal is ineligible for a publications grant?

We do not support:

(a) Historical research apart from the editing of documentary publications; or

(b) Documentary editing projects to publish the papers of someone who has been deceased for fewer than ten years.

§ 1206.16 What are my responsibilities once I have received a publications grant?

(a) *Printed publications.*

(1) *With no subvention grant.* You, the project director, must send three copies of each book publication to: National Historical Publications and Records Commission (NHPRC), National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001.

(2) *With subvention grant.* You, the publisher, must submit five copies of each book publication to the NHPRC at the address in paragraph (a)(1) of this section and ten copies to the project director or editor. The project director need not provide any copies to the NHPRC. (See § 1206.18.)

(b) *Microform publications.* For microform projects, you, the grantee, must make positive micrographics and all finding aids available to institutions, scholars, or students through interlibrary loan and for purchase. You must also send three complimentary copies of the microform guides and indexes to the NHPRC at the address in paragraph (a)(1) of this section.

(c) *Electronic documentary publications.* If you publish a documentary edition in electronic form, you must produce a copy of the edition in an archivally-recognized format for long-term preservation.

§ 1206.18 What is a subvention grant, and am I eligible for one?

(a) A subvention grant is a subsidy of printing costs.

(b) We use subvention grants to encourage the widest possible distribution of NHPRC-supported and endorsed documentary editions and the highest archival permanence standards of paper, printing, and binding.

(c) The Commission considers grant applications from nonprofit presses for the subvention of part of the costs of manufacturing and distributing volumes that we have funded or formally endorsed.

(d) You, the publisher, must send five complimentary copies to NHPRC, and ten complimentary copies to the project director or editor for each published volume for which we gave you a subvention grant.

Subpart C—Records Grants

§ 1206.20 What are the scope and purpose of records grants?

Records projects are supported by the National Historical Publications and Records Commission to preserve and make available State government, local government, and non-government historical records of national and State significance for the purpose of furthering an understanding and appreciation of United States history.

§ 1206.22 What type of proposal is eligible for a records grant?

We provide support for:

(a) Locating, preserving and making available records of State, local, and other governmental units; and other private collections maintained in non-Federal, non-profit repositories and special collections relating to particular fields of study, including the arts, business, education, ethnic and minority groups, immigration, labor, politics, professional services, religion, science, urban affairs, and women;

(b) Advancing the state of the art in archival and records management; and in the long-term maintenance and easy access of authentic electronic records;

(c) Promoting cooperative efforts among institutions and organizations in archival and records management;

(d) Improving the knowledge, performance, and professional skills of those who work with historical records; and

(e) Fellowships in archival administration, a training program in various aspects of archival management held at host institutions.

§ 1206.24 What type of proposal is ineligible for a records grant?

We do not support proposals:

(a) To construct, renovate, furnish, or purchase a building or land;

(b) To purchase manuscripts or other historical records;

(c) To conserve archaeological artifacts, museum objects, or works of art;

(d) To exhibit archaeological artifacts, museum objects, works of art, and documents;

(e) To acquire, preserve, or describe books, periodicals, or other library materials;

(f) To acquire, preserve, or describe art objects, sheet music, or other works primarily of value as works of art or entertainment;

(g) To support celebrations, reenactments, and other observations of historical events.

(h) To conduct a records project centered on the papers of an appointed or elected public official who remains in major office, or is politically active, or the majority of whose papers have not yet been accessioned into a repository;

(i) To process historical records, most of which will be closed to researchers for more than five years, or not be accessible to all users on equal terms, or will be in a repository that denies public access;

(j) To conduct an arrangement, description, or preservation project in which the pertinent historical records are privately owned or deposited in an institution subject to withdrawal upon demand for reasons other than requirements of law; and

(k) To conduct an arrangement, description, or preservation project involving Federal government records that are:

(1) In the custody of the National Archives and Records Administration (NARA) or an archives officially affiliated with NARA;

(2) In the custody of another Federal agency; or

(3) Deposited in a non-Federal institution without an agreement authorized by NARA.

Subpart D—State Historical Records Advisory Boards

§ 1206.30 What is a State historical records advisory board?

(a) Each State actively participating in the NHPRC records program must adopt an appointment process and appoint a State historical records advisory board (the board) consisting of at least seven members, including the State historical records coordinator (see § 1206.32), who chairs the board, unless otherwise specified in State statute or regulation. The board coordinator must provide the Commission with a description of the appointment process. A majority of the members should have recognizable experience in the administration of government records, manuscripts, or archives. The board should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations in the State. Board members will not be deemed to be

officials or employees of the Federal Government and will receive no Federal compensation for their service on the board. They are appointed for three years. They may be re-appointed to serve additional terms. Preferably their terms should be staggered so that one-third of the board is newly appointed or re-appointed each year. If the board is not established in State law, members may continue to serve until replacements are appointed. The board may adopt standards for attendance and may declare membership positions open if those standards are not met. The Board should adopt a conflict-of-interest policy, unless otherwise provided for in State statute or regulation.

(b) The board is the central advisory body for historical records planning and for Commission-funded records projects carried out within the State. The board helps historical records repositories and other information agencies coordinate activities within the State. The board reviews State records grant proposals for State projects as defined in the NHPRC guidelines and makes recommendations to the Commission. The board also engages in planning activities by developing, revising, and submitting to the Commission priorities for State historical records projects following the NHPRC guidelines. The board may also provide various other services. For example, it may sponsor and publish surveys of the conditions and needs of historical records in the State; solicit or develop proposals for projects to be carried out in the State with NHPRC grants or regrants; promote an understanding of the role and value of historical records; and review the operation and progress of projects in the State financed by NHPRC grants.

(c) The NHPRC will not consider a grant proposal from a State government agency until a board is appointed and all appointments are current. If an active board is not in place within a State, local governments, nonprofit organizations or institutions, and individuals within that state may apply directly to the Commission for support.

§ 1206.32 What is a State historical records coordinator?

(a) *Appointment.* In order to actively participate in the NHPRC records program, your governor must appoint a State historical records coordinator (coordinator), the full-time professional official in charge of the State archival program or agency, unless otherwise specified in state statute or regulation. If your State has another State government historical agency or agencies with archival and/or records responsibilities, the official(s) in charge of at least one of these must be a member of the State historical records advisory board (board).

(b) *Duties.* The coordinator is appointed to a minimum four-year term, but may continue to serve until replaced by the governor or until resignation. The coordinator will be the central coordinating officer for the historical records grant program in the State and should serve as chair of the board unless otherwise specified in the State statute or regulation. The coordinator is not deemed to be an official or employee of the Federal Government and will receive no Federal compensation for such service. The ''Manual of Suggested Practices for State Historical Records Coordinators and State Historical Records Advisory Boards'' which is available from the Commission and from State historical records coordinators, provides further information on the role of the coordinator. For a copy, write to NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue NW., Washington, DC 20408–0001, or contact us by email at *nhprc@nara.gov.*

(c) *Replacement.* In the event of the resignation of the coordinator or other inability to serve, a deputy coordinator, if one has been designated, will serve as acting coordinator until the governor makes an appointment. In the absence of a deputy coordinator, the NHPRC will recognize an acting coordinator, selected by the State board, who will serve until the governor appoints a coordinator in order to conduct the necessary business of the board.

§ 1206.34 What are the duties of the deputy State historical records coordinator?

The governor or coordinator may designate a deputy State historical records coordinator to assist in carrying out the duties and responsibilities of the coordinator and to serve as an acting coordinator at the coordinator's direction or upon the coordinator's resignation or other inability to serve.

Subpart E—Applying for NHPRC Grants

§ 1206.40 What types of funding and cost sharing arrangements does the Commission make?

(a) *Types of grants.*

(1) *Matching grant.* A matching grant is a way to demonstrate shared Federal/non-Federal support for projects. We will only match funds raised from non-Federal sources, either monies provided by the applicant's own institution specifically for the project or from a non-Federal third-party source.

(2) *Outright grant.* Outright grants are those awards we make without any matching component.

(b) *Cost sharing arrangements.*

(1) For publications projects that first received NHPRC funding prior to 1992, the Commission will supply as much as 75 percent of the direct costs.

(2) For publications projects funded after 1992, the Commission will provide no more than 50 percent of direct costs. We will give preference to projects for which the sponsoring institution bears at least 25 percent of the direct costs. For short-term (i.e., 3 years or less) publications projects, we will give preference to applicants that provide at least 50 percent of the project's total direct and indirect costs.

(3) For records projects, the Commission will give preference to projects in which the applicants provide at least 50 percent of the project's total direct and indirect costs.

(4) We prefer the applicant cover indirect costs through cost sharing.

§ 1206.42 Does the Commission ever place conditions on its grants?

In making its decisions on grants, the Commission may place certain conditions on its grants. We describe those possible conditions in the booklet *Grant Guidelines: How to Apply for NHPRC Grants, How to Administer NHPRC Grants.* For a copy, write to NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue NW., Washington, DC 20408–0001, or contact us by email at *nhprc@nara.gov.*

§ 1206.44 Who may apply for NHPRC grants?

The Commission will consider applications from State and local government agencies (Federal agencies are *not* eligible to apply), U.S. non-profit organizations and institutions, including institutions of higher education, Federally acknowledged or state-recognized Native American tribes or groups, United States citizens applying as individuals rather than for an organization, and State historical records advisory boards. Most NHPRC grants to individuals are awarded under its fellowship programs. In general, we prefer projects operating within a host institution.

§ 1206.46 When are applications due?

The Commission generally meets twice a year, and we consider grant proposals during our meetings. For current application deadlines contact the NHPRC staff or your State historical records coordinators (for records grant proposals). Some State boards have

established pre-submission review deadlines for records proposals; further information is available from your State coordinator(s). We will publish deadlines once a year in the **Federal Register**. All proposals must be postmarked by those deadlines.

§ 1206.48 How do I apply for a grant?

(a) *Contact the NHPRC staff.* We encourage you to discuss your proposal through correspondence, by phone, or in person with Commission staff and/or, in the case of records proposals, with the appropriate State historical records coordinator before you submit the proposal and at all stages of your proposal's development.

(b) *Contact your State Historical Records Advisory Board.*

(1) Contact is not necessary if:

(i) Your proposal is for documentary editing and publication subvention projects;

(ii) You are a Native American applicant; or

(iii) Your project will largely take place in more than one state.

(2) Staff contacts and a list of State historical records coordinators may be found on our Web site at *http://www.nara.gov/nhprc.*

§ 1206.50 What must I provide as a formal grant application?

You must submit the following materials as part of your grant application:

(a) *Application forms.* You can obtain copies of the following application forms from the Commission:

If you are an applicant for . . .	Then you must submit . . .
(1) NHPRC publication and records grants	''Application for Federal Assistance'' (Standard Form 424) and ''Budget Form'' (NA Form 17001; OMB Control Number 3095–0004);
(2) Subvention grants	NHPRC subvention grant application (OMB Control Number 3095–0021), ''Application for Federal Assistance'' (Standard Form 424) and ''Budget Form'' (NA Form 17001);
(3) Archival or historical documentary editing fellowship host institutions	NHPRC ''Application for Host Institutions of Archival Administration or Historical Documentary Editing Fellowships'' (OMB Control Number 3095–0015)
(4) NHPRC-sponsored fellowships	''Application for Archival Administration or Historical Documentary Editing Fellowships'' (OMB Control Number 3095–0014);
(5) NHPRC-sponsored editing institute	''Application for Attendance at the Institute for the Editing of Historical Documents'' (OMB Control Number 3095–0012).

(b) *Assurances and certifications.* You must submit the following assurances and certifications, signed by an authorized representative of your institution, or if you are an individual applicant, by you:

(1) ''Assurances—Non-Construction Programs'' (Standard Form 424B).

(2) ''Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-free Workplace Requirements.''

(c) *Project summary.* You must submit a project summary. A description of the project summary is found in the booklet *Grant Guidelines: How to Apply for NHPRC Grants, How to Administer NHPRC Grants* that is available from the NHPRC and from State historical records coordinators.

(d) *List of performance objectives.* You must list in the proposal from four to seven quantifiable objectives by which the project can be evaluated following the submission of the final report and the closing of the grant. NHPRC evaluates the project to determine whether it produces the results promised in grant applications.

(e) *Submission requirements.* Send the original, signed copy of your application to the NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001. Your properly completed application and any materials you send with it (such as pamphlets and photographic prints) will not be returned to you. Additional copies must be sent as follows:

If you are applying for . . .	Then you must send . . .
(1) A documentary editing project that has previously been supported by the Commission.	Two additional copies to the NHPRC;
(2) A subvention grant	Two additional copies to the NHPRC;
(3) A new documentary editing project	Two additional copies to the NHPRC;
(4) A records grant and you are a Native American applicant	Two additional copies to the NHPRC;
(5) A records that is being done in a state where there is a State historical records advisory board.	One additional copy to the NHPRC and one copy to the State historical records coordinator. In order to help facilitate the review process, however, it is recommended a state where that applicants send a copy for each member of the state board;
(6) A records grant whose work will take place in more than one State	Two additional copies to the NHPRC.

§ 1206.52 Who reviews and evaluates grant proposals?

(a) *State boards.* State historical records advisory boards evaluate records proposals on technical merits as well as on their relation to State-plan priorities. The board can return proposals it finds inappropriate or incomplete, with recommendations for revision, on which we will not act unless the applicant submits a revision for consideration in a later cycle. The Board may also recommend that the Commission reject the proposal.

(b) *Peer reviewers.* The NHPRC asks from five to ten external peer reviewers, some of whom may be selected from a list provided by you, to evaluate the proposal if the proposal:

(1) Requests NHPRC funds of $75,000 or more;

(2) Requests a grant period of two years or more;

(3) Involves complex technological processes and issues with which the NHPRC staff may be unfamiliar;

(4) Is a resubmission that the NHPRC invited; or

(5) Is not reviewed by a State historical records advisory board.

(c) *Other reviewers.* We may subject on-going documentary editions to

special review by NHPRC staff and outside specialists, particularly when:

(1) You propose to change the project director/editor;

(2) Your sponsoring institution encounters difficulties or you propose a change in that institution;

(3) Your major search for materials has been completed;

(4) Your project finishes publication in one medium and plans to begin publication in another; or

(5) You change your project's estimate of quantity of publications and/or time needed to complete the project.

(d) *NHPRC staff.* NHPRC staff will analyze the reviewer's comments, State board evaluations, the appropriateness of the project toward Commission goals, the proposal's completeness and conformity to application requirements. The staff will, through a questions letter to you, raise important issues or concerns and allow you the opportunity to respond. The staff will then make recommendations to the Commission.

(e) *The Commission.* After individually reviewing the proposal and recommendations on it from State boards, peer reviewers, and NHPRC staff, Commission members will deliberate on all eligible proposals and recommend to the Archivist of the United States what action to take on each (fund, partially fund, endorse, reject, resubmit, etc.). By statute the Archivist chairs the Commission and has final authority to make or deny a grant.

§ 1206.54 What formal notification will I receive, and will it contain other information?

(a) The grant award document is a letter from the Archivist of the United States to you, the grantee. The letter and attachments specify terms of the grant. NHPRC staff notifies project directors informally of awards and any conditions soon after the Commission recommends the grant to the Archivist of the United States. Unsuccessful applicants will be notified within two weeks by letter.

(b) The grant period begins and ends on the dates specified in the award document. Grant periods must begin on the first day of a month and end on the last day of a month.

Subpart F—Grant Administration

§ 1206.60 Who is responsible for administration of NHPRC grants?

The grantee institution and the project director designated by the institution share primary responsibility for the administration of grants. In the case of grants made to individuals, the individual named as project director has primary responsibility for the administration of the grant.

§ 1206.62 Where can I find the regulatory requirements that apply to NHPRC grants?

(a) In addition to this part 1206, NARA has issued other regulations that apply to NHPRC grants in 36 CFR ch. XII, subchapter A. NARA also applies the principles and standards in the following Office of Management and Budget (OMB) Circulars for NHPRC grants:

(1) OMB Circular A–21, ''Cost Principles for Educational Institutions'';

(2) OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments'';

(3) OMB Circular A–122, ''Cost Principles for Non-Profit Organizations''; and

(4) OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) These regulations and circulars are available on our web site at www.nara.gov/nhprc. Our regulations may also be found at http://www.nara.gov/nara/cfr/subch-a.html, and OMB Circulars at http://www.whitehouse.gov/omb/grants/.

(c) Additional policy guidance related to Title VI of the Civil Rights Act of 1964, regarding persons with limited English proficiency, is provided in our guidelines.

§ 1206.64 When do I need prior written approval for changes to the grant project?

You must obtain prior written approval from the Commission for any changes in the grant project and terms of the grant, including:

(a) Revising the scope or objectives of the project;

(b) Changing the project director or other key project personnel who are specifically named in the grant application or award or related correspondence;

(c) Contracting out, sub-granting, or otherwise obtaining the services of a third party to perform activities central to the purposes of the grant, unless specified in the grant proposal;

(d) Changing the beginning date of the grant or extending the grant period;

(e) Re-budgeting of grants of $100,000 or more, when cumulative transfers among direct cost categories total more than 10 percent of the total project budget (i.e., grant funds plus other funds). With written approval from the Executive Director of the Commission, grantees may adjust the amounts allocated to existing budget lines for both grant funds and cost sharing and may transfer grant funds among existing NHPRC-funded direct cost categories that appear in the final project budget approved by the Commission at the time of the grant award. Cost-sharing funds may also be shifted among existing cost-sharing categories; and

(f) Creating the following new cost categories:

You must obtain approval from . . .	When your new cost category was not in the final approved budget where . . .
(1) The Executive Director of the Commission or the Executive Director's designee.	(i) such action seems appropriate for the fulfillment of the original purposes of the grant; and (ii) the amount of funds involved does not exceed 10 percent of the amount of the award, or $5,000, whichever is less.
(2) The full Commission	The amount of funds involved exceeds the amount in paragraph (f)(1)(ii) of this section.

§ 1206.66 How do I obtain written approval for changes in my grant project?

(a) You must make all requests for changes in the form of a letter. The grant-receiving institution's authorized representative, as indicated on the grant application form (SF 424), must sign the letter. The signed, written response of the Commission's Executive Director, or the Executive Director's designee, will constitute approval for the change.

(b) You must make requests for extension of the grant period not more than two months before the scheduled end of the grant period. We will not allow extensions unless you are up-to-date in your submission of financial and narrative reports.

§ 1206.68 Are there any changes for which I do not need approval?

You do not need approval for re-budgeting of grants of less than $100,000. For such grants:

(a) You may adjust the amounts allocated to existing budget lines for both grant funds and cost sharing;

(b) You may transfer grant funds among existing NHPRC-funded direct cost categories that appear in the final project budget approved by the Commission at the time of the grant award; and

(c) You may also shift cost-sharing funds among existing cost-sharing categories.

§ 1206.70 What reports am I required to make?

(a) Grant recipients are generally required to submit annual financial status reports and semi-annual narrative progress reports, as well as final financial and narrative reports at the conclusion of the grant period. The grant award document will specify the dates your reports are due.

(b) Send the original reports to the NHPRC, National Archives and Records Administration, 700 Pennsylvania Avenue NW., Washington, DC 20408–0001. One copy of each records project narrative report must be sent to the State historical records coordinator if the board reviewed the proposal. Other records projects should send courtesy copies of narrative reports to State coordinators whose States are involved in or affected by the project. Provide the names of individuals to whom copies of the report have been sent when submitting the original report to the NHPRC.

§ 1206.72 What is the format and content of the financial report?

You must submit financial reports on Standard Form 269 and have them signed by the grantee's authorized representative or by an appropriate institutional fiscal officer. If cost sharing figures are 20 percent less than anticipated in the project budget you must explain the reason for the difference.

§ 1206. 74 What is the format and content of the narrative report?

(a) Interim narrative reports should summarize briefly the objectives and activities for the entire grant and then focus on those accomplished during the reporting period. The report should include a summary of project activities; whether the project proceeded on schedule; any revisions of the work plan, staffing pattern, or budget; and any web address created by the project. It should include an analysis of the goals met during the reporting period and any goals for the period that were not accomplished. For documentary editing projects, it also must include information about the publication of volumes and the completion of finding aids, as well as any work that is pending with publishers.

(b) The final report must provide a detailed assessment of the project, following the format in paragraph (a) of this section, including whether the goals set in the original proposal were realistic; whether there were unpredicted results or outcomes; whether the project encountered unexpected problems and how you faced them; and how you could have improved the project. You must discuss the project's impact, if any, on the grant-receiving institution and others. You must indicate whether all or part of the project activities will be continued after the end of the grant, whether any of these activities will be supported by institutional funds or by grant funds, and if the NHPRC grant was instrumental in obtaining these funds.

(c) The project director must sign narrative reports.

§ 1206.76 What additional materials must I submit with the final narrative report?

(a) For records-related projects, you are required to send the NHPRC three copies of any finding aids, reports, manuals, guides, forms, articles about the project, and other materials produced about or based on the grant project at the time that the final narrative report is submitted.

(b) Documentary editing projects must send the NHPRC three copies of any book edition unless support for their publication was provided by an NHPRC subvention grant. For those volumes, presses rather than projects are responsible for submitting the required number of volumes (see § 1206.18(d)). Projects with microform editions must send the NHPRC three copies of the microform guides and indexes produced by the project.

§ 1206.78 Does the NHPRC have any liability under a grant?

No, the National Archives and Records Administration (NARA) and the Commission cannot assume any liability for accidents, illnesses, or claims arising out of any work undertaken with the assistance of the grant.

§ 1206.80 Must I acknowledge NHPRC grant support?

Yes, grantee institutions, grant project directors, or grant staff personnel may publish results of any work supported by an NHPRC grant without review by the Commission; however, publications or other products resulting from the project must acknowledge the assistance of the NHPRC grant.

Dated: October 17, 2001.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–2758 Filed 1–29–02; 8:45 am]

BILLING CODE 7515–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301203; FRL–6817–4]

RIN 2070–AC18

Oxadixyl; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke specific tolerances for residues of the fungicide oxadixyl because this pesticide is no longer registered for those uses in the United States. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act of 1996 (FQPA). By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of 14 tolerances which would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

DATES: Comments, identified by docket control number OPP–301203, must be received on or before April 8, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301203 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules, '' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301203. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301203 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301203. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Can I Do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any

needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

On April 23, 2001, and on May 11, 2001, Gustafson LLC (end use product registrant) and Syngenta Crop Protection, Inc. (technical and end use product registrant), respectively, requested voluntary cancellation of all of their oxadixyl product registrations. On August 15, 2001, EPA published a notice in the **Federal Register** (66 FR 42854) (FRL–6796–4) under section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) announcing its receipt of these requests. Also, the registrants requested and EPA agreed to waive the 180–day public comment period contained in FIFRA section 6(f)(1)(C)(ii). Therefore, EPA provided a 30–day public comment period which ended on September 14, 2001. No public comments were received during the 30–day comment period. EPA approved the registrants' requests for voluntary cancellation of oxadixyl registrations. EPA also inadvertently erroneously included oxadixyl in a batch 6(f)(1) notice published on August 22, 2001 (66 FR 44131) (FRL–6795–5) that listed the comment period as 180 days. The 30–day comment period associated with the August 15, 2001 notice was the correct one. The cancellations were effective September 27, 2001, and announced in a cancellation order published in the **Federal Register** on November 1, 2001 (66 FR 55158) (FRL–6808–4).

In a June 1, 2001 letter to EPA, Syngenta stated that the last known production of oxadixyl was prior to January 1, 1997. Syngenta is also not aware of any stocks of the products in the channels of trade. Likewise, in their June 1, 2001 letter, Gustafson noted that the last date of manufacture was January 6, 1993, and the last remaining product which they had on hand was disposed of on April 4, 2001. Although the manufacture of oxadixyl products ended years ago and the registrants know of no products in channels of trade, the cancellation order allowed a period of 1–year from September 27, 2001, to permit all sale and distribution of existing stocks. The Agency believes that existing stocks of oxadixyl will be exhausted by spring of 2003.

It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crops for which there are no active registered uses under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. Because the Agency approved the registrants' requests for voluntary cancellation, oxadixyl is not registered under FIFRA for use on those commodities. Therefore, EPA is proposing in 40 CFR 180.456 to revoke all tolerances for residues of oxadixyl and its desmethyl metabolite, with an expiration/revocation date of September 27, 2003. The Agency believes that this date allows sufficient time for any oxadixyl-treated food commodities to pass through the channels of trade.

For FQPA reassessment purposes, EPA counts ''Grass, forage, fodder and hay, group'' as three tolerances (grass, forage; grass, fodder; and grass, hay) and expects in a final rule to count a total of 14 tolerances as reassessed. In the interim, before the tolerance expires and to conform to current Agency practice, EPA is proposing to revise tolerance commodity terminology names in 40 CFR 180.456 as follows: for ''Brassica (cole) leafy vegetables group'' to ''vegetable, Brassica, leafy, group;'' ''cereal grains group (except wheat)'' to ''grain, cereal, except wheat, group;'' ''cotton seed'' to ''cotton, undelinted seed;'' ''cucurbit vegetables group'' to ''vegetable, cucurbit, group;'' ''fruiting vegetables (except cucurbits) group'' to ''vegetable, fruiting, group;'' ''leafy vegetables (except Brassica vegetables) group'' to ''vegetable, leafy, except Brassica, group;'' ''nongrass animal feeds (forage, fodder, straw, and hay) group'' to ''animal feed, nongrass, group;'' ''peas'' to ''pea,'' ''root and tuber vegetables group'' to ''vegetable, root and tuber, group;'' ''soybeans'' to ''soybean, seed;'' and ''sunflower seed'' to ''sunflower, seed.''

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore, ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be ''adulterated,'' you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq.*). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe

based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

C. When Do These Actions Become Effective?

EPA is proposing that the tolerances for oxadixyl be revoked as of September 27, 2003. EPA is proposing this revocation/expiration date because EPA believes that by this date all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation will have been exhausted and that there is ample time for any treated food commodities to clear trade channels. Therefore, EPA believes the revocation/expiration date proposed in this document is reasonable. However, if EPA is presented with information that existing stocks of oxadixyl would still be available for use after the expiration date and that information is verified, EPA will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date accounts for these stocks, please submit comments as described under Unit I.E.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of January 22, 2002, EPA has reassessed over 3,830 tolerances. This document proposes to revoke 14 tolerances which would be counted as reassessments in a final rule toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by FFDCA. The same food safety standards apply to domestically-produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support June 1, 2000 (65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section

12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule 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 proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 18, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.456 is revised to read as follows:

§ 180.456 Oxadixyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide oxadixyl [2-methoxy-*N*-(2-oxo-1,3-oxazolidin-3-yl)-acet-2′,6′-xylidide] and its desmethyl (*M*-3) metabolite (2-hydroxy-*N*-(2-oxo-1,3-oxazolidin-3-yl)-acet-2′,6′-xylidide), calculated as oxadixyl in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/ Revocation Date
Animal feed, nongrass, group	0.1	9/27/03
Cotton, undelinted seed	0.1	9/27/03
Grain, cereal, except wheat, group	0.1	9/27/03
Grass, forage, fodder and hay, group	0.1	9/27/03
Pea	0.1	9/27/03
Soybean, seed	0.1	9/27/03
Sunflower, seed	0.1	9/27/03
Vegetable, Brassica, leafy, group	0.1	9/27/03
Vegetable, cucurbit, group	0.1	9/27/03
Vegetable, fruiting, group	0.1	9/27/03
Vegetable, leafy, except Brassica, group	0.1	9/27/03
Vegetable, root and tuber, group	0.1	9/27/03

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–2512 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0007b, WY–001–0008b, WY–001–0009b; FRL–7130–4]

Clean Air Act Approval and Promulgation of State Implementation Plan; Wyoming; Revisions to Air Pollution Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action partially approving and partially disapproving revisions to the State Implementation Plan (SIP) submitted by the designee of the Governor of Wyoming on August 9, 2000; August 7, 2001; and August 13, 2001. These revisions are intended to restructure and modify the State's air quality rules so that they will allow for more organized expansion and revision and are up to date with Federal

requirements. The August 9, 2000 revisions include a complete restructuring of the Wyoming Air Quality Standards and Regulations (WAQSR) from a single chapter into thirteen separate chapters. In addition to restructuring the regulations, the State's August 9, 2000 revisions also update the definition in Chapter 3, Section 6 Volatile organic compounds (previously Chapter 1, Section 9) and include revisions to Chapter 6, Section 4 Prevention of significant deterioration (PSD) (previously Chapter 1, Section 24). The August 7, 2001 revisions include the addition of a credible evidence provision and another update to the definition of VOC. The August 13, 2001 revisions include changes to the State's particulate matter regulations. EPA is proposing to partially approve these SIP revisions because they are consistent with Federal requirements. EPA is proposing to partially disapprove the provisions of the State's submittal that allow the Administrator of the Wyoming Air Quality Division (WAQD) to approve alternative test methods in place of those required in the SIP, because such provisions are inconsistent with section 110(i) of the Clean Air Act (Act) and the requirement that SIP provisions can only be modified through revisions to the plan that must be approved by EPA. EPA is proposing these actions under section 110 of the Act. We are not acting on Chapter 8, Section 4 Transportation Conformity (part of the August 9, 2000 submittal) or on the $PM_{2.5}$ revisions in Chapter 1 and Chapter 2 of the State's August 13, 2001 submittal. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing on or before March 8, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Division, Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming, 82002.

FOR FURTHER INFORMATION CONTACT: Megan Williams, EPA, Region VIII, (303) 312–6431.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 3, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–2707 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301195; FRL–6815–1]

RIN 2070–AC18

Methyl Parathion and Ethyl Parathion; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke certain tolerances for residues found for methyl parathion and for ethyl parathion. These actions are being taken because there are no registered uses for methyl parathion or ethyl parathion on these commodities. EPA expects to determine whether any individuals or groups want to support these tolerances. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. These tolerances would be counted among reassessments made toward the August 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. These tolerances were established under section 408 of the FFDCA. EPA is proposing to revoke these tolerances because the Agency has canceled the pesticide registrations under FIFRA associated with them.

DATES: Comments, identified by docket control number OPP–301195, must be received on or before April 8, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301195 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: (703) 305–5776; e-mail address: *parsons.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply

to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/*. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301195. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301195 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI.. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301195. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the proposed revocation of 73 tolerances of which 66 would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline. The remaining seven tolerances are not found in the current baseline total of tolerances to be reassessed.

EPA is proposing to revoke certain tolerances established under section 408 of FFDCA for residues of methyl parathion and ethyl parathion. The Agency is proposing to revoke these tolerances by amending 40 CFR 180.121 to list only the remaining tolerances for methyl parathion and by creating 40 CFR 180.122 to list the remaining tolerances for ethyl parathion until they expire on December 31, 2005.

Parathion (methyl and ethyl) tolerances to be revoked 90 days after the publication of the final rule: apricots; avocados; blackberries; blueberries; boysenberries; clover; cranberries; cucumbers; currants; dates; dewberries; eggplants; endive, escarole; figs; filberts, garlic; gooseberries; guar beans; guavas; loganberries; mangos; melons; mustard seed; okra; olives;

parsnips, with or without tops; parsnip greens; peppers; pineapples; pumpkins; quinces; radishes, with or without tops; radish tops; raspberries; safflower seed; squash; strawberries; summer squash; Swiss chard; and youngberries. The tolerances for sorghum; sorghum, grain, stover; sorghum, grain, forage are proposed to be revoked from methyl parathion 90 days after publication of the final rule and for ethyl parathion on December 31, 2005. Please note that the tolerance for loganberries was inadvertently removed from the parathion tolerance listings by 66 FR 1241 (FRL–6752–6).

Methyl parathion tolerances to be revoked 90 days after the publication of the final rule: guar beans and parsley.

Ethyl parathion tolerances to be revoked 90 days after the publication of the final rule: apples; artichokes; beets, greens; beets, with or without tops; broccoli, Brussel sprouts; carrots; cauliflower; celery; cherries; collards; grapes; kale; kohlrabi; lettuce; mustard greens; nectarines; peaches; pears; plums, fresh prunes; rutabaga tops; rutabagas, with or without tops; spinach; tomatoes; turnip greens; turnips, with or without tops; and vetch. Please note that these commodities were removed from the methyl parathion listing by 66 FR 1241 (FRL–6752–6).

Ethyl parathion tolerances to be removed 90 days after the publication of the final rule, but tolerances for methyl parathion will remain: almonds; almond hulls; beets, sugar; beets, sugar, tops; cabbage; dried beans; dried peas; peas, forage; grass, forage; hops; oats; onions; peanuts; pecans; rape seed (canola); rice; rye; sweet potatoes; walnuts; and white potatoes.

Ethyl parathion tolerances to be removed on December 31, 2005: alfalfa, fresh; alfalfa, hay; barley; corn; corn, forage; cotton, undelinted seed; rapeseed; sorghum; sorghum, grain, stover; sorghum, grain, forage; soybean; soybean, hay; sunflower, seed; and wheat. Except for the tolerances on sorghum products as noted above, these tolerances remain for methyl parathion.

B. Why is this Action being Proposed?

EPA is proposing to revoke tolerances for residues of methyl parathion and ethyl parathion on certain commodities listed in 40 CFR 180.121 for which FIFRA registrations no longer exist. The tolerances have been expressed as ''joint'' tolerances; therefore, the tolerance on each commodity must be revoked for both pesticides. Unit II.C. provides a list of tolerances which will be maintained for methyl parathion. All tolerances of ethyl parathion are proposed for revocation by or before December 31, 2005.

The uses of ethyl parathion were canceled for all but nine crops per the 1991 Ethyl Parathion Settlement Agreement (December 13, 1991 (56 FR 65061) (FRL–4003–9), January 29, 1992 (57 FR 3296) (FRL–4044–9) and February 20, 1992 (57 FR 6168) (FRL–4049–2)). Use on the remaining nine crops was canceled with the 2000 Memorandum of Agreement between the registrants and EPA (September 13, 2001 (66 FR 47667) (FRL–6801–9)). EPA believes that no one needs these tolerances for domestic use and has no information on the need for these tolerances for imported foods.

Several uses of methyl parathion were canceled as per the August 2, 1999, Agreement between the EPA and the registrants. The notice of these cancellations was published in the **Federal Register** October 27, 1999 (64 FR 57877) (FRL–6387–8). Since these cancellations were based on dietary risk, the tolerances for the commodities were revoked in accordance with section 408(l)(2) of FFDCA January 5, 2001 (66 FR 1241) (FRL–6752–6). The tolerances proposed for revocation in this notice are generally the result of the ''joint tolerances'' with ethyl parathion; there have been no domestic registrations for many years. Tolerances for the commodities listed in Unit II.C. are not affected by this proposal.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues providing the Agency is able to make the appropriate safety finding under FFDCA. However, where there is no need to retain a tolerance solely for import purposes, the Agency believes it is appropriate to propose to revoke such tolerances.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain or retain needed tolerances or to register needed new uses. To avoid these trade-restricting situations, the Agency is proposing to revoke tolerances for residues on crop uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should note that additional data may be needed to support retention. In the case of ethyl parathion, there are several gaps in the Agency's data base including the developmental neurotoxicity study; these data gaps must be fulfilled in order to retain ethyl parathion tolerances. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require the submission of the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerances at issue.

C. What Tolerances are Not Proposed for Revocation?

The registrations of methyl parathion for use on several commodities were canceled in the **Federal Register** of October 27, 1999 (64 FR 57877), pursuant to the August 2, 1999 Settlement Agreement between EPA and the registrants. The Settlement Agreement allowed only the following uses to be maintained: Alfalfa, almonds, barley, cabbage, corn, cotton, dried beans, dried peas, grass, hops, lentils, oats, onions, peanuts, pecans, rape seed (canola), rice, rye, soybeans, sugar beets, sunflower, sweet potatoes, walnuts, wheat, and white potatoes. The 29 tolerances associated with these methyl parathion uses are not proposed for revocation.

D. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be ''adulterated,'' you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under section 3, section 5, or section 18 of FIFRA (7 U.S.C. *et seq.*) Food-use pesticides not registered in the United States (U.S.) have tolerances for residues of pesticides in or on commodities imported into the U.S..

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the U.S..

E. What Can I Do If I Wish the Agency to Maintain a Tolerance that the Agency Is Proposing to Revoke?

Consistent with FFDCA section 408, EPA will consider maintaining any of the tolerances that EPA is proposing to revoke in this proposed rule if the Agency determines that there is a need for such tolerance. If you wish that the Agency maintain any of the tolerances that are proposed for revocation in this document, submit to the Agency comments explaining the need for the tolerance(s). All comments must be submitted within 60 days of issuance of this proposal.

If EPA receives a timely comment explaining a need for a tolerance in response to this proposal and determines that there is a need for such tolerance, EPA will not proceed to revoke the tolerance based on the current proposal and will reassess what regulatory action, if any, is appropriate. Further, EPA will determine, based on the information provided in the comments and any other available information, whether additional data and/or information are needed to support continuation of the tolerance. If so, the Agency will take steps to ensure the submission of any necessary data and/or information and may issue an order in the **Federal Register** in accordance with FFDCA section 408(f), if needed. The order would specify the deadline by which an interested party must submit to EPA a written notice that it will submit the necessary data and/or information. The order would also specify the necessary data and/or information and time frames for their submissions. If any of the submissions required in the order is not made by the specified deadlines, EPA would likely issue a final rule revoking the tolerance in question.

If EPA does not receive any indication of a need for one or more tolerances proposed for revocation in this document, EPA will consider the comments that are submitted in response to this proposal and, if appropriate, issue a final rule revoking such tolerance(s). You may file an objection within 60 days of EPA's issuance of a final rule revoking the tolerance(s). If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule in any subsequent proceedings.

F. When Do These Actions Become Effective?

EPA is proposing to make revocations of these tolerances effective 90 days following publication of a final rule in the **Federal Register** except for the 14 ethyl parathion tolerances for which EPA is proposing an effective revocation/expiration date of December 31, 2005. EPA intends to delay the effectiveness of the final revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's action. EPA believes that the affected commodities should have cleared the channels of trade before the effective date of the proposed revocations. However, if EPA is presented with information that there would be existing stocks still available for use after the expiration date and that the information is verified, EPA will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks, please submit comments as described in Unit I. of this proposal.

G. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of November 19, 2001, EPA has assessed over 3,830 tolerances. The regulatory actions in this document pertain to the proposed revocation of 73 tolerances of which 66 would be counted among tolerance/exemption reassessments made toward the August 2002 review deadline. The remaining seven tolerances are not found in the current baseline total of tolerances to be reassessed.

III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. How Do the Regulatory Assessment Requirements Apply to this Proposed Rule?

This rule is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, of Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Public Law 104–113), section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with cancelled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule 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.''

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 18, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. By revising § 180.121 paragraph (a) to read as follows:

§ 180.121 Methyl parathion; tolerances for residues.

(a) Tolerances are established for residues of the insecticide parathion O, O-Dimethyl-O-p-nitrophenyl thiophosphate (the methyl homolog of parathion) in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa (fresh)	1.25
Alfalfa (hay)	5
Almonds	0.1
Almond hulls	3
Barley	1
Beans, dried	1
Beets, sugar	0.1
Beets, sugar, (tops)	0.1
Cabbage	1
Corn	1
Corn, forage	1
Cotton, seed	0.75
Grass (forage)	1
Hops	1
Oats	1
Onions	1
Peanuts	1
Peas, dried	1
Pea, forage	1
Pecans	0.1
Potatoes	0.1
Rape, seed	0.2
Rice	1
Soybeans	0.1
Soybean hay	1
Sunflower seed	0.2
Sweet potatoes	0.1

Commodity	Parts per million
Walnuts	0.1
Wheat	1

* * * * *

3. By adding § 180.122 to read as follows:

§ 180.122 Parathion; tolerances for residues.

(a) *General*. Tolerances are established for residues of the insecticide parathion (O, O-Diethyl-O-p-nitrophenyl thiophosphate) in or on the following raw agricultural commodities:

Commodity	Parts per million	Date of expiration
Alfalfa (fresh)	1.25	12/31/05
Alfalfa (hay)	5	12/31/05
Barley	1	12/31/05
Corn	1	12/31/05
Corn, forage	1	12/31/05
Cotton, seed	0.75	12/31/05
Rape, seed	0.2	12/31/05
Sorghum	0.1	12/31/05
Sorghum, fodder	3	12/31/05
Sorghum forage	3	12/31/05
Soybeans	0.1	12/31/05
Soybean hay	1	12/31/05
Sunflower seed	0.2	12/31/05
Wheat	1	12/31/05

(b) *Section 18 emergency exemptions*. [Reserved]

(c) *Tolerances with regional registrations*. [Reserved]

(d) *Indirect or inadvertent residues*. [Reserved]

* * * * *

[FR Doc. 02–2513 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 012802C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Regional Administrator proposes to issue EFPs that would allow up to four federally permitted vessels in the limited access multispecies fishery to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. The vessels would collect catch data to support the development of trawl mesh selectivity curves for the Southern New England (SNE) yellowtail flounder fishery. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before February 21, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Rhode Island EFP Proposal''. Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978) 281-9221, e-mail regina.l.spallone@noaa.gov.

SUPPLEMENTARY INFORMATION: The State of Rhode Island Department of Environmental Management, Division of Fish and Wildlife (applicant) submitted an application for EFPs on December 20, 2001. The EFPs will facilitate the collection of additional catch data that will support the development of trawl mesh selectivity curves for the SNE yellowtail flounder fishery. The catch data will supplement the data collected under EFPs in 2001, which were determined to be inconclusive due to the temporal nature of SNE yellowtail abundance in the study area and the resulting small sample size. The applicant intends to provide the trawl mesh selectivity curves to fisheries managers as a tool for matching the minimum legal yellowtail flounder size with the size of yellowtail flounder retained by the appropriate mesh size.

In June 2001, NMFS granted a request for EFPs to the State of Rhode Island Department of Environmental Management (applicant). The applicant investigated the selectivity of 6.0-inch (15.2–cm) diamond, 6.5–inch (16.5–cm) square, 6.5-inch (16.5–cm) diamond, and 7.0-inch (17.8–cm) square mesh codends using alternate tow methods for yellowtail flounder in southern Rhode Island waters during the summer of 2001. The applicant's intent was to investigate alternative measures that would achieve the mortality reductions for this stock of fish needed to achieve Sustainable Fisheries Act objectives to be met in the Northeast Multispecies Fishery Management Plan. The New England Fishery Management Council's (Council) Plan Development Team (PDT) has indicated that, in order to rebuild this stock of yellowtail flounder, fishing mortality must be reduced 50 to 70 percent from its current level. To address these reductions, the PDT and the Council's Groundfish Oversight Committee (Committee) have developed a wide range of management measures, including trip limits, increases in the minimum fish and/or mesh sizes, year-round and/or seasonal area closures, and day-at-sea (DAS) reductions. Of those measures being considered, the applicant has expressed specific concern over the potential implementation of area closures as such closures would likely have a severe impact on the SNE commercial fishing community. Therefore, the applicant is seeking additional information that may support minimum fish and/or mesh size measures as alternatives to closures.

Under the EFP approved last year, the applicant developed selectivity curves upon which to base the lengths for yellowtail flounder at 50-percent retention (L50's). In summary, they were:

Shape	Mesh size, inches (cm)	Retention size, inches (cm)
Diamond	6.0 (15.2)	14.7 (37.3)
	6.5 (16.5)	15.6 (39.6)
Square	6.5 (16.5)	13.0 (33.0)
	7.0 (17.8)	14.3 (36.3)

However, additional analyses of the mean number of yellowtail flounder retained that were in compliance with

the minimum size requirements under 50 CFR part 648.83 (a), indicate no significant differences between each experimental codend. The applicant compared length frequency distributions of the catches retained in the codends, which indicated some similarities in the catch performance of the experimental codends. The applicant attributes the equivocal results of the 2001 study to low catch numbers (26) of yellowtail flounder per tow. The applicant further explains that the summer months (June-July) during which the 2001 study was conducted typically exhibit low catches of yellowtail flounder. While the study suggests potential fishery benefits by increasing mesh size for yellowtail, the small sample size led to inconclusive results upon which fishery managers could rely. The applicant would therefore like to repeat the mesh selectivity study during March and April 2002, when yellowtail flounder would be in the nearshore waters and adequate sample sizes could be obtained.

As in 2001, the applicant proposes to examine differences between the mesh selectivity of 6–inch (15.2cm) diamond and 6.5–inch (16.5–cm) square mesh to 6.5–inch (16.5–cm) diamond and 7–inch (17.8-cm) square mesh. To accomplish this, the applicant will use an alternate tow design for a comparison of mesh selectivity. Each net configuration will be tested with and without a 3–inch (7.6–cm) liner.

The applicant will charter up to four federally permitted vessels in the limited access multispecies fishery. Participating vessels will take 4–5 day trips (totaling 16–20 trips). The applicant will select participating vessels based on their owners' or operators' knowledge of the trawl fishery for yellowtail flounder, familiarity with local fishing methodology, familiarity with the survey area, and possession of trawl gear (except netting). The applicant will provide the proper mesh configuration.

All trips will be completed during daylight hours and must include at least two scientific personnel. A minimum of 12 comparisons per codend are required, for a total of 48 experimental comparisons. Five tows at a duration of 1.5 hours will be conducted during each sampling day, for a total of three experimental comparisons per day.

Vessels would be required to comply with all conditions of the EFP. The EFPs would allow participating vessels to be exempt from the multispecies minimum mesh size restrictions (§ 648.80 (b)(2)(i)) in order to permit the vessels to use a 3– inch (7.6–cm) mesh liner for the purposes of comparing catch. All other regulations specified under 50 CFR part 648 would apply. Vessels would be fishing under the multispecies DAS program, and thus would be authorized to retain and sell all groundfish and non-targeted species up to the regulatory amounts for each species that meet the minimum size requirements under 50 CFR part 648. The proceeds generated from the sale of the fish will help defray the cost associated with the experimental fishing. The experimental fishing will be conducted in areas open to commercial fishing within statistical areas 537 and 539 from the date of issuance of the EFPs through April 30, 2002.

Participating vessels would be required to fish in accordance with a sampling plan designed by the applicant, maintain logbooks documenting fishing activities, carry on-board observers trained in fish taxonomy, and allow biological information to be collected from the catches.

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

Dated: February 1, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–2879 Filed 2–5–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 25
Wednesday, February 6, 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

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR part 215 and 36 CFR part 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after December 1, 2000. The list of newspapers will remain in effect until June 1, 2001, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara Schuster, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, and Phone (801) 625–5301.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR part 215 and 36 CFR part 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *The Idaho Statesman,* Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada: *The Reno Gazette-Journal,* Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune,* Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah: *Salt Lake Tribune,* Salt Lake City, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Salt Lake Tribune, Salt Lake City, Utah

Ashley National Forest

Ashley Forest Supervisors decisions: *Vernal Express,* Vernal, Utah
Vernal District Ranger decisions: *Vernal Express,* Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming: *Casper Star Tribune,* Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express,* Vernal, Utah
Roosevelt and Duchesne District Ranger decisions: *Uintah Basin Standard,* Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions: *The Idaho Statesman,* Boise, Idaho
Mountain Home District Ranger decisions: *The Idaho Statesman,* Boise, Idaho
Idaho City District Ranger decisions: *The Idaho Statesman,* Boise, Idaho
Cascade District Ranger decisions: *The Long Valley Advocate,* Cascade, Idaho
Lowman District Ranger decisions: *The Idaho World,* Garden Valley, Idaho
Emmett District Ranger decisions: *The Messenger-Index,* Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune,* Casper, Wyoming
Jackson District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Buffalo District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Big Piney District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Pinedale District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Greys River District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Kemmerer District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal,* Pocatello, Idaho
Soda Springs District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Montpelier District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Westside District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Caribou-Targhee Forest Supervisor decisions for the Targhee Portion: *The Post Register,* Idaho Falls, Idaho
Dubois District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Island Park District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Ashton District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Palisades District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Teton Basin District Ranger decisions: *The Post Register,* Idaho Falls, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions: *The Daily Spectrum,* St. George, Utah
Pine Valley District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Cedar City District Ranger decisions: *The Daily Spectrum,* St. George, Utah

Powell District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Escalante District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Teasdale District Ranger decisions: *The Daily Spectrum,* St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions: *Richfield Reaper,* Richfield, Utah
Loa District Ranger decisions: *Richfield Reaper,* Richfield, Utah
Richfield District Ranger decisions: *Richfield Reaper,* Richfield, Utah
Beaver District Ranger decisions: *Richfield Reaper,* Beaver, Utah
Fillmore District Ranger decisions: *Richfield Reaper,* Fillmore, Utah.

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press,* Elko, Nevada
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal, Reno, Nevada*
Carson District Ranger decisions: *Mammoth Times,* Mammoth Lakes, California
Bridgeport District Ranger, decisions: *The Review-Herald,* Mammoth Lakes, California
Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal,* Las Vegas, Nevada
Austin District Ranger decisions: *Reno Gazette-Journal,* Reno, Nevada
Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News,* Tonopah, Nevada
Ely District Ranger decisions: *Ely Daily Times,* Ely, Nevada
Mountain City District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Ruby Mountains District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Jarbidge District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Santa Rosa District Ranger decisions: *Humboldt Sun,* Winnemucca, Nevada

Manti-Lasal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate,* Price, Utah
Sanpete District Ranger decisions: *The Pyramid,* Mt. Pleasant, Utah
Ferron District Ranger decisions: *Emery County Progress,* Castle Dale, Utah
Price District Ranger decisions: *Sun Advocate,* Price, Utah
Moab District Ranger decisions: *The Times Independent,* Moab, Utah
Monticello District Ranger decisions: *The San Juan Record,* Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman,* Boise, Idaho
Weiser District Ranger decisions: *Signal American,* Weiser, Idaho
Council District Ranger decisions: *Adams County Record,* Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions: *Star News,* McCall, Idaho
New Meadows, McCall, and Krassel District Ranger Decisions: *McCall-Cascade Times Advocate,* McCall, Idaho
New Meadows, McCall, and Krassel District Ranger Decisions

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Recorder-Herald,* Salmon, Idaho
Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis-Messenger,* Challis, Idaho
North Fork District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Leadore District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Salmon/Cobalt District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Middle Fork District Ranger decisions: *The Challis-Messenger,* Challis, Idaho
Challis District Ranger decisions: *The Challis-Messenger,* Challis, Idaho
Yankee Fork District Ranger decisions: *The Challis-Messenger,* Challis, Idaho
Lost River District Ranger decisions: *The Challis-Messenger,* Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News,* Twin Falls, Idaho
Burley District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit. *South Idaho Press,* Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions: *The Times News,* Twin Falls, Idaho
Ketchum District Ranger decisions: *Idaho Mountain Express,* Ketchum, Idaho
Sawtooth National Recreation Area: *The Challis-Messenger,* Challis, Idaho
Fairfield District Ranger decisions: *The Times News,* Twin Falls, Idaho

Uinta National Forest

Unita Forest Supervisor decisions: *The Daily Herald,* Provo, Utah
Pleasant Grove District Ranger decisions: *The Daily Herald,* Provo, Utah
Heber District Ranger decisions: *The Daily Herald,* Provo, Utah, and
Spanish Fork District Ranger decisions: *The Daily Herald,* Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Salt Lake District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Kamas District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Evanston District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming
Mountain View District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming
Ogden District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah
Logan District Ranger decisions: *Logan Herald Journal,* Logan, Utah

Dated: January 30, 2002.

Christopher L. Pyron,

Deputy Regional Forester.

[FR Doc. 02–2803 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on February 25, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 25, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. Email: jandersen@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting will focus on a presentation of fire protection and fuel reduction priorities on lands in Trinity County. 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 30, 2002.

S.E. ''LOU'' Woltering,

Forest Supervisor.

[FR Doc. 02–2804 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on March 4, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on March 4, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. Email: jandersen@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting will focus on a summary and discussion of watershed restoration and fire protection priorities in Trinity County. 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 30, 2002.

S.E. ''LOU'' Woltering,

Forest Supervisor.

[FR Doc. 02–2805 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on March 5, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on March 5, 2002 from 6:00 to 8:00 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *Ichapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the committee, and will focus on the overall strategy for selecting Title II projects and involving the public. 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 30, 2002.

S.E. ''LOU'' Woltering,

Forest Supervisor.

[FR Doc. 02–2806 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Withdrawal of the Rocky Mountain Regional Guide and the Transfer of Decisions Therein to a Regional Supplement to the Forest Service Directive System

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The intended effect of this action is to comply with 36 CFR part 219 § 219.35(e) which directs that within 1 year of November 9, 2000, the Regional Forester must withdraw the Regional Guide. When a Regional Guide is withdrawn, the Regional Forester must identify the decisions in the Regional Guide that are to be transferred to a regional supplement of the Forest Service directive system (36 CFR 200.4) or to one or more plans and give notice in the **Federal Register** of these actions.

DATES: This action will be effective February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Chris Liggett, Land Management Planning Staff; Rocky Mountain Region; P.O. Box 25127; Lakewood, CO 80225. Phone: (303) 275–5158.

SUPPLEMENTARY INFORMATION: This action accomplishes withdrawal of the Rocky Mountain Regional Guide. The Standards and Guidelines therein (Chapter 3) will be transferred to a regional supplement to FSM 1920 in the Forest Service Directive System.

Dated: January 22, 2002.

Rick D. Cables,

Regional Forester.

[FR Doc. 02–2802 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Georgia

AGENCY: Natural Resources Conservation Service (NRCS) in Georgia, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Georgia for review and comment.

SUMMARY: It is the intention of NRCS in Georgia to issue new and revised conservation practice standards in Section IV of the FOTG. The revised standards are Tree/Shrub Establishment (612) and Forest Site Preparation (490). The new standard is Tree/Shrub Pruning (660).

DATES: Comments will be received until March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Address all requests and comments to Leonard Jordan, State Conservationist, Natural Resources Conservation Service (NRCS); Stephens Federal Building, MS 200; 355 East Hancock Ave., Athens, Georgia 30601. Copies of these standards will be made available upon written request. You may submit your electronic requests and comments to *Josh.Wheat@ga.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Georgia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Georgia regarding disposition

of these comments and a final determination of changes will be made.

Dated: January 22, 2002.

Richard Oliver,

Assistant State Conservationist, Athens, GA.

[FR Doc. 02–2859 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

Amended Sunshine Act Notice: Amends previous **Federal Register** notice published on January 31, 2002, volume 67, number 2.

DATE AND TIME: Friday, Februrary 8, 2002, 8:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of January 11, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Alabama, District of Columbia, Maryland, Virginia, and West Virginia
VI. Report from a Number of SAC Chairs About Activities in Their States
VII. Future Agenda Items
10 a.m. Environmental Justice Hearing (Part II)

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–8312.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–2965 Filed 2–4–02; 11:48 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-825]

Oil Country Tubular Goods, Other than Drill Pipe, From Korea: Postponement of Time Limits for Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Time Limits for Preliminary Results of New Shipper Review.

DATES: February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Scott Lindsay, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4236 and (202) 482–0780, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background:

In response to a request from Shinho Steel Co. Ltd. (Shinho Steel), the Department of Commerce (Department) is conducting this new shipper review of Shinho Steel. (See Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Initiation of New Shipper Antidumping Administrative Review, 66 FR 18438, (April 9, 2001). The period of review is August 1, 2000 through February 28, 2001.

Postponement of New Shipper Review

On January 22, 2002, Shinho Steel, in accordance with 19 CFR 351.214(j)(3), agreed to waive the time limits applicable to its new shipper review so that the Department might conduct its new shipper review concurrently with the administrative review of the antidumping duty order on OCTG from Korea for the period of August 1, 2000 through July 31, 2001. (See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 66 FR 49924 (October 1, 2001). Therefore, pursuant to respondent's request and in accordance with the Departments's regulations, we will issue the preliminary results of this new shipper review concurrently with the preliminary results of the 2000/2001 administrative review of OCTG from Korea, which are currently scheduled for May 3, 2002.

This notice is published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(j)(3).

January 28, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–2871 Filed 2–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–601]

Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the Stainless Steel Cookware Committee (the Committee), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on top-of-the-stove stainless steel cooking ware from Korea. The period of review (POR) is January 1, 2000, through December 31, 2000.

We preliminarily determine that certain manufacturers/exporters sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument(s): (1) a statement of the issue(s) and (2) a brief summary of their argument (not to exceed five pages).

EFFECTIVE DATE: February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham and Thomas F. Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; (202) 482–6320 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

Background

The Department published an antidumping duty order on top-of-the-stove stainless steel cooking ware (cookware) from Korea on January 20, 1987 (52 FR 2139). On January 18, 2001, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on cookware from Korea (66 FR 4796) covering the period January 1, 2000, through December 31, 2000.

On January 31, 2001, in accordance with 19 CFR 351.213(b), the Committee (the petitioner), whose members are Regal Ware, Inc., The West Bend Company, New Era Cookware and Vita-Craft Corporation, requested that we conduct an administrative review of twenty-six specific manufacturers/exporters of cookware from Korea: Daelim Trading Co., Ltd. (Daelim), Dong Won Metal Co., Ltd. (Dong Won), Chefline Corporation, Sam Yeung Ind. Co., Ltd., Namyang Kitchenflower Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Dong Hwa Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han II Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., Pionix Corporation, East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. In accordance with 19 CFR 351.221(b), we published a notice of initiation of the review on February 28, 2001 (66 FR 12758).

On March 2, 2001, we issued Section A antidumping questionnaires to each of the twenty-six manufacturers/exporters listed above. In response to our request for information, Pionix Corporation, Namyang Kitchenflower Co., Ltd., and Dong Hwa Steel Co., Ltd., reported that they had no sales or shipments during the POR. Information on the record indicates that there were no entries of subject merchandise made by these manufacturers/exporters during the POR. Accordingly, we are preliminarily rescinding the review with respect to these manufacturers/exporters.

The following companies failed to respond to the Department's Section A questionnaire: Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han II Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. On January 4, 2002, we informed each of these companies that because they failed to respond to the Department's questionnaire, we may use facts available (FA) to determine their dumping margins. In response, the following manufacturers/exporters reported that they had no sales or shipments during the POR: Ssang Yong Ind., Co., Ltd., Poong Kang Ind. Co., Ltd., Sungjin International, Inc., Seshin Co., Ltd., O. Bok Stainless Steel Co., Ltd., Hai Dong Stainless Steel Co., Ltd., and Bae Chin Metal Ind. Co. Information on the record indicates that there were no entries of subject merchandise from these firms during the POR. Accordingly, we are preliminarily rescinding the review with respect to these manufacturers/exporters.

On April 2, 2001, Daelim and Dong Won responded to Section A of the antidumping questionnaire. On May 3, 2001, the Department issued Sections B, C and D of the Department's questionnaire to these two companies. Daelim and Dong Won filed responses to Sections B and C on June 18, 2001. On July 3, 2001, Daelim and Dong Won responded to Section D of the Department's questionnaire.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On September 26, 2001, the Department published a notice of extension of the time limit for the preliminary results in this case to January 30, 2002. See Top-of-the-Stove Stainless Steel Cooking Ware From Korea: Extension of Preliminary Results of Antidumping Duty Administrative Review, 66 FR 49164 (September 26, 2001).

On November 2, 2001, the Department issued Section A through D supplemental questionnaires to Daelim and Dong Won. The responses to these supplemental questionnaires were received on November 30, 2001. On December 19, 2001, the Department issued an additional Section A through D supplemental questionnaire to these companies. The responses were submitted by the companies on January 11, 2002.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise subject to this antidumping order is top-of-the-stove stainless steel cookware from Korea. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. The subject merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The Department has issued several scope clarifications for this order. The Department found that certain stainless steel pasta and steamer inserts (63 FR 41545, August 4, 1998), certain stainless steel eight-cup coffee percolators (58 FR 11209, February 24, 1993), and certain stainless steel stock pots and covers are within the scope of the order (57 FR 57420, December 4, 1992). Moreover, as a result of a changed circumstances review, the Department revoked the order on Korea in part with respect to certain stainless steel camping ware (1) made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consisting of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 3662, January 24, 1997).

FA

Application of FA

Section 776(a)(2) of the Act provides that if any interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in making its determination.

Section 782(e) of the Act provides that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) of the Act if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified;

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties

As stated above, on March 2, 2001, we issued Section A questionnaires to twenty-six manufacturers/exporters of the subject merchandise. The following companies failed to respond to the Department's Section A questionnaire: Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., Il Shin Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., East One Co., Ltd., Charming Art Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. On January 4, 2002, we informed each of these companies that because they failed to respond to the Department's questionnaire, we may use FA to determine their dumping margins.

Because these 14 companies failed to provide any of the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we must establish the margins for these companies based totally on facts otherwise available.

Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–20 (October 16, 1997). These 14 companies were given two opportunities to respond, and did not. Moreover, these companies failed to offer any explanation for their failure to respond to our questionnaires. As a general matter, it is reasonable for the Department to assume that these companies possessed the records necessary for this review; however, by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. As these 14 companies have failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 31.23 percent, the highest rate determined for any respondent in any segment of this proceeding. See Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Cookware from Korea, 51 FR 42873 (November 26, 1986) (Final LTFV Determination).

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA further provides that the term ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The rate used as AFA in this segment was originally calculated using verified information from the investigative segment of this proceeding. See Final LTFV Determination. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. Furthermore, we have no new information that would lead us to reconsider the reliability of the rate being used in this case.

As to the relevance of the margin used for AFA, the courts have stated that ''[b]y requiring corroboration of adverse inference rates, Congress clearly intended that such rates should be reasonable and have some basis in reality.'' F.Lli De Cecco Di Filippo Fara S. Martino S.p.A., v. U.S., 216 F.3d 1027, 1034 (Fed. Cir. 2000).

The rate selected is the rate currently applicable to certain companies, including 10 of these 14 companies. See Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review, 66 FR 45664 (August 29, 2001) (Final Results). In determining a relevant AFA rate, the Department assumes that if the non-responding parties could have demonstrated that their dumping margins were lower, they would have participated in this review and attempted to do so. See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190–91 (Fed. Cir. 1990). Therefore, given these 14 companies' failure to cooperate to the best of their ability in this review, we have no reason to believe that their dumping margins would be any less than the highest calculated rate in this proceeding. This rate ensures that they do not benefit by failing to cooperate fully. Therefore, we consider the rate of 31.23 percent relevant and appropriate to use as AFA for the non-responding parties.

NV Comparisons

To determine whether sales of cookware from South Korea to the United States were made at less than NV, we compared the export price (EP) to the NV for Daelim and EP and constructed export price (CEP) to the NV for Dong Won, as specified in the EP, CEP and NV sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

EP

Where Daelim and Dong Won sold merchandise directly to unaffiliated purchasers in the United States, we used EP, in accordance with section 772(a) of the Act, as the price to the United States. For both respondents, we calculated EP using the packed prices charged to the first unaffiliated customer in the United States (the starting price).

We made deductions from the starting price amounts for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, brokerage and handling, international freight, and marine insurance, in accordance with

section 772(c)(2)(A) of the Act. We added duty drawback received on imported materials, where applicable, pursuant to section 772(c)(1)(B) of the Act.

CEP

For Dong Won, we calculated CEP, in accordance with subsection 772(b) of the Act, for those sales to unaffiliated purchasers that took place after importation into the United States. We based CEP on the packed FOB prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions for discounts. We also made deductions for movement expenses in accordance with 772(c)(2)(A) of the Act. Movement expenses included foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. Customs duties, and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. Also, we made an adjustment for profit in accordance with section 772(d)(3) of the Act. Further, we added duty drawback received on imported materials, where applicable, pursuant to section 772(c)(1)(B) of the Act.

NV

1. Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Since Daelim's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales. Because Dong Won's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was not viable. Therefore, we have based NV for Dong Won on third country sales in the usual commercial quantities and in the ordinary course of trade. Because Dong Won's aggregate volume of sales of the foreign like product in Canada was more than five percent of its aggregate volume of U.S. sales of the subject merchandise, we used sales to Canada as the third country comparison sales. As in the preceding segment of this proceeding, the Department notes that Canada was Dong Won's largest third country market for cookware in terms of both value and quantity and the cookware that Dong Won exported to Canada was more similar to the subject merchandise exported to the United States than the cookware exported to other comparison markets. See Top-of-the-Stove Stainless Steel Cooking Ware From Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review, 66 FR 11259 (February 23, 2001).

2. Cost of Production (COP) Analysis

The Department disregarded certain sales made by Daelim and Dong Won during the previous administrative review because we found that these sales failed the cost test. See Final Results. Pursuant to section 773(b)(2)(A)(ii) of the Act, this provides reasonable grounds to believe or suspect in this review segment that Daelim and Dong Won made sales in the home or third country markets at prices below the COP. Consequently we initiated a COP inquiry with respect to both Daelim and Dong Wong and conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated, respectively, COP based on the sum of Daelim and Dong Won's cost of materials and fabrication (COM) for the foreign like product, plus amounts for SG&A, including financial expense, and packing costs. For the preliminary results, we relied on Daelim's and Dong Won's submitted information without adjustment.

B. Test of Foreign Market Sales Prices

We compared COP to foreign market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts and rebates, and selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, within the meaning of section 773(b)(2)(B) of the Act. Because we compared prices to POR or fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found, looking at Dong Won's third country market sales and Daelim's home market sales, that both made sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold in the relevant foreign markets meeting the description in the ''Scope of the Review'' section of this notice, above, for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the foreign markets made in the ordinary course of trade (i.e., sales within the contemporaneous window which passed the cost test), we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Further, as in the preceding segment of this proceeding, merchandise was considered ''similar'' for purposes of comparison only if it is of the same ''product type,'' (i.e., (1) vessels or (2) parts). Among merchandise which was identical on the basis of ''product type,'' we then selected the most ''similar'' model through a hierarchical ranking of the remaining 11 product characteristics

listed in sections B and C of our antidumping questionnaire and application of the DIFMER test. If there were no sales of identical or similar merchandise in the foreign market to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period. For a further discussion of the Department's product comparison methodology, see Final Results and accompanying Decision Memo at Comment 1.

Level of Trade (LOT)

In accordance with section 773(a)(7)(A) of the Act, if the Department compares a U.S. sale at one LOT to NV sales at a different LOT, we will adjust the NV to account for the difference in LOT if the difference affects price comparability as evidenced by a pattern of consistent price differences between sales at the different LOTs in the market in which NV is determined.

Section 351.412(c)(2) of the Department's regulations states that the Secretary will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). To make this determination, the Department reviews such factors as selling functions, classes of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even if substantial, are not alone sufficient to establish a difference in the LOT. Similarly, while customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different LOTs, they are insufficient in themselves to establish that there is a difference in the LOT.

In determining whether separate LOTs actually existed in the foreign and U.S. markets for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services) offered to each customer or customer category, in both markets.

Dong Won reported third country sales through two channels of distribution for its Canadian sales. The first channel of distribution was direct sales with two customer categories (i.e., distributors/wholesalers and retailers). The second channel of distribution was also sales to the two customer categories listed above, but through Korean trading companies. As Dong Won performs essentially the same selling activities at the same degree for third country sales in both of these channels of distribution, we considered this one LOT for purposes of our antidumping analysis.

For the U.S. market, Dong Won reported both EP and CEP sales in the U.S. market. For EP sales, Dong Won reported the same channels of distribution and customer categories as those in the third country market (i.e., direct sales to distributors/wholesalers and retailers as well as direct sales to distributers/wholesalers and retailers through Korean trading companies). As Dong Won performs essentially the same selling activities at the same degree for EP sales in both channels of distribution, we consider this one LOT. When we compared EP sales to third country sales, we determined that the EP sales were made at the same LOT as the third country sales. Accordingly, because we calculated NV at the same LOT as EP, no LOT adjustment is warranted. See 19 CFR 351.412 (b)(1).

Dong Won reported sales through its U.S. affiliate as CEP sales. For CEP sales, Dong Won performed fewer selling functions than in the third country. In addition, the differences in selling functions performed for third country and CEP transactions indicate that third country sales involved a more advanced stage of distribution than CEP sales. Our preliminary analysis demonstrates that the third country LOT is different from, and constitutes a more advanced stage of distribution than the CEP LOT because, after making the CEP deductions under section 772(d) of the Act, the third country LOT includes significantly more selling functions at a higher level of service with greater selling expenses than the CEP LOT. Therefore, the third country LOT is at a different, more advanced marketing stage than the CEP LOT.

Section 773(a)(7)(B) of the Act provides for a CEP offset to NV when NV is established at a LOT which constitutes a more advanced LOT than the LOT of the CEP, but the data available do not provide an appropriate basis upon which to determine a LOT adjustment. As discussed above, in this case we found that there is only one LOT in the market in which NV is determined. Thus, it is not possible to determine a pattern of price differences on the basis of sales of the foreign like product by the producer. Furthermore, we do not have information on the record in this proceeding to determine a pattern of price differences on the basis of sales of different or broader product lines, sales by other companies, or any other reasonable basis. Therefore, we conclude that Dong Won is entitled to a CEP offset to NV. See Memorandum on LOT for Dong Won, dated January 31, 2002.

Daelim reported sales through one LOT, consisting of two channels of distribution for its home market sales. The first channel of distribution was sales through its affiliate in the home market, Living Star. The second channel of distribution was direct sales to home market customers. As Daelim performs the same selling activities at the same degree for home market sales in both channels of distribution, we consider this one LOT. See Memorandum on LOT for Daelim, dated January 31, 2002. Daelim reported only EP sales in the U.S. market. For EP sales, Daelim reported one LOT, consisting of one channel of distribution.

Upon review of the record we found that Daelim performed the same selling functions (i.e., inventory maintenance, technical advice, warranty services, freight & delivery arrangement, and advertising) at the same degree for EP sales as compared to home market sales. As such, we preliminarily find that there are no differences in the number, type, and degree of selling functions Daelim performs in the home market as compared to its EP sales. Therefore, because we are calculating NV at the same LOT as Daelim's EP sales, no LOT adjustment is warranted. See 19 CFR 351.412(b)(1).

Date of Sale

In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporters's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer established the material terms of sale on some other date. For both foreign market and U.S. transactions, Daelim and Dong Won reported the date of the contract (i.e., purchase order) as the date of sale, i.e., the date when the material terms of sale are finalized. The respondents note that the purchase order confirms all major terms of sale--price, quantity, and product specification--as agreed to by the respondents and the customer. Because there is nothing on the record to indicate that there were changes in the material terms of sale between the purchase order (or revised purchase order) and the invoice, the Department preliminarily determines that the purchase order date is the most appropriate date to use for the date of sale.

CV

In accordance with section 773(e) of the Act, we calculated CV based on the respondents' respective COM employed

in producing the subject merchandise, SG&A expenses, the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the COM and G&A expenses as reported in the CV portion of respondents' questionnaire responses. We used the U.S. packing costs as reported in the U.S. sales portion of the respondents' questionnaire responses. For selling expenses, we used the average of the selling expenses reported for home market sales that survived the cost test, weighted by the total quantity of those sales. For profit, we first calculated, based on the home market sales that passed the cost test, the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive profit.

Price-to-Price Comparisons

For those comparison products for which there were sales that passed the cost test, we based the respondent's NV on the price at which the foreign like product is first sold for consumption in Korea (Daelim) or Canada (Dong Won), in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act.

In accordance with section 773(a)(6) of the Act, we made adjustments to the foreign market price, where appropriate, for discounts and movement expenses (inland freight, brokerage and handling, and international freight). To account for differences in circumstances of sale between the foreign market and the United States, where appropriate, we adjusted the foreign market price by deducting foreign market direct selling expenses (including credit) and commissions and by adding U.S. direct selling expenses (including U.S. credit expenses). Where commissions were paid on foreign market sales and no commissions were paid on U.S. sales, we increased NV by the lesser of either: (1) The amount of commission paid on the foreign market sales or (2) the indirect selling expenses incurred on U.S. sales. See 19 CFR 351.410(e).

With respect to both CV and foreign market prices, we made adjustments, where appropriate, for inland freight, inland insurance, and discounts. We also reduced CV and foreign market prices by packing costs incurred in the foreign market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased CV and foreign market prices for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We made further adjustments to foreign market prices, when applicable, to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in circumstances of sale by deducting foreign market direct selling expenses and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act. Finally, in the case of Dong Wong, we made a CEP offset adjustment to account for comparing U.S. and foreign market sales at different LOTs.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period January 1, 2000, through December 31, 2000:

Manufacturer/Exporter	Margin (percent)
Dong Won Metal Co., Ltd	1.90
Dae-Lim Trading Co., Ltd	1.73
Chefline Corporation	31.23
Sam Yeung Ind. Co., Ltd	31.23
Kyung-Dong Industrial Co., Ltd	31.23
Il Shin Co., Ltd	31.23
Han Il Stainless Steel Ind. Co., Ltd	31.23
East One Co., Ltd	31.23
Charming Art Co., Ltd	31.23
Won Jin Ind. Co., Ltd	31.23
Wonkwang Inc	31.23
Sae Kwang Aluminum Co., Ltd	31.23
Hanil Stainless Steel Ind. Co., Ltd	31.23
East West Trading Korea, Ltd	31.23
Clad Co., Ltd	31.23
B.Y. Enterprise, Ltd	31.23

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For Daelim and Dong Won, we have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. For all other respondents, the assessment rate will be based on the margin percentage identified above. We will direct Customs to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is de minimis, i.e., less then 0.5 percent.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of top-of-stove stainless steel cooking ware from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent ad valorem and, therefore, de minimis, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash

deposit rate will be 8.10 percent, the “all-others” rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 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 administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

January 31, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–2870 Filed 2–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020102B]

Proposed Information Collection; Comment Request; Scientific Research, Exempted Fishing, and Exempted Activity Submissions

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before April 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William D. Chappell, Fisheries Management Specialist, at 301–713–2341 or William.Chappell@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishery regulations do not generally affect scientific research activities conducted by a scientific research vessel. Persons planning to conduct such research are encouraged to submit a research plan to ensure that the activities are considered research and not fishing. NOAA may also grant exemptions from fishery regulations for educational or other activities (e.g. testing of fishing gear). Applications for these exemptions must be submitted, and reports on activities submitted. Somewhat different requirements apply to the Atlantic Highly Migratory Species fishery, including certain arrival and offloading reports.

II. Method of Collection

Most information is submitted on forms or other written format. Some information may be phoned to NOAA.

III. Data

OMB Number: 0648–0309.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit; individuals or households; not-for-profit institutions; State, Local, or Tribal government.

Estimated Number of Respondents: 359.

Estimated Time Per Response: 1 hour for a scientific research plan, an exempted fishing permit request, or an exempted fishing permit report; 10 minutes for an application for an exempted fishing permit/letter of authorization for commercial fishing for Highly Migratory Species; 30 minutes for an application for an exempted fishing permit/letter of authorization for non-commercial fishing for Highly Migratory Species; 30 minutes for an annual summary of activities under an exempted fishing permit/letter of authorization for sharks; 5 minutes for an arrival report for a vessel with a swordfish exempted fishing permit/letter of authorization; 5 minutes for a report on non-commercial activities under an exempted fishing permit/letter of authorization for Highly Migratory Species; and 5 minutes for an off-loading notification for swordfish for a vessel with an exempted fishing permit/letter of authorization.

Estimated Total Annual Burden Hours: 435.

Estimated Total Annual Cost to Public: $500.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 31, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–2876 Filed 2–5–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board, Standing Committee of Emerging Chemical and Biological Technology Advisory Committee of Experts Closed Panel Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board, Standing Committee on Emerging Chemical and Biological Technology Advisory Committee of Experts has been scheduled as follows:

DATES: 13 & 14 February 2002 (0800am–1700pm).

ADDRESSES: San Diego, California 92118.

FOR FURTHER INFORMATION CONTACT: Mr. Jack A McNulty, Director, DIA Science and Technology Advisory Board, Standing Committee on Emerging Chemical and Biological Technology

Advisory Committee of Experts, Washington, DC 20340–1328, telephone (202) 231–3507.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: January 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2769 Filed 2–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8 a.m. to 5 p.m. on February 28, 2002 and from 8 a.m. to 5 p.m. on March 1, 2002. The meeting will be held at the Catamaran Hotel in San Diego, California. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than February 15, 2002.

Dated: January 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2770 Filed 2–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Overseas Dependents' School National Advisory Panel on the Education of Dependents with Disabilities

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, as amended (5 U.S.C. app. II), the Federal Advisory Committee Act, notice is hereby given that a meeting of the National Advisory Panel (NAP) on the Education of Dependents with Disabilities is scheduled to be held from 8:30 a.m. to 4 p.m. on April 16–18, 2002. The meeting is open to the public and will be held in the Holiday Inn Hotel conference room at 4610 North Fairfax Drive, Arlington, Virginia 22203. The purpose of the meeting is to (1) review the responses to the panel's recommendations from its May 8–10, 2001 meeting; (2) review and comment on data and information provided by DoDEA; and (3) review and comment on reports from subcommittees. Persons desiring to attend the meeting or desiring to make oral presentations or submit written statements for consideration by the panel must contact Ms. Diana Patton at (703) 696–4386 extension 1947.

Dated: January 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2768 Filed 2–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.116A, 84.116B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

Eligible Applicants: Institutions of higher education or combinations of those institutions and other public and private nonprofit institutions and agencies.

Applications Available: February 1, 2002.

Deadline for Transmittal of Preapplications: March 13, 2002.

Deadline for Transmittal of Final Applications: May 24, 2002.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: July 23, 2002.

Available Funds: $9,958,000.

Estimated Range of Awards: $50,000–$275,000 per year.

Estimated Average Size of Awards: $156,000 per year.

Estimated Number of Awards: 60–65.

Note: the Department in not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

Invitational Priorities

While applicants may propose any project within the scope of 20 U.S.C. 1138(a), under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1

Projects to improve the quality of K–12 teaching through new models of teacher preparation and through new kinds of partnerships between schools and colleges and universities that enhance students' preparation for, access to, and success in college.

Invitational Priority 2

Projects to promote innovative reforms in the curriculum and instruction at the college preparation, undergraduate, and graduate/professional levels, especially through student-centered or technology-mediated strategies.

Invitational Priority 3

Projects designing more cost-effective ways of improving postsecondary instruction and operations, i.e., to promote more student learning relative to institutional resources expended.

Invitational Priority 4

Projects to support new ways of ensuring equal access to postsecondary education, and to improve rates of retention and program completion, especially for underrepresented students whose retention and completion rates continue to lag behind those of other groups.

Methods for Applying Selection Criteria

For preapplications (preliminary applications) and final applications, the Secretary gives equal weight to each of the selection criteria. Within each of these criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating preapplications and final applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

Preapplications

In evaluating preapplications, the Secretary uses the following selection criteria:

(a) *Need for project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed project for the quality of its evaluation, as determined by the extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Final Applications

In evaluating final applications, the Secretary uses the following selection criteria:

(a) *Need for project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address the needs of, the target population or other identified needs.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed project for the quality of its evaluation, as determined by the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(e) *Quality of the management plan.* The Secretary reviews each proposed project for the quality of its management plan, as determined by the plan's adequacy to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(f) *Quality of project personnel.* The Secretary reviews each proposed project for the quality of project personnel who will carry out the proposed project, as determined by the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of key project personnel.

(g) *Adequacy of resources.* The Secretary reviews each proposed project for the adequacy of its resources, as determined by the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(5) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–567–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*. Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CDFA number 84.116A.

Note: Application text and forms are available on the FIPSE web site (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8544. Telephone: (202) 502–7500. The application text and forms may be obtained from the Internet address: *http://www.ed.gov/FIPSE/*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities also may obtain a copy of the application package in an alternative format. However, the Department is not able to reproduce in alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/legislation/FedRegister/*.

To use PDF you must have Adobe Acrobat Reader, which is available free this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: the official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www/access.gpo.gov/nara/index.html*.

Program authority: 20 U.S.C. 1138–1138d.

Dated: January 31, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–2762 Filed 1–31–02; 4:58 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under Article 10 paragraph 3 of the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy, and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of atomized uranium-molybdenum powder, containing 1,564.76 g uranium (307.87 g uranium-235) from the Korea Atomic Energy Research Institute (KAERI) to the Compagnie pour l'Etude el la Realleation de Combustibles Atomiques (CERCA), Romans, France. The material, which is located at and was prepared by KAERI, will be used at the CERCA facility for the formability test of plate-type nuclear fuel as part of a Reduced Enrichment for Research and Test Reactors (RERTR) program.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the publication of this notice.

Dated: January 3, 2002.

For the Department of Energy.

Jon Phillips,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 02–2825 Filed 2–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–252]

Notice of intent to prepare an Environmental Impact Statement and to conduct public scoping meetings and Notice of Floodplain and Wetlands Involvement; GenPower New York, L.L.C.

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and to conduct public scoping meetings.

SUMMARY: GenPower New York, L.L.C. (GenPower) has applied to DOE for a Presidential permit to construct a ±500,000-volt (±500-kV) direct current (DC) submarine electric transmission cable across the U.S. border with Canada. The cable is proposed to originate in Goldboro, Nova Scotia, Canada, and terminate in New York City, New York. DOE has determined that the issuance of the Presidential permit would constitute a major Federal action that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). For this reason, DOE intends to prepare an EIS to address reasonably foreseeable impacts from the proposed action and alternatives.

The purpose of this Notice of Intent is to inform the public about the proposed action, announce plans for three public scoping meetings, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the EIS. Because the proposed project may involve an action in a floodplain or wetland, the EIS will include a floodplain and wetlands assessment and floodplain statement of findings in accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022).

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until March 25, 2002. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by March 25, 2002, in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public scoping meetings are:

1. February 26, 6 to 9 p.m., Gloucester, Massachusetts
2. February 27, 1 to 4 p.m., Boston, Massachusetts
3. February 28, 1 to 4 p.m., New York City, New York

Requests to speak at a public scoping meeting(s) should be received by Mrs. Ellen Russell at the address indicated below on or before February 25, 2002. Requests to speak may also be made at the time of registration for the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellen Russell, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350; phone 202–586–9624, facsimile: 202–287–5736, or electronic mail at *Ellen.Russell@hq.doe.gov.* In addition, a toll free comment line, 1–800–437–7280, and a project information Web site, *http://projects1.battelle.org/genpowereis,* are available.

The locations of the scoping meetings are:

1. Milton Fuller School, 4 School House Road, Gloucester, Massachusetts.
2. Environmental Protection Agency Building, Training Room 1101, 1 Congress Street, Boston, Massachusetts.
3. Federal Triangle Building, Conference Room A, 26 Federal Plaza, New York City, NY.

FOR FURTHER INFORMATION CONTACT:

For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice. The GenPower application, including associated maps and drawings, can be downloaded in its entirety from the Fossil Energy web site (*www.FE.DOE.GOV;* choose ''Electricity Regulation,'' then ''Pending Procedures'').

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, maintained, operated, or connected at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 CFR 205.320—205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On September 19, 2001, GenPower filed an application with the Office of Fossil Energy (FE) of the DOE for a Presidential permit. For its ''Hudson Energy Project,'' GenPower proposes to install a high-voltage, direct current (HVDC) submarine cable extending from a proposed 820-megawatt combined-cycle, natural gas-fired power plant located in Goldboro, Guysborough County, Nova Scotia, Canada, to New York City, New York, a distance of approximately 800 to 900 miles (1,300 to 1,450 kilometers (km)). GenPower's proposed terminus in New York City is the Consolidated Edison Company's (ConEd) West 49th Street substation. GenPower proposes, based on technical and geological limitations, to bury the cable on the sea bed to a depth of approximately 3.3 feet (1 meter (m)) in Canadian, United States, and possibly international waters at ocean depths to 990 feet (300 m). The cable is proposed to be installed using remotely operated water-jet trenching and/or water-jet plow equipment. Two areas designated as Critical Habitat for the Right Whale may be transited by installer ships. GenPower proposes to finalize installation procedures after consultations with the National Marine Fisheries Service under the Marine Mammal Protection Act.

The GenPower application, including associated maps and drawings, can be downloaded in its entirety from the Fossil Energy Web site (*www.FE.DOE.GOV;* choose ''Electricity Regulation,'' then ''Pending Procedures'').

GenPower does not have firm contracts in place in the United States for the sale of power from the proposed generating facilities.

GenPower's application proposes two sea-bed alternatives in the vicinity of ''Georges Bank,'' one to the east, the other to the west (applicants preferred alternative), beginning at the proposed Goldboro, Nova Scotia, power plant and terminating at ConEd's West 49th Street Substation. Georges Bank is one in a series of immense underwater banks or plateaus stretching from Newfoundland to southern New England on the edge of the North American continental shelf. The northernmost banks are called the Grand Banks and are off the Newfoundland and Labrador coasts. Georges Bank is an oval-shaped geological formation, approximately 150 miles (240 km) long by 75 miles (120 km) wide, and approximately 330 feet (100 m) higher than the sea bed of the Gulf of Maine that lies just north of it. Georges Bank is located at the southwestern end of the chain of banks and it is 75 miles (120 km) off the coast of New England. An important fishing resource, the banks are prime North American breeding and feeding grounds for fish and shellfish.

The alternative cable routes proposed by GenPower are as follows: For both alternatives, submarine cable installation would begin at Goldboro, Nova Scotia, and head offshore, then southwesterly along the Nova Scotia coast, to the Northeast Channel area. From there, the cable route would follow either a southeastern route around Georges Bank (southeast of Nantucket Island), or, for the applicant's preferred alternative, a southwestern route around Georges Bank to the Great South Channel and western terminus of the Ambrose shipping channel into New York Harbor.

When the cable route would enter the territorial waters of New York State it would be outside Lower New York Bay approximately three miles (5 km) south of Rockaway Beach, Queens. The route would continue west, entering Lower New York Bay, then turn northwest, passing through the Narrows into Upper New York Bay. The route would then proceed north, on the east side of the New York/New Jersey state line, to the west of Governors Island. The route would then proceed north, paralleling the west shoreline of Manhattan until the vicinity of the Passenger Ship Terminal piers near West 50th Street, where the cable route would proceed east and enter a directionally drilled conduit to connect with a proposed DC to AC power converter facility, proposed to be located at West 50th and 12th Avenue. The converted power would then leave the converter facility

via a buried AC interconnection that would pass from the converter facility to ConEd's West 49th Street substation (located at West 49th Street between 12th and 11th Avenues), for interconnection with ConEd's existing electrical transmission system.

Federal and Provincial Governments in Canada will also have a permitting role in the construction and operation of GenPower's Hudson Energy Project. DOE believes that this project is likely to require a demonstration that facilities in Canada would be undertaken in an environmentally safe manner. Further, DOE believes that an environmental review, similar to the one being announced by DOE herein, will be required by the Canada Environmental Assessment Act. DOE will consider information developed in that proceeding in the GenPower EIS.

Identification of Environmental Issues

A purpose of this notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list is not intended to be all-inclusive or to imply any predetermination of impacts. Following is a preliminary list of issues that may be analyzed in the EIS:

1. Impacts on fisheries, infrastructure, and employment;
2. Impacts on protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats;
3. Impacts on floodplains and wetlands;
4. Impacts on cultural or historic resources;
5. Impacts on human health and safety;
6. Impacts on air, soil, and water;
7. Visual impacts; and
8. Disproportionately high and adverse impacts on minority and low-income populations.

The EIS will also consider alternatives to the proposed transmission lines, including, to the extent practicable, the No Action Alternative. However, not issuing the Presidential permit would not necessarily imply maintenance of the status quo. GenPower indicated its proposed action is required to meet current and projected demand for electricity in New York City. Other actions (*e.g.,* construction of a new generating station in the vicinity of New York or New England and new transmission lines into New York City) could occur if the proposed transmission line is not built. The No Action Alternative will address the environmental impacts that are reasonably foreseeable to occur if the Presidential permit is not issued.

Scoping Process

Interested parties are invited to participate in the scoping process both to refine the preliminary alternatives and environmental issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental issues that are not feasible or pertinent. The scoping process is intended to involve all interested agencies (Federal, state, county, and local), public interest groups, Native American tribes, businesses, and members of the public. Potential Federal cooperating agencies include the U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service. Both oral and written comments will be considered and given equal weight by DOE.

Public scoping meetings will be held at the locations, dates, and times indicated above under the **DATES** and **ADDRESSES** sections. These scoping meetings will be informal. The DOE presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that DOE understands all issues and comments. Speakers will be allocated approximately 10 minutes for their oral statements. Depending upon the number of persons wishing to speak, DOE may allow longer times for representatives of organizations. Consequently, persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting(s), but advance requests are encouraged. Should any speaker desire to provide for the record further information that cannot be presented within the designated time, such additional information may be submitted in writing by the date listed in the **DATES** section. Meetings will begin at the times specified and will continue until all those present who wish to participate have had an opportunity to do so.

Draft EIS Schedule and Availability

The Draft EIS is scheduled to be issued in the fall, 2002, at which time its availability will be announced in the **Federal Register** and local media and public comments again will be solicited.

People who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when it is issued should notify Mrs. Russell at the address above.

The Draft EIS will be made available for public inspection. A notice of these locations will be provided in the **Federal Register** and local media at a later date.

Issued in Washington, DC on January 31, 2002.

Steven V. Cary,

Acting Assistant Secretary, Office of Environment, Safety, and Health.

[FR Doc. 02–2826 Filed 2–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–446–002]

ANR Pipeline Company; Notice of Compliance Filing

January 31, 2002.

Take notice that on January 28, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of December 6, 2001:

Second Revised Volume No. 1

Second Revised Sheet No. 2B

Original Volume No.2

First Revised Sheet No. 249

ANR states that the above-referenced tariff sheets are being filed in compliance with the Commission's Order issued December 6, 2001, in Docket No. CP01–445–000, which vacated the certificate of public convenience and necessity under which Rate Schedule X–32 had been authorized, subject to ANR's compliance with part 154 of the Commission's Regulations within 20 days of the date of the Order. ANR has requested a waiver of the 20 day requirement to allow that the compliance filing be submitted out of time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2774 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2644–000, 001, 002, and 003]

Colton Power, L.P.; Notice of Issuance of Order

January 31, 2002.

Colton Power, L.P. (Colton Power) submitted for filing a tariff that provides for the sales of capacity, energy, and ancillary services at market-based rates. Colton Power also requested waiver of various Commission regulations. In particular, Colton Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Colton Power.

On January 30, 2002, the Commission issued an order (Order) that accepted Colton Power's application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's January 30, 2002 Order granted Colton Power's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Colton Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Colton Power is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Colton Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of the Colton Power's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 25, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–2816 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–40–006]

Florida Gas Transmission Company; Notice of Amendment

January 31, 2002.

Take notice that on January 22, 2002, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP00–40–006, an application pursuant to Section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued to FGT on July 27, 2001, in Docket Nos. CP00–40–000, *et al.,* authorizing the construction and operation of the Phase V Expansion. FGT seeks to amend the certificate in order to relocate the site of the proposed Compressor Station No. 31 (Station 31), and modify related environmental conditions listed in the appendix to the July 27 order, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

As part the Phase V Expansion, FGT was authorized to construct Station 31at a site in Osceola County, Florida. The City of Kissimmee, Osceola County, and local residents objected to the location, and some parties sought rehearing of the July 27 order with respect to the location of Station 31.

FGT states that, in an effort to accommodate the desires of local residents and resolve their disagreement with the Commission's decision with respect to the location of Station 31, FGT has identified an alternate site for Station 31, also located in Osceola County, but which, upon removal of an RV Park in May 2002, will have no residences within a half-mile radius. FGT's amendment application includes letters from The City of Kissimmee and Osceola County expressing their support for the alternate location proposed in the amendment and stating that they will withdraw their requests for rehearing of the Commission's authorization of the initial proposed site of Station 31 after a final Commission order authorizing the new location. Consequently, FGT requests revision of Environmental Condition No. 27 and elimination of Environmental Condition No. 28 which require FGT to work with The City of Kissimmee and Osceola County to develop a landscaping plan and exterior design to mitigate the impact on residents located near the originally proposed site.

FGT states that it will utilize the same horsepower and unit, as previously approved, and that there will be no loss in FGT's ability to serve all firm requirements. FGT requests that its amendment be approved by April 1, 2002, so that the facilities can be placed in-service as quickly as possible.

Any questions concerning this application may be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Suite 3997, 1400 Smith Street, Houston, TX 77002 or call (713) 853–6549.

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 21, 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.

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. 02–2773 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–007]

Kern River Gas Transmission Company; Notice of Negotiated Rate

January 31, 2002.

Take notice that on January 28, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 495, to be effective January 28, 2002.

Kern River states that the purpose of this filing is to submit a tariff sheet reflecting the revised rate formula to be used in the negotiated rate transactions between Kern River and Questar Gas Company and between Kern River and the Town of Eagle Mountain in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2781 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. ER02–199–000, ER02–218–000, ER02–219–000, ER02–220–000, ER02–221–000, ER02–222–000, ER02–223–000, ER02–224–000, ER02–225–000, ER02–226–000, ER02–227–000, ER02–228–000, ER02–229–000, ER02–230–000, ER02–498–000, ER02–788–000, EL02–50–000

Mississippi Power Company, Southern Company Services, Inc., Georgia Power Company, Alabama Power Company, Gulf Power Company, Southern Company Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

January 31, 2002.

Take notice that on January 30, 2002, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL02–50–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL02–50–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2772 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–152–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 31, 2002.

Take notice that on January 25, 2002, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective as follows:

To be effective October 1, 2001:

Fifteenth Revised Sheet No. 8

To be effective November 1, 2001:
Substitute Forty-Third Revised Sheet No. 5
Substitute Forty-Third Revised Sheet No. 6
Substitute Fortieth Revised Sheet No. 7
To be effective January 1, 2002:
Substitute Forty-Fourth Revised Sheet No. 5
Substitute Forty-Fourth Revised Sheet No. 6
Substitute Forty-First Revised Sheet No. 7

MRT states that the purpose of this filing is to incorporate the changes accepted by Order dated January 16, 2002 in MRT's rate case Docket No. RP01–292 to these sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–2782 Filed 2–5–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–374–003]

Northwest Pipeline Corporation; Notice of Negotiated Rates

January 31, 2002.

Take notice that on January 18, 2002, Northwest Pipeline Corporation (Northwest) a Rate Schedule TF–1 negotiated rate and non-conforming service agreement. Northwest also tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of February 18, 2002:

Sixth Revised Sheet No. 1
Eleventh Revised Sheet No. 364
Fourth Revised Sheet No. 366
Sheet Nos. 367 through 369
Original Sheet No. 370
Sheet Nos. 371 through 374

Northwest states that the purpose of this filing is to implement a negotiated rate between itself and Calpine Energy Services, L.P. and to reflect the negotiated rate agreement in its tariff. Northwest states that because this agreement contains a provision that is not included in the form of service agreement in Northwest's tariff, Northwest is submitting a copy of this service agreement and is adding it to the list of non-conforming service agreements in its tariff. Northwest states that it is also removing two terminated service agreements from its list of non-conforming agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–2780 Filed 2–5–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–77–000]

Northwestern Wind Power, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

January 31, 2002.

Take notice that on January 25, 2002, Northwestern Wind Power, LLC, 3313 West Second Street, The Dalles, Oregon 97058, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant proposes to develop and own a wind powered generation facility. Upon completion of Phase Two of the project, the facility will have a maximum capacity of 49.5 megawatts. The facility will be located in Sherman County, Oregon. Phase One of the facility is operational and producing test power. Phase Two of the facility is scheduled to be completed by September 1, 2002.

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 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. All such motions and 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: February 11, 2002.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–2776 Filed 2–5–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–8–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

January 31, 2002.

Take notice that on January 25, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing a Refund Report for interruptible transportation revenue credits on its Coyote Springs Extension.

GTN states that it refunded $625.75 to Portland General Electric Company, the sole eligible firm shipper on the Coyote Springs Extension, by credit billing adjustment on January 11, 2002.

GTN further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 7, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2777 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2928–000, 001, and 002]

Progress Ventures, Inc.; Notice of Issuance of Order

January 31, 2002.

Progress Ventures, Inc.[1] (Progress Ventures) submitted for filing a tariff that provides for the sales of capacity, energy, and ancillary services at market-based rates and for the reassignment of transmission capacity. Progress Ventures also requested waiver of various Commission regulations. In particular, Progress Ventures requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Progress Ventures.

On January 25, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Acceptance of Progress Ventures' market-based rate tariff is subject to any tariff condition adopted by the Commission in Docket No. EL01–118–000.

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Progress Ventures should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Progress Ventures is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Progress Ventures, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Progress Ventures' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 25, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 02–2817 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Progress Ventures is an indirect, wholly-owned subsidiary of Progress Energy, Inc., a registered holding company under the Public Utility Holding Company Act of 1935. Progress Ventures is an intermediate holding company formed to hold 100% indirect interest in certain exempt wholesale generators.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–45–000]

Texas Eastern Transmission, LP; Notice of Site Visit

January 31, 2002.

On Wednesday, February 20, 2002, the Federal Energy Regulatory Commission (FERC) staff will conduct a site visit of Texas Eastern Transmission, L.P.'s (Texas Eastern) Hanging Rock Lateral Project in Scioto and Lawrence Counties, Ohio. We will visit sites along the 9.6-mile-long pipeline project.

We will meet at the following location at 9 AM on Wednesday February 20, 2002: Texas Eastern's Right-of-Way Office, 433 Center Street, Wheelersburg, Ohio 45694.

For further information call the Office of External Affairs, at (202) 208–0004.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2775 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2984–001, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 30, 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. Cinergy Services, Inc.

[Docket No. ER01–2984–001]

Take notice that on January 25, 2002, Cinergy Services, Inc. tendered for filing an executed Interconnection Agreement entered into by and between Cinergy Services, Inc. (Cinergy) and Duke Energy Vigo, LLC (Duke Energy Vigo), and an executed Facilities Construction Agreement by and between Cinergy and Duke Energy Vigo, both of which are dated January 25, 2002.

The Interconnection Agreement between the parties provides for the interconnection of a generating station with the transmission system of PSI Energy, Inc. (PSI), a Cinergy utility operating company, and further defines the continuing responsibilities and obligations of the parties with respect thereto. The Facilities Construction Agreement between the parties provides for the construction and installation of the interconnection facilities and the additions, modifications and upgrades to the existing transmission facilities of PSI.

Consistent with the Commission's October 26, 2001 Order in this Docket, Cinergy requests an effective date of October 31, 2001 for both the Interconnection Agreement and the Facilities Construction Agreement.

Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission, Duke Energy Vigo and any other party on the Commission's official service list in this Docket.

Comment Date: February 15, 2002.

2. Cinergy Services, Inc.

[Docket No. ER01–3022–001]

Take notice that on January 25, 2002, Cinergy Services, Inc. tendered for filing an unexecuted Interconnection Agreement by and between Cinergy Services, Inc. (Cinergy) and Sugar Creek Energy, LLC (Sugar Creek Energy).

The unexecuted Interconnection Agreement between the parties provides for the interconnection of a generating station with the transmission system of PSI Energy, Inc. (PSI), a Cinergy utility operating company, and further defines the continuing responsibilities and obligations of the parties with respect thereto.

Consistent with the Commission's October 26, 2001 Order in this Docket, Cinergy requests an effective date of September 8, 2001 for the unexecuted Interconnection Agreement.

Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission and Sugar Creek Energy.

Comment Date: February 15, 2002.

3. Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., Twelvepole Creek, LLC

[Docket No. ER02–113–001]

Take notice that on January 24, 2002, Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., and Twelvepole Creek, LLC (collectively the Orion Affiliates) submitted for filing with the Federal Energy Regulatory Commission (Commission) an amendment to their market based rate tariffs in response to the Commission's Letter Order issued December 13, 2001.

Comment Date: February 14, 2002.

4. Duke Energy Murray, LLC

[Docket No. ER02–302–001]

Take notice that on January 25, 2002, Duke Energy Murray, LLC filed a notice of status change with the Federal Energy Regulatory Commission in connection with the pending change in upstream control of Engage Energy America LLC and Frederickson Power L.P. (Frederickson) resulting from a transaction involving Duke Energy Corporation and Westcoast Energy Inc.

Copies of the filing were served upon all parties on the official service list for the above-captioned proceeding.

Comment Date: February 15, 2002.

5. Virginia Electric and Power Company

[Docket No. ER02–840–000]

Take notice that on January 25, 2002, Virginia Electric and Power Company (the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission), a service agreement between the Company and Entergy-Koch Trading, LP, designated as Service Agreement No. 10, 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 Entergy-Koch Trading, LP, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 15, 2002.

6. Commonwealth Edison Company

[Docket No. ER02–844–000]

Take notice that on January 25, 2002, Commonwealth Edison Company (ComEd) submitted for filing an executed Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Service Agreement) and the associated executed Dynamic Scheduling Agreement (DSA) with Exelon Generation Company, LLC (Exelon) under ComEd's Open Access Transmission Tariff (OATT). The executed Service Agreement and associated executed DSA replace the unexecuted Service Agreement and unexecuted DSA between ComEd and Exelon which were previously filed with the Commission on December 28, 2001, designated as Docket No. ER02–633–000.

ComEd requests an effective date of January 1, 2002 for the executed Service Agreement and associated executed DSA to coincide with the effective date requested for the unexecuted Service Agreement and associated unexecuted DSA filed with the Commission on December 28, 2001, designated as Docket No. ER02–633–000. Accordingly, ComEd requests waiver of the Commission's notice requirements. A copy of this filing was served on Exelon.

Comment Date: February 15, 2002.

7. Northwestern Wind Power, LLC

[Docket No. ER02–845–000]

Take notice that on January 25, 2002, Northwestern Wind Power, LLC, tendered for filing a petition for acceptance of an initial rate schedule authorizing Northwestern Wind Power, LLC, to make wholesale sales of power at market-based rates.

Comment Date: February 15, 2002.

8. Northern Indiana Public Service Company

[Docket No. ER02–846–000]

Take notice that on January 25, 2002, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and NRG Power Marketing Inc. (NRG).

Under the Transmission Service Agreement, Northern Indiana Public

Service Company will provide Non-Firm Point-to-Point Transmission Service to NRG pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of January 25, 2002.

Comment Date: February 15, 2002.

9. Pacific Gas and Electric Company

[Docket No. ER02–847–000]

Take notice that on January 25, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing 1998, 1999, and 2000 true-ups to rates pursuant to Contract No. 14–06–200–2948A (Contract 2948A), PG&E First Revised Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

Pursuant to Contract 2948A and the PG&E-Western Letter Agreement dated February 7, 1992, electric energy sales are made initially at rates based on estimated costs and are then trued-up at rates based on recorded costs after the necessary data become available. The proposed rate changes establish recorded cost-based rates for true-ups of energy sales from Energy Account No. 2, made during 1998, 1999 and 2000, at rates based on estimated costs.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment Date: February 15, 2002.

10. Commonwealth Edison Company

[Docket No. ER02–848–000]

Take notice that on January 25, 2002, Commonwealth Edison Company (ComEd) submitted for filing an executed Service Agreement for Network Integration Transmission Service (''NSA'') and the associated executed Network Operating Agreement (NOA) between ComEd and Central Illinois Light Company (CILCO) under the terms of ComEd's Open Access Transmission Tariff (OATT). The executed NSA and associated executed NOA replace the unexecuted NSA and unexecuted NOA between ComEd and CILCO that were previously filed with the Commission in Docket No. ER02–463–000 and accepted for filing by the Commission on January 22, 2002.

ComEd requests an effective date of November 4, 2001 for the executed NSA and associated executed NOA to coincide with the effective date granted the unexecuted NSA and NOA that were previously filed with the Commission. Accordingly, ComEd requests waiver of the Commission's notice requirements. A copy of this filing was served on CILCO.

Comment Date: February 15, 2002.

11. American Transmission Systems, Inc.

[Docket No. ER02–849–000]

Take notice that on January 25, 2002, American Transmission Systems, Inc. (ATSI), filed revised specifications to its service agreements with the City of Cleveland, American Municipal Power-Ohio, Inc., and the FirstEnergy merchant group for firm Point-to-Point Transmission Service. The proposed effective date for the agreements is January 1, 2002. This filing is made pursuant to section 205 of the Federal Power Act. Copies of this filing have been served on the counterparties and the public utility commissions of Ohio and Pennsylvania.

Comment Date: February 15, 2002.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–850–000]

Take notice that on January 25, 2002, pursuant to section 205 of the Federal Power Act and section 35.16 of the Commission's regulations, 18 CFR 35.16 (2001), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by the Louisville Gas & Electric Company/Kentucky Utilities Company (LG&E/KU).

Copies of this filing were sent to all applicable customers under the LG&E/KU Open Access Transmission Tariff by placing a copy of the same in the United States mail, first-class postage prepaid.

Comment Date: February 15, 2002.

13. Southern Company Services, Inc.

[Docket No. ER02–851–000]

Take notice that on January 25, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), tendered for filing changes to Southern Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). The proposed changes would increase the monthly charge for transmission service on Southern Companies' bulk transmission facilities (those operated above 44/46 kV) from $1.37/kW-month to $1.63/kW-month.

This amendment to the Tariff is being made so that the Tariff will more accurately recover Southern Companies' actual revenue requirement. Southern Companies are revising the Tariff to adopt a formula rate to derive charges for transmission services on their bulk transmission facilities. In addition, the Tariff is being revised to adopt: a ''stated rate'' approach ($/kW-month) in lieu of the load ratio share approach to derive bulk charges for network integration transmission service; on-peak and off-peak bulk charges for daily point-to-point transmission service (in addition to on-peak and off-peak charges for non-firm point-to-point transmission service); and a cost component to recover the Commission's annual charge. An effective date of April 1, 2002 has been requested for this amendment.

Copies of the filing were served upon Southern Companies' customers under the Tariff and upon the State Public Service Commissions having jurisdiction over Southern Companies.

Comment Date: February 15, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–2814 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2541–000, et al.]

Whiting Clean Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 31, 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. Whiting Clean Energy, Inc.

[Docket No. ER01–2541–001]

Take notice that on January 28, 2002, Whiting Clean Energy, Inc. tendered for filing its transaction report for short-term transactions for the fourth quarter of 2001 pursuant to the Commission's April 12, 2001 Letter Order in the above-referenced docket.

Comment Date: February 19, 2002.

2. San Diego Gas & Electric Company

[Docket No. ER01–3074–003]

Take notice that on January 28, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its Final Costs and Corrected Tariff sheets in the above-captioned docket. SDG&E's final costs update its December 6, 2001 filing of both final and estimated costs. The corrected tariff sheets reflect a change in the utility-specific high voltage Transmission Access Charge assessed by the California Independent System Operator.

SDG&E states that copies of the amended filing have been served on the service list in dockets ER01–3074–000 and ER01–3074–001.

Comment Date: February 19, 2002.

3. Combined Locks Energy Center, LLC

[Docket No. ER02–346–001]

Take notice that on January 24, 2002, Combined Locks Energy Center, LLC (CLEC), in compliance with the January 8, 2002, letter order of Director Michael C. McLaughlin, Division of Tariffs and Rates—Central in the above-captioned proceeding, filed, with rate schedule designations, an executed service agreement with WPS Energy Services, Inc. (WPS–ESI) under CLEC's market-based rate tariff, FERC Electric Tariff, Original Volume No. 1.

Copies of the filing were served upon WPS–ESI and the Public Service Commission of Wisconsin.

Comment Date: February 14, 2002.

4. EPCOR Power Development, Inc.

[Docket No. ER02–852–000]

Take notice that on January 28, 2002, EPCOR Power Development, Inc. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: February 19, 2002.

5. American Electric Power Service Corporation

[Docket No. ER02–853–000]

Take notice that on January 28, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing seven (7) Service Agreements which include Service Agreements for new customers and replacement Service Agreements for existing customers under the AEP Companies' Power Sales Tariffs. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies). AEPSC respectfully requests waiver of notice to permit the attached Service Agreements to be made effective on or prior to January 1, 2002.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: February 19, 2002.

6. Florida Power & Light Company

[Docket Nos. ER02–854–000]

Take notice that on January 28, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an unexecuted Interconnection and Operation Agreement between FPL and Calpine's Blue Heron Energy Center, LLC (Calpine) that sets forth the terms and conditions governing the interconnection between Calpine's generating project and FPL's transmission system. A copy of this filing has been served on Calpine and the Florida Public Service Commission.

Comment Date: February 19, 2002.

7. EPDC, Inc.

[Docket No. ER02–855–000]

Take notice that on January 28, 2002, EPDC, Inc. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: February 19, 20002.

8. The Dayton Power and Light Company

[Docket No. ER02–856–000]

Take notice that on January 28, 2002 The Dayton Power and Light Company (Dayton) submitted a service agreement establishing H.Q. Energy Services (US) Inc. (HQUS) as a customer under the terms of Dayton's FERC Electric Tariff, Original Volume No. 10.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon HQUS and the Public Utilities Commission of Ohio.

Comment Date: February 19, 2002.

9. Fitchburg Gas and Electric Light Company

[Docket No. ER02–857–000]

Take notice that on January 28, 2002 Fitchburg Gas and Electric Light Company (Fitchburg) filed a service agreement with Great Bay Power Corporation for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. Fitchburg requests an effective date of January 15, 2002.

Comment Date: February 19, 2002.

10. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–858–000]

Take notice that on January 28, 2002, Wolverine Power Supply Cooperative, Inc. tendered for filing an executed Service Agreement for Network Integration Transmission Service with Great Lakes Energy and an executed Network Operating Agreement with Great Lakes Energy under its Open Access Transmission Tariff. Wolverine requests an effective date of January 2, 2002.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy and the Michigan Public Service Commission.

Comment Date: February 19, 2002.

11. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–859–000]

Take notice that on January 28, 2002, Wolverine Power Supply Cooperative, Inc. tendered for filing an executed Market-Based Power Sales Agreement with Great Lakes Energy under its

Market-Based Power Sales Tariff. Wolverine requests an effective date of January 2, 2002.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy and the Michigan Public Service Commission.

Comment Date: February 19, 2002.

12. Arizona Public Service Company

[Docket No. ER02–860–000]

Take notice that on January 28, 2002, Arizona Public Service Company (APS or Company) filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of the Service Agreement No. 202 under FERC Electric Tariff, Tenth Revised Volume No. 2 effective date of October 9, 2001, between APS and Ak Chin Electric Utility Authority.

Comment Date: February 19, 2002.

13. Arizona Public Service Company

[Docket No. ER02–861–000]

Take notice that on January 28, 2002, Arizona Public Service Company (APS) tendered for filing a revised Service Agreement to provide Firm Point-to-Point Transmission Service to Ak Chin Electric Utility Authority (AkChin) under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on Ak Chin and the Arizona Corporation Commission.

Comment Date: February 19, 2002.

14. Entergy Power Ventures, L.P.

[Docket No. ER02–862–000]

Take notice that on January 28, 2002, Entergy Power Ventures, L.P. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act. Copies of this filing have been served on the Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Texas Public Utility Commission, and the Council of the City of New Orleans.

Comment Date: February 19, 2002.

15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–863–000]

Take notice that on January 28, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.16 of the Commission's regulations, 18 CFR 35.16, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by the Alliant Energy Corporate Services, Inc. (Alliant).

Copies of this filing were sent to all applicable customers under the Alliant Open Access Transmission Tariff.

Comment Date: February 19, 2002.

16. Arizona Public Service Company

[Docket No. ER02–864–000]

Take notice that on January 28, 2002, Arizona Public Service Company (APS) tendered for filing a revisions to its Open Access Transmission Tariff (OATT) in order to conform with Rule 614, clean up typographical errors, and clarify some language.

APS requests an effective date of April 1, 2002.

A copy of this filing has been served on the Arizona Corporation Commission. Copies of the filing can be viewed on APS' OASIS Web site, www.azpsoasis.com.

Comment Date: February 19, 2002.

17. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–865–000]

Take notice that on January 29, 2002, Wolverine Power Supply Cooperative, Inc. tendered for filing an Executed Wholesale Power Sales Enabling Agreement Between Wolverine Power Supply Cooperative, Inc., and Wolverine Power Marketing Cooperative, Inc., including an incorporated and executed Term Sheet. Wolverine requests an effective date of January 1, 2002.

Wolverine states that a copy of this filing has been served upon Wolverine Power Marketing Cooperative, Inc. and the Michigan Public Service Commission.

Comment Date: February 19, 2002.

18. Michigan Electric Transmission Company

[Docket No. ER02–866–000]

Take notice that on January 28, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with Consumers Energy Company (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreements being filed are Nos. 136 and 137 under that tariff.

Michigan Transco is requesting an effective date of January 1, 2002 for the Agreements.

Copies of the filed agreements were served upon the Michigan Public Service Commission, ITC and the customer.

Comment Date: February 19, 2002.

19. Michigan Electric Transmission Company

[Docket No. ER02–867–000]

Take notice that on January 28, 2002 Michigan Electric Transmission Company (METC) tendered for filing a Letter Agreement with Consumers Energy Company (Generator), dated December 31, 2001, (Agreement). The agreement is meant to enable METC to begin engineering and other preliminary work associated with upgrading METC's transmission system to accommodate an increase in capacity at an existing generating plant operated by Generator.

METC requested that the Agreement be allowed to become effective December 31, 2001.

Copies of the filing were served upon Generator and the Michigan Public Service Commission.

Comment Date: February 19, 2002.

20. Michigan Electric Transmission Company

[Docket No. ER02–868–000]

Take notice that on January 28, 2002, Michigan Electric Transmission Company (METC) tendered for filing executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with Michigan Cooperative Coordinated Pool (Customer) whose members are The Michigan Public Power Agency and Wolverine Power Supply Cooperative, Inc. pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreement being filed is No. 135 under that tariff.

METC is requesting an effective date of January 1, 2002 for the Agreement.

Copies of the filed agreements were served upon the Michigan Public Service Commission, ITC and the Customer.

Comment Date: February 19, 2002.

21. Great Bay Power Corporation

[Docket No. ER02–869–000]

Take notice that on January 29, 2002, Great Bay Power Corporation (Great Bay) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement between Indeck Pepperell Power Associates and Great Bay for service under Great Bay's revised Market-Based Rate Power Sales Tariff Volume No. 2 (Tariff). This Tariff was accepted for filing by the Commission on May 31, 2000, in Docket No. ER00–2211–000.

The service agreement is proposed to be effective February 1, 2002.

Comment Date: February 19, 2002.

22. Southwestern Electric Power Company

[Docket No. ER02–870–000]

Take notice that on January 29, 2002, Southwestern Electric Power Company (SWEPCO) filed two executed agreements between SWEPCO and Northeast Texas Electric Cooperative, Inc. (NTEC): a long-term Power Purchase and Sale Agreement with a Confirmation Letter Agreement (in redacted and non-redacted form) as a service agreement under SWEPCO's Market-Based Rate Tariff and a Scheduling Agent Agreement.

SWEPCO seeks an effective date of January 1, 2002 for the two agreements and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on NTEC and on the Public Utility Commission of Texas.

Comment Date: February 19, 2002.

23. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–871–000]

Take notice that on January 29, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing information regarding the recent developments in the Midwest ISO's phased initiation of jurisdictional service to commence as of February 1, 2002 and redlined and clean versions of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1, regarding Schedules 7, 8 and 9, Attachments J and K and Schedule 10–B.

The Midwest ISO has electronically served copies of its filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter.

Comment Date: February 19, 2002.

24. AES Ironwood, L.L.C.

[Docket No. ER02–872–000]

Take notice that on January 29, 2002, AES Ironwood, L.L.C (AES Ironwood) filed a long-term power sales agreement between AES Ironwood and Williams Energy Marketing & Trading Company (the Agreement). Confidential treatment of the Agreement, pursuant to 18 CFR 385.112 (2000), has been requested.

Comment Date: February 19, 2002.

25. MDU Resources Group, Inc.

[Docket No. ES02–20–000]

Take notice that on January 18, 2002, MDU Resources Group, Inc. (MDU Resources) submitted an application pursuant to section 204 of the Federal Power Act to issue up to 100,000 shares of common stock, par value $1.00 per share, to be issued from time to time in connection with the MDU Resources Group, Inc. Group Genius Innovation Plan.

MDU Resources also requests a waiver of the competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: February 21, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–2815 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

January 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of License.

b. Project No. 2543–053.

c. Date Filed: December 28, 2001.

d. Applicant: The Montana Power Company.

e. Name of Project: Milltown.

f. Location: On the Clark Fork River in Missoula County, Montana. The project does not utilize federal or tribal lands.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, Montana 59701, (406) 497–2456.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Deadline for filing motions to intervene, protests, comments: (March 7, 2002).

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–2543–053) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. Description of Amendment: The licensee requests that its license be amended to extend the expiration date of the license two years, from December 31, 2006 to December 31, 2008. On December 28, 2001, the licensee filed a notice of intent to relicense the

Milltown Project, with the understanding that its notice would become moot if its request to extend the term of the license is granted.

1. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2778 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Ready for Environmental Analysis, Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions, and Intent To Prepare One Multi-Project NEPA Document

January 31, 2002.

Take notice that the following applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Subsequent Licenses.

b. *Project Nos.:* P–6058–005, and P–6059–006.

c. *Date Filed:* January 2, 2001.

d. *Applicant:* Hydro Development Group, Inc.

e. *Name of Projects:* Hailesboro #4 Project, and Fowler #7 Project.

f. *Location:* On the Oswegatchie River in St. Lawrence County, near the town of Gouverneur, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)-825(r).

h. *Applicant Contact:* Kevin M. Webb, Hydro Development Group, Inc., 200 Bulfinch Drive, Andover, MA 01810, (978) 681–1900 ext. 1214.

i. *FERC Contact:* Monte TerHaar, (202) 219–2768 or E-mail address at monte.terhaar@FERC.fed.us.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. Status of environmental analysis: These applications have been accepted for filing and are now ready for environmental analysis. At this time we do not anticipate the need for preparing a draft EA. We intend to prepare one multi-project environmental document. The EA will include our recommendations for operating procedures and environmental enhancement measures that should be part of any new license issued by the Commission. Recipients will have 45 days to provide the Commission with any comments on that document. All comments on the EA, filed with the Commission, will be considered in an Order taking final action on the license applications. However, should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

l. Description of Projects: Hailesboro #4 Project: The existing, operating Hailesboro #4 Project consists of: (1) A concrete gravity-type dam comprising: (i) the 92-foot-long, 14-foot-high Dam #1 surmounted by a pneumatic gate; and (ii) the 58-foot-long, 5-foot-high Dam #2 surmounted by flashboards; (2) a reservoir with a 2.0-acre surface area and a gross storage volume of 20 acre-feet at normal water surface elevation 461 feet National Geodetic Vertical Datum (NGVD); (3) a gated intake structure with trashracks; (4) a 170-foot-long concrete-lined forebay canal; (5) a powerhouse containing a 640-kilowatt (kW) generating unit and an 850-kW generating unit for a total installed capacity of 1,490 kW; (6) a 2.4/23-kilovolt (kV) substation; (7) a 50-foot-long, 23-kV transmission line; (8) a tailrace; and (9) appurtenant facilities. The applicant estimates that the total average annual generation would be 11.0 megawatt-hours (MWh).

Fowler #7 Project: The existing, operating Fowler #7 Project consists of: (1) A concrete gravity-type dam surmounted by flashboards comprising: (i) the 75-foot-long, 25-foot-high Dam #1; (ii) the 192-foot-long, 20-foot-high Dam #2; and (iii) the 154-foot-long, 15-foot-high Dam #3; (2) a reservoir with a 3.0-acre surface area and a gross storage volume of 30-acre-feet at normal water surface elevation 542 feet NGVD; (3) an intake structure with trashracks; (4) a powerhouse containing three, 300-kW generating units for a total installed capacity of 900-kW; (5) a 1,000-kVA 2.3/23-kV transformer; (6) a 4,000-foot-long,

23-kV overhead transmission line; (7) a tailrace; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be 6.0 MWh.

m. Locations of the Applications: Copies of the applications are available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–2326. The applications 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). Copies are also available for inspection and reproduction at the Hydro Development Group, Inc., 200 Bulfinch Drive, Andover, MA 01810, (978) 681–1900 ext. 1214.

n. The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2779 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–9–000]

Reporting of Natural Gas Sales to the California Market

January 30, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of decision not to seek an extension of reporting period.

SUMMARY: On July 25, 2001, the Federal Energy Regulatory Commission (Commission) issued an order imposing certain reporting requirements on natural gas sellers and transporters serving the California market for the period ending January 31, 2002 (see 66 FR 40245, August 2, 2001). The Commission, by this notice, will not seek an extension of the reporting period provided for in the July 25, 2001 order.

DATES: The reporting period will terminate with the report covering activities ending January 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2078.

SUPPLEMENTARY INFORMATION: On July 25, 2001, the Commission issued an order (July 25 order) imposing a reporting requirement on natural gas sellers and transporters serving the California market for the six-month period August 2001, through January 2002.[1] The order stated that the Commission believed the reporting period should cover the same period as the Commission's mitigation plan regarding wholesale electricity prices in California and the West, and therefore the Commission intended to seek an extension of the reporting requirement, and approval by Office of Management and Budget (OMB), through September 30, 2002, to coincide with the termination date of the mitigation order.[2] However, in light of changed circumstances since the July 25th order, the Commission has decided that it will not seek an extension of the reporting requirement. This action is in the public interest because the price disparity that was the reason for imposing the reporting requirement no longer exists, and the continued submissions may not lead to a further understanding of the California gas market.

The July 25 order stated that the information was needed by the Commission to help it understand why the disparity between the price of natural gas in California and the prices in the remainder of the country had occurred, and was continuing, by gaining a better understanding of how the California market operates. The July 25 order explained that due to the emergency nature of the California price disparity, the Commission sought emergency processing by OMB for the collection of information under 5 CFR § 1320.13 (2001). Under that procedure the OMB approval is limited to 180 days. Accordingly, the order provided for the information to be submitted monthly for the six-month period covering August 1, 2001, through January 31, 2002, with the reports due 30 days after the end of each month. The first report was due October 1, 2001, and the last will be due March 1, 2002.[3]

The purpose of the reporting requirement was to investigate why there was a substantial disparity between spot natural gas prices in California and the rest of the nation by gaining a better understanding of how the California market operates. A preliminary analysis of the data furnished to date indicates that the data for the six month period ending January 31, 2002, will provide information about the California market, as well as some guidance on how to improve data collection and processing should another emergency reoccur. However, the crisis which led the Commission to impose the reporting requirement no longer exists. In May 2001, when the Commission first proposed to impose a reporting requirement, 95 FERC ¶ 61,262, the spot price of natural gas in the California market, as that order noted, ranged between $11.79[4] and $18.80, while the price range in all other markets was between $4 and $7. However, natural gas prices are now, and have been for a number of months, far lower than they were last spring in

[1] 96 FERC ¶ 61,119, *reh'g denied, 97 FERC* ¶ 61,029 (2001).

[2] See San Diego Gas & Electric Company, *et al.,* 95 FERC ¶ 61,418 (2001).

[3] On September 17, 2001, OMB granted the Commission's request and approved the information collection through January 31, 2002, and assigned it OMB No. 1902–0187.

[4] All prices are per MMBtu.

California, as well as in the rest of the country. Currently, as reported in Platts Gas Daily, the spot price of natural gas at the California border is less than $3.00, which is generally in line with the spot price elsewhere in the country and, in fact, lower than the price at some city gates in the East. Similarly, the monthly California Regional Average contract index price reported in Platts Gas Daily Price Guide was $2.44,[5] while the National Average price was $2.34.[6]

While the July 25 order stated the Commission intended to seek approval from OMB to extend the reporting requirement, market conditions, as shown above, have subsequently changed dramatically. As a result, the reason for imposing a special reporting requirement for sales of natural gas to the California market—that the California market is suffering unique difficulties—has largely disappeared. Furthermore, since the price of natural gas in California for the past few months has remained fairly stable and has not shown any significant disparity from the price of gas in the rest of the country, the continued collection and analysis of data relating to the California market is unlikely to add incrementally to what is being learned from the initial six months of data. Thus, at this time there is no reason to extend a special reporting requirement with respect to gas sales in only California, when there is no similar reporting requirement in other parts of the country.

The Commission is currently undertaking a comprehensive review of the information it should collect in order to monitor energy markets throughout the country. Since the crisis in California has now ceased, the Commission concludes that any further reporting requirement covering the California gas market is best developed as part of this comprehensive review of reporting requirements of all energy markets.

On December 11, 2001, Indicated Shippers,[7] who are certain major producers and marketers subject to the California reporting requirement, filed a petition requesting that the Commission not extend the reporting requirement beyond the current expiration date.[8] The basis of the petition was similar to the discussion above that the current market conditions in the California gas market do not justify extending the reporting requirement for gas sales in that market.[9] The California Electricity Oversight Board filed a protest to the petition asserting that current market conditions were irrelevant because ''there is no principled reason to assume that current market stability inherently eliminates future abuse of California's natural gas market.''[10]

The Commission has concluded that the reason for imposing a special reporting requirement for sales of gas in the California market no longer exists. While there is no guarantee that the disparity in the prices could not again occur, at this time there is no basis to assume that it will. We are well into the winter season, and the California gas market has not exhibited any conditions that now warrant imposing the reporting requirement there, as compared to any other market. Thus, the concern by the California Electricity Oversight Board that the price disparity could reoccur, is not a sufficient reason to extend the reporting requirement. However, should the price disparity reoccur, the Commission will be in a better position to determine what action it should take as a result of the submissions to date.

The Commission concludes that extending a reporting requirement that is limited to the California market would not further the Commission's goal of achieving more transparency of the national energy market. The Commission's decision not to extend the reporting requirement at this time does not represent any lessening of the Commission's intent to closely monitor that market, but reflects the Commission's conclusion that since the crisis that led to the imposition of the reporting requirement has ceased, the resources that would have to be devoted to the extension, would be better utilized in other areas, particularly the more comprehensive ongoing review of data collection by the Commission, discussed above.

Accordingly, the Commission will not seek an extension of the existing reporting period.

By direction of the Commission. Chairman Wood and Commissioner Brownell concurred with a separate statement attached.

Magalie R. Salas,

Secretary.

Federal Energy Regulatory Commission

[Docket No. RM01–9–000]

Reporting of Natural Gas Sales to the California Market

Issued January 30, 2002.

WOOD, Chairman, and BROWNELL, Commissioner, *concurring:*

We write separately to add that the data collected thus far has provided the Commission with valuable information on how the California natural gas market operates, such as, the proportion of sales in California under long and short-term contracts, the extent to which the prices in gas sales contracts are fixed, the extent of utilization of interstate transportation capacity to California, the nature of the purchasers under the sales contracts (e.g., marketers, LDCs, or end users), and also the approximate proportion of sales in the California market that are subject to the Commission's jurisdiction. This information will provide a reference point that will enable the Commission to effectively craft a more focused reporting requirement should it appear that a price disparity may again resurface in the California market and such a reporting requirement is needed. More importantly, it provides us useful information for our current effort to comprehensively revise all of our reporting requirements to reflect the present state of the energy markets.

Pat Wood, III,
Chairman.

Nora Mead Brownell,
Commissioner.

[FR Doc. 02–2818 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

[5] Platt's Gas Daily Price Guide defines the contract index price as the weighted average cost of gas based on volume and prices for baseload deals done within the last five working days of the month.

[6] In September the California Regional Average was $2.58, while the National Average was $2.31. In November, the California Regional Average was $2.93, and the National Average was $3.08.

[7] Indicated Shippers consists of Aera Energy LLC, Amoco Production Company, BP Energy, Burlington Resources Oil & Gas Company, Conoco Inc., Coral Energy Resources LP, Occidental Energy Marketing Inc., and Texaco Natural Gas Inc.

[8] Indicated Shippers also asserted that compliance required each company to expend approximately 15 hours per month, and this burden should not be imposed when the reason for the reporting requirement no longer existed.

[9] Dynegy Marketing and Trade filed comments in support of the petition.

[10] Protest at 3.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7138–2]

Equipment Containing Ozone Depleting Substances at Industrial Bakeries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Bakery Partnership Program and response to comments.

SUMMARY: The Environmental Protection Agency announces a unique voluntary Partnership Program for the baking industry. Commercial bakeries use large quantities of chlorofluorocarbons and other chemicals that contribute to depletion of the ozone layer in industrial process refrigeration appliances. Failure to comply with the stringent leak detection and repair requirements under 40 CFR part 82 of the regulations implementing Title VI of

the Clean Air Act can result in the release of tens of thousands of pounds of ozone-depleting chemicals to the atmosphere, and expose companies to enforcement liability.

Accordingly, EPA is offering incentives for those commercial bakeries that agree to reduce or eliminate leaks of ozone-depleting substances (ODS) used in refrigeration equipment. Companies that elect to participate agree to audit certain appliances, comply with leak detection and repair requirements, and phaseout Class I industrial process refrigeration appliances and thus qualify for reduced penalties and a waiver of civil liability for past violations. Penalties are reduced even further (in some cases eliminated) for companies that replace existing refrigeration units with systems that use non-ozone depleting chemicals.

The terms of the agreement allow companies a high degree of choice in designing the most cost-effective compliance strategy and considering whether to switch to non-ODS systems. EPA encourages companies to take advantage of this voluntary partnership, which offers an economical way to protect the atmosphere and assure compliance with the Clean Air Act.

This announcement indicates how EPA expects to exercise its enforcement discretion in settling potential past violations of 40 CFR part 82 with companies that elect to participate, and which agree to meet certain conditions. It is designed to help companies assess their liabilities and determine whether it is reasonable to audit and correct violations in return for reduced penalties and a waiver of past civil liability. The use of the terms ''must'' and ''shall'' establish presumptions as to the terms and conditions and EPA's response. As always, EPA reserves the right to exercise its discretion differently if presented with unusual or compelling circumstances. This notice establishes no new rights or obligations on behalf of EPA or any other party, except to the extent specific terms are agreed to in administrative orders on consent.

On December 10, 2001, the Environmental Protection Agency [EPA] published a proposed voluntary program for the baking industry and sought comments. The comment period has closed and comments have been received. The proposed Bakery Partnership Program has been revised in several ways based on the helpful comments. Some comments have been editorial in nature, providing clarifying language which have been adopted. Others have been more substantive, most of which have been incorporated into this final announcement.

The most important change is that EPA agrees with the comment that the starting date for the program should be moved forward from March 15, 2002 to April 26, 2002. In addition, EPA agrees with the comment that an alternative dispute resolution mechanism should be available if the informal attempts to resolve disagreements are not successful, and believes that this mechanism is the most appropriate means to resolve those few factual disputes that may arise. EPA also agrees that Class I units should have the option of shutting down these units rather than converting them.

Participation in the partnership program is purely voluntary, and this is not a rule, but it does combine the advantages of predictability and reduced penalties with incentives to move away from the use of ozone depleting substances (ODS). Participating companies will be asked to agree to phaseout use of the more hazardous Class I ODS by July 15, 2003, reflecting the fact that use of these substances is being rapidly phased out under existing rules. Bakeries that have installed non-ODS systems by April 26, 2002, can avoid all penalties under this agreement. Bakeries that install non-ODS systems after that date but no later than July 15, 2004 (unless an extension is granted) are limited to penalties of $10,000 per appliance. All other appliances that do not install non-ODS systems must pay a per pound penalty for any leaks that cross a high threshold, but again, this per pound penalty can be avoided by conversion to non-ODS systems. Companies already under national investigation for violations are not eligible to participate in this program.

DATES: No more comments are being solicited. Key dates in the program are listed below.

ADDRESSES: Comments and other notices that were or may be received may be reviewed by the public at Bakery Partnership Program, the Docket Clerk, Enforcement and Compliance Docket and Information Center (Mail Code 2201A), Docket Number EC–2001–007, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Other notices under this Bakery Partnership Program may be sent electronically to: *docket.oeca@epa.gov.* Attach electronic notices as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number, EC–2001–007 on your document. Notices may also be faxed to (202) 501–1011. Notices may be mailed or delivered in person to Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, Ariel Rios Building, Room 4033, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Persons interested in reviewing this docket may do so by calling (202) 564–2614 or (202) 564–2119, with the understanding that confidential business information will not be released to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Garlow, Air Enforcement Division (2242A), US EPA, 1200 Pennsylvania Ave NW., Washington, DC 20460, telephone 202–564–1088.

SUPPLEMENTARY INFORMATION:

Many industries, including most industrial bakeries, use ozone depleting substances [ODS], such as CFCs and hydrochlorofluorocarbons [HCFCs], to cool their products. Like other industrial sources, most industrial bakeries have industrial process refrigeration appliances that are subject to 40 CFR part 82, subpart F. The equipment that produces the product contains CFCs or other ozone depleting substances in jackets around the product. The equipment may sometimes leak these coolants in sizeable quantities into the air, but not into the product. If certain leak rates are exceeded, the company may be required to retrofit or retire the equipment.

EPA has concluded two large industrial process refrigeration enforcement cases, one of which involved a company with bakeries in several states. In both cases, the companies voluntarily chose to replace their industrial process refrigeration appliances with equipment designed to prevent pollution. The ozone depleting coolant was replaced by a cooling system that uses a secondary loop containing a cooling solution, glycol, that is not an ozone depleting substance. Although the primary loop of the refrigeration system may still contain some ozone depleting substances, the quantity is greatly reduced, and the ODS refrigerant is located where vibration and the potential for leaks is greatly reduced. The EPA wants to encourage all companies with industrial process refrigeration appliances that may be leaking to consider a similar pollution prevention approach to ensuring their compliance with the refrigerant recycling and emissions reduction regulations found at 40 CFR part 82, subpart F.

EPA is inviting the baking industry to participate in a voluntary program to address these potential violations. The

program offers an expedited way for companies to correct past violations and prevent future ones, in return for a release from past liabilities and reduced penalties. The largest trade association representing bakeries has accepted this invitation on behalf of its members. The total number of industrial bakeries is not exactly known yet, but it is believed that there may be over 1000 bakeries in the United States. Each bakery will likely have one or more industrial process refrigeration appliances that are subject to the regulations, such as mixers or chillers, at each bakery. Many of these industrial process refrigeration appliances have already been converted to non-ODS, pollution prevention equipment.

In the interests of promoting fast, efficient and widespread emission reductions, and better compliance with the regulatory structure, EPA intends to offer and enter into agreements with baking companies providing that they:

- Audit their facilities;
- Identify problem areas;
- Pay a greatly reduced penalty, and propose solutions that will protect the environment; and,
- Ensure greater compliance with the refrigerant recycling and emissions reduction regulations found at 40 CFR part 82, subpart F.

EPA's proposal offers clear and consistent terms to reduce uncertainty and eliminate the need for extended, individualized negotiations. Presented here are the basic elements, illustrations and a chronology of key steps that EPA and participants will be expected to complete. The basic elements of the program are as follows:

- *Notice to EPA.* Bakeries not already the subject of a national enforcement investigation or action, and which had or have industrial process refrigeration appliances containing 50 pounds or more of ODS refrigerants, are eligible to participate. Companies intending to participate should notify EPA by April 26, 2002, and as soon thereafter as possible, but no later than April 30, 2002, submit a signed Bakery Partnership Agreement to EPA. If some of the industrial process refrigeration appliances have been converted to non-ODS systems prior to April 26, 2002, a count of these appliances should also be provided. If, during the audit, a more accurate tally is obtained, an updated notice may be submitted at that time. Annex A contains a sample notice of intent to participate, which can be updated with the number of appliances to be audited by April 30, 2002. It can be sent by electronic mail or postal mail, but electronic mail or e-mail is preferred.
- *Annualized leak rate.* For the purposes of this Partnership Agreement, the annualized leak rate shall be calculated for every instance in which refrigerant was added to the appliance. The leak rate shall be calculated by the formula agreed upon by EPA in its publication, Compliance Guidance for Industrial Process Refrigeration Leak Repair Regulations under Section 608 of the Clean Air Act.
- *Audit.* Participating companies must audit up to June 15, 2003, i.e., assess the compliance status of all their industrial process refrigeration appliances and facilities. They must then report to EPA a summary of their findings, by July 15, 2003. If a company complies with the entire program, EPA intends to grant a release from civil liability for the matters identified and corrected, so long as reduced penalties are paid as described below. However, if violative conduct is not identified and corrected, EPA is not granting any release from civil liability for such problems. Good faith participants in this Partnership Program will receive a release for the period of time prior to September 30, 2000, even though this period may not have been audited. For example, if a facility has installed non-ODS technology on any of their appliances prior to the April 26, 2002 start date for this Partnership Program, such an appliance need not be audited, and a complete release from civil liabilities and penalties will be granted for such appliances. By non-ODS systems, EPA means systems that contain no ODS at all [*e.g.* HFC systems or ammonia systems], or no ODS in the secondary loop, but may contain an ODS in the primary loop. Typically, the ODS in the primary loop [compressor] is a much smaller volume, and is not subjected to the vibration in the process areas that may cause greater leaks. If the primary loop contains less than 50 pounds of ODS, as is frequently the case, then the appliance is exempt from the leak repair regulations. It is still subject, however, to other requirements such as the ''no venting'' requirement of 40 CFR 82.154(a).
- *Class I appliances.* All Class I appliances must be audited and converted either to a non-ODS system, or to a system using an ODS with an ozone depleting potential [ODP] of less than 0.1, or shut down (permanently taken out of service). Class I appliances are those containing Class I controlled substances, listed in appendix A to subpart A of 40 CFR part 82, and include CFC refrigerants (*e.g.,* R–12). Leaks from these Class I appliances are more damaging to the Earth's ozone layer than an equivalent amount of leakage from Class II appliances. The phaseout of the production of CFCs was completed as of December 31, 1995. Since the availability of CFCs will continue to decrease over time, EPA believes that this is a good time to switch to a less ozone-depleting technology. EPA estimates that the vast majority of appliances in this industry have already switched from using Class I ODS to either Class II or non-ODS systems. Participating companies must identify their Class I appliances and submit a plan for shutdown or change/conversion to either the Class II ODS with an ODP of 0.1 or less, such as R–22, or to a non-ODS system. The audits must be completed and plans must be submitted to EPA by July 15, 2002. An Administrative Order on Consent [AOC] will incorporate a company pledge to complete the audits of Class II appliances and to submit plans, if needed, for those appliances by July 15, 2003 and pay penalties as specified in the agreement. EPA expects the plans for Class I appliances to be fully implemented by July 15, 2003, but may grant additional time in exceptional circumstances pursuant to 40 CFR 82.156(i)(7).
- *Class II appliances.* All Class II appliances must be audited by June 15, 2003. Class II appliances are those containing Class II controlled substances, listed in appendix B to subpart A of 40 CFR part 82 (including all HCFC refrigerants, such as R–22). If any of these appliances are being changed/converted to non-ODS systems, then plans to accomplish this must be submitted by July 15, 2003 as agreed to in the July 2002 AOC.
- *CAFO.* EPA will issue to participating companies, pursuant to the authority of Section 113(d) of the Clean Air Act, Compliance Agreement Final Orders [CAFOs] that reflect the audit findings, implementation plans and schedule of corrections, any reduced penalties that must be paid, and a release from civil liability conditioned on completion of the implementation plans and corrections. EPA will issue CAFOs at the completion of all audits in July of 2003. If a company has only Class I appliances, EPA will issue the CAFO in July of 2002. Companies must also commit to compliance with all regulations.
- *Plan Implementation.* By July 15, 2003 for Class I appliances and by July 15, 2004 for Class II appliances, all plans for equipment changes/conversions should be completely implemented, unless extensions are granted pursuant to 40 CFR 82.156(i)(7).
- *Program Completion.* By July 15, 2004 or such later date when all

conversions are completed, the participating company will notify EPA and EPA will respond with a confirmation letter acknowledging the completion of the Bakery Partnership Program.

Penalties

• *Per appliance penalty.* A penalty of $10,000 shall be paid for each ODS containing appliance, regardless of whether violations are identified or not, except that no penalties are due for any appliance converted to a non-ODS system before April 26, 2002. No bakery facility must pay more than $50,000 in these penalties. This penalty will be paid with other penalties no later than 30 days after receipt of the CAFO.

• *Per pound penalties.* Additional ''per pound'' penalties for all appliance leaks discovered during the audit, occurring after a 35% annualized leak rate, must be calculated on a 12-month basis, beginning when the auditing period starts, *i.e.,* September 30, 2000. At the end of the 12-month period following a 35% annualized leak rate, per pound penalty calculations cease, unless a subsequent 35% annualized leak rate is discovered, in which case another 12 month period of calculation begins. Per pound penalty calculations end June 15, 2003.

• *No per pound penalties for replacement with non-ODS system.* Switching to a non-ODS system is encouraged. If a participating company agrees to replace an ODS system with a non-ODS system in an appliance, no ''per pound'' penalties need be paid for that appliance. If a company is facing high per pound penalties for a particular appliance but has decided that it does not make technical or economic sense for the company to convert that particular appliance to a non-ODS system, it may instead substitute another appliance[s] and still avoid the per pound penalties for the first appliance. The first appliance, however, must still be brought into full compliance. This ''bubbled compliance'' concept would allow a company to substitute the first appliance with another appliance or appliances that have 120% of the full charge of the appliance that will not be changed/converted to a non-ODS system. For example, if a 1000 pound appliance has very high per pound penalties that the company wishes to avoid, it may avoid those penalties either by converting this appliance to a non-ODS system, or by converting one or more other ODS containing appliances [that were not already required to convert to non-ODS systems] that have a total charge of at least 1200 pounds. This could be one other appliance with a full charge of 1200 pounds, or two appliances of 600 pounds each, or some other combination of appliances that total at least 1200 pounds of refrigerant. If the two 600 pound appliances in this example had per pound penalties of their own, those penalties would still be due, unless some other appliance or appliances in turn were converted to non-ODS systems in their stead, at the 1.2 to 1 ratio, as described above.

• *Start-up period.* No leaks will be counted as part of the per pound calculation for the period 60 days after a new installation or after an appliance is changed/converted to a non-ODS or lower than 0.1 ODP system, considered as a ''start up'' period.

• *Per pound amounts.* Per pound penalties will be calculated per appliance as follows: $20 per pound up to 500 pounds, $30 per pound for 501–1000 pounds and $40 per pound for the pounds over 1000, during each 12 month period after a 35% annualized leak rate is identified.

In summary, to participate in the Partnership Program, all sources must achieve and maintain full compliance with the refrigerant recycling and emissions reduction regulations found at 40 CFR part 82, subpart F. In addition, appliances using Class I substances must be audited and changed/converted. Appliances using Class II substances must be audited. Owners of Class I and II appliances may elect to convert to non-ODS systems to avoid paying fees for higher leaks. Each company will sign an Administrative Order on Consent [AOC] on or before July 15, 2002 and sign a Consent Agreement Final Order [CAFO] on or before July 15, 2003, which will specify a conditional waiver of liability. These are the main points of interest in this Partnership Agreement. There are some other minor details that are mentioned in the Partnership Agreement and the other Annexes, which should be self-explanatory. Other approaches to achieving the objectives of this program were considered by EPA and the industry representatives, but this approach was chosen as being the best from the point of view of administrative ease of implementation and environmental improvement.

Here Is an Example of What a Participating Company May Encounter During Participation in This Partnership Agreement

If a company is eligible and wants to participate, it should send a notice to EPA by April 26, 2002, identifying the company and its facilities. If this company has five bakeries and five appliances in each bakery, for a total of 25 appliances, seven of which have been converted to a non-ODS system prior to April 26, 2002, then there will be a $10,000 penalty per appliance for the 18 ODS containing appliances. This company will, however, get a release from civil liability for all 25 appliances for problems identified and corrected. The company is best advised to pay particular attention to their Class I appliances, if any, as audits must be conducted and a decision on these appliances must be made by July 15, 2002. If there are four Class I appliances, these should be audited first to determine what per pound ''penalties'' may be due for these appliances. If the per pound penalties determined from this audit indicate that a large per pound penalty may be due for several of these appliances, then this may be persuasive in deciding to convert these appliances to a non-ODS system in order to avoid the per pound penalties. If, instead, the company chooses to convert some or all of the Class I appliances to a Class II ODS refrigerant with an ODP of less than 0.1, rather than a non-ODS system, then the per pound penalties will still be due and payable by 30 days after receipt of the CAFO, which should be shortly after July 2003. Auditing and calculation of per pound penalties should continue through June 15, 2003 to ensure continued compliance and lowered emissions.

By July 15, 2002, the company must prepare a plan and submit this plan to EPA, indicating which of the appliances are the Class I appliances, and what changes or conversions the company pledges to make to them, with a schedule for the work anticipated. The company should submit, along with the plans, the auditing summaries for the Class I appliances [see the sample below]. EPA will incorporate the plans for these four Class I appliances, along with the company's pledge to continue auditing the other appliances and to prepare and submit plans for them within a year in an Administrative Order on Consent [AOC], which should be signed by the company and then by EPA. EPA will return a copy of the signed AOC to the company.

For the other Class II appliances, a similar audit of compliance should begin, covering the period from September 30, 2000 until June 15, 2003. Per pound penalties, if any, should be calculated for these appliances. As with the Class I appliances, if the company wishes to avoid paying these per pound penalties, it may do so by agreeing to convert the Class II systems to non-ODS systems. The company should make that decision and submit plans, if any, for

such conversions to EPA by July 15, 2003. These plans will be incorporated in the CAFO. EPA expects that these plans will be implemented by July 15, 2004, with the possibility of extensions if additional time is needed.

When calculating per pound penalties, this company should look at each appliance and calculate its per pound penalties, if any. If, for example, the first Class I appliance had a 50% annualized leak rate in October 2000 and thereafter in the next 12 months had small and large leaks totaling 1500 pounds, then the per pound penalty for these 1500 pounds would be calculated as follows: $20 per pound for the first 500 pounds or $10,000; $30 per pound for pounds 501–1000 or $15,000; and $40 per pound for pounds 1001–1500 or $20,000. Thus, the total for this 12-month block period would be $45,000 [$10,000 + $15,000 + $20,000]. If a large leak rate was discovered in December 2000, that does not start another 12-month block period up to December 2001, as this is a leak inside the October 2000–2001 12-month period. If after October 2001 this same appliance had another annualized leak greater than 35%, for example, a 90% annualized leak rate, then leaks after that point would be calculated as above and added to the $45,000 total. This process should continue through June 15, 2003 and a total per pound penalty should be calculated for this appliance, and for all other appliances. The company then has the option of paying this per pound penalty or avoiding it by submitting a plan for converting to a non-ODS system. EPA hopes that this financial incentive will cause more companies to choose conversion to non-ODS systems while still giving the company the flexibility to decide which option is best for it.

On July 15, 2003, the company should submit audit summaries and plans for any equipment changes/conversions that it intends to make to the Class II appliances. It should also be prepared to pay any penalties that may be due shortly after the CAFO, signed by both parties, is received by the company. EPA will also prepare a CAFO with the release from civil liability for all matters that the company has identified as being a potential problem and corrected. This listing of problems discovered by the audit can be included in the plan for equipment changes/conversions or can be listed separately. It can include matters such as technician certification, better recordkeeping systems, equipment certifications, etc. Problem areas, or violations, not so identified and corrected will not receive a release from liability, so it is very important to identify all these problem areas and correct all these problems. EPA may inspect and request information to ensure that the audits are being conducted fully and properly.

By July 15, 2004, the company will have completed the equipment changes/conversions, unless more time is needed, and corrected other problems identified in the audit. The company will send a letter certifying that all these matters have been attended to, and EPA will reply accepting this certification and thanking the company for participating. This is the end of the program for this company.

Key Dates

September 30, 2000

Begins period of compliance audit and monthly measurement of annual leak rates from industrial process refrigeration appliances for all partnership participants.

''Look-back'' period gives credit to companies that have taken steps to improve leak management.

April 26, 2002

Notice of intent to participate in Partnership Program is due. Name and address of facilities. All penalties waived for appliances that have been converted to non-ODSs by April 26, 2002.

Program open to all companies not subject of national enforcement investigation.

April 30, 2002

Companies must identify charging capacity and location of all appliances using over 50 lbs of Class I or Class II ODS, and those which have converted to use of non-ODS refrigerant in primary loop by April 26, 2002.

Companies commit, by signing the Bakery Partnership Agreement, to complete audit and submit implementation plans by July 15, 2002, to convert Class I appliances to at least Class II, and to pay stipulated penalties or switch to non-ODS refrigeration appliances by July 15, 2003 (unless extension granted).

July 15, 2002

EPA issues administrative order/information request on consent [AOC] to participating companies reflecting company's commitment to complete audit by June 15, 2003 and submit implementation plans for Class II appliances by July 15, 2003.

Companies that have switched all appliances to non-ODS by April 26, 2002 may receive compliance agreement/final order (CAFO) discharging all liabilities for past violations without payment of penalty.

June 15, 2003

Audits are completed.

July 15, 2003

Bakeries submit audit results and final implementation plans.

Bakeries pay stipulated penalties for the 12 months following any single month in which annualized leak rate exceeds 35%, but:

—Bakeries can avoid stipulated penalties if implementation plan commits to replace leaking appliance with non-ODS system no later than July 15, 2004 (unless program grants extension).

—Bakeries can ''bubble'' by substituting ODS conversion at another appliance (must have charge 120% greater than leaking appliance).

All Class I ODS appliances must convert to at least Class II ODS appliances by July 15, 2003, unless program grants extension.

EPA issues compliance agreement/final order [CAFO] reflecting conversion to Class II or non-ODS systems, and payment of stipulated penalties.

July 15, 2004

Bakeries must complete conversion to non-ODS systems reflected in implementation plans, unless program has granted an extension.

Key Definitions

Annualized leak rate—(pounds of refrigerant added/pounds of full charge) × (365 days/# days since refrigerant last added) x 100%.

Appliance—industrial process refrigeration device containing 50 pounds or more of ODS refrigerants.

Class I—an ODS listed in appendix A to 40 CFR part 82, subpart A.

Class II—an ODS listed in appendix B to 40 CFR part 82, subpart A.

ODS—ozone depleting substance.

Facility—a discrete parcel of real property or such a parcel improved by Participating Company's building, structure, factory, plant, premises, or other thing, related to Participating Company's wholesale baking/bakery business, and containing at least one appliance as defined in this agreement.

Non-ODS system—systems that contain no ODS at all [e.g. HFC systems or ammonia systems] or no ODS in the secondary loop, but may contain an ODS in the primary loop.

Additional Sources of General Information

To find out more about compliance with Title VI of the Clean Air Act,

access the EPA's web site at *www.epa.gov/ozone*. The EPA and the Chemical Manufacturer's Association (CMA) have developed a guidance document entitled Compliance Guidance For Industrial Process Refrigeration Leak Repair Regulations Under Section 608 of the Clean Air Act [see *http://www.epa.gov/ozone/title6/608/compguid/compguid.html*] that provides greater detail than the discussion on the EPA web site. The guidance document is intended for those persons who are responsible for complying with the requirements. The guidance should not be used to replace the actual regulations published in the **Federal Register** on August 8, 1995 (60 FR 40420) [see *http://www.epa.gov/spdpublc/title6/608/leakfrm.txt*] ; however, it can act as a supplement to explain the requirements. Reliance on this guidance alone will likely not result in compliance. Another useful web site is one pertaining to general leak repair: *http://www.epa.gov/ozone/title6/608/leak.html*. EPA has also made available a sample inspector's checklist to the trade association, which is available online at *http://www.epa.gov/ozone/title6/608/compguid/compguid.html* or *http://www.epa.gov/oeca/ore/aed/bakery/index.html* or by contacting the Ozone Hotline at 800–296–1996.

Conclusion

EPA believes that the above-described program is the best, most cost-effective way to achieve immediate environmental improvement and achieve significant progress in resolving the myriad compliance concerns that may be present in this industry. Its terms, conditions and protections will be available only to those companies that are eligible, elect to participate, and abide by the conditions of the program.

Dated: January 30, 2002.

Eric Schaeffer,

Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance.

Attachments

Partnership Agreement with Annexes: Sample Identification of Facilities due April 26, 2002; Sample AOC; Sample CAFO.

Ozone-Depleting Substance Emission Reduction Bakery Partnership Agreement

The United States Environmental Protection Agency (''EPA'') and _____ (''Participating Company''), the parties to this agreement, desire to enter into and be bound by the terms of this Ozone-Depleting Substance (ODS) Emission Reduction Bakery Partnership Agreement (''Agreement'').

Introduction

The Agreement specifies an audit, self-disclosure and corrective action program, which shall result in a release from liability for the conditions that are identified and corrected. This Agreement incorporates the features of the Bakery Partnership Program as detailed in the **Federal Register** notice on this topic, published February 6, 2002.

Applicability

1. This Partnership Agreement shall apply to and be binding upon both EPA and Participating Company, including but not limited to its officers, directors, agents, servants, employees, successors, and assigns. Participating Company shall give notice of this Agreement to any successor in interest prior to the transfer of any ownership interest in any machinery subject to Title VI, Clean Air Act (42 U.S.C. 7671 et. seq.) (the ''Act'') and its incorporating regulations, 40 CFR Part 82 (''Regulations''). EPA, in cooperation with baking industry trade officials and trade journals, notified the baking industry of this program.

2. In order for a Participating Company to be eligible to participate in this Agreement, the Participating Company must be a wholesale bakery not currently under corporate-wide investigation by EPA for a violation of Title VI of the Clean Air Act.

Definitions

3. ''Participating Company'' means any eligible company and its wholly- or partially-owned subsidiaries, including all their bakeries, that agree to abide by the conditions of this Agreement.

4. ''Corporate-wide investigation'' means an investigation that requires information disclosure from either (1) five or more facilities owned by a company that seeks to be a Participating Company or (2) all facilities that are subject to Title VI and owned by a company that seeks to be a Participating Company.

5. ''Non-ODS system'' means pollution prevention technology recommended to and agreed upon by EPA that supplants standard ODS technology, including but not limited to glycol, chilled water, or other non-ODS coolant in a secondary loop system or totally non-ODS systems, such as HFCs or ammonia.

6. ''Facility'' means a discrete parcel of real property or such a parcel improved by Participating Company's building, structure, factory, plant, premises, or other thing, related to Participating Company's baking/bakery business, containing at least one appliance.

7. ''Retrofit'' means to install new or modified parts in an appliance that were not provided as a part of the originally manufactured equipment. The retrofitted appliance must use a refrigerant with an ozone depleting potential that is lower than that which was used before the retrofit.

8. ''Retire'' means to withdraw an appliance from service and replace it with an appliance containing a refrigerant with an ozone depleting potential that is lower than that which was used in the retired appliance.

9. ''Appliance'' means an industrial process refrigeration appliance containing 50 pounds of more of ODS refrigerant that is housed within the facility.

10. ''ODS'' means Ozone Depleting Substance used as a refrigerant.

Initial Notice and Submission of Partnership Agreement

11. Participating Company represents that:

a. It notified EPA of Participating Company's intent to participate in the Ozone Depleting Substance Emission Reduction Bakery Partnership Program by 5:00 PM Eastern Time, April 26, 2002, by identifying the facilities owned by the Participating Company.

b. It submitted this executed Partnership Agreement by April 30, 2002. Annex A, submitted with this Agreement, or updated shortly thereafter, is a true, accurate, and complete identification of:

i. Name of the Participating Company; and

ii. Name, street address, ZIP code, and city of each facility at which the Participating Company believes any subject appliance is presently located; and

iii. State in which the facility is located; and

iv. EPA region in which the facility is located; and

v. The number or best estimate of the number of appliances with more than 50 pounds of refrigerant when fully charged, as determined by calculation, weight, manufacturer supplied information, or an established range as described in 40 CFR 82.152; and

vi. The number or best estimate of the number of non-ODS industrial process refrigeration appliances.

c. Participating Company certifies that it is eligible to be a participating company, that is, it meets the qualifications specified in paragraphs 2 and 3.

d. Participating Company agrees to audit all its facilities as specified below and disclose the summary results of such audits to EPA and correct any and all violations in accordance with this Agreement.

e. Participating Company agrees to toll the applicable statute of limitations during the life of the Agreement as it may apply to the violations that may have occurred within the time period five years prior to the signing of this Agreement.

f. In the event that ownership of a facility subject to this Agreement is (or was) transferred during the period covered by the Agreement, the Agreement shall apply to the former owner for the period during which the facility was owned by the former owner, provided all applicable terms and conditions are otherwise satisfied. The Agreement shall also apply prospectively, according to its terms, to the party to whom the facility is transferred.

Audit Conduct, Report and Plans

12. Participating Company agrees to assist EPA with EPA's review of company's audit results. Such assistance may take the form of responding to telephone calls for clarification and other reasonable informal inquiries, without the need for formal information demands.

13. Participating Company agrees to identify all facilities with applicable industrial process refrigeration appliances.

14. Participating Company agrees to undertake a reasonable investigation, and to

the extent it can reasonably assemble such information, report to EPA for each applicable appliance, dates of service, beginning September 30, 2000 and continuing until June 15, 2003; pounds of refrigerant added; days since the last addition of refrigerant; percent annualized leak rate; and any associated comments by using a spreadsheet such as the one contained in Annex C. To the extent that a change in system components, such as a new compressor, may have altered the full charge, or where other special conditions arise, these conditions should be noted in the comments section.

15. Participating Company agrees to complete audits of all industrial process refrigeration appliances at each facility, except for those appliances converted to a non-ODS system prior to April 26, 2002, and notify EPA with a summary of the audit results as specified in the preceding paragraph and corrective actions planned, as necessary, by July 15, 2002 for Class I appliances and by July 15, 2003 for Class II appliances. Participating Company may, at its sole discretion, include commercial and comfort cooling appliances subject to 40 CFR 82.156(i) in the audit for compliance and receive a release from liability for problems identified and corrected.

16. Participating Company agrees to calculate the total per appliance and per pound penalties, if any, due and owing by July 15, 2003 in accordance with the method outlined in the **Federal Register** final announcement of the Bakery Partnership Program, and to submit this calculation to EPA.

17. Participating Company agrees to provide, in writing, by July 15, 2003, the steps that Participating Company will take to achieve continuous compliance with the requirements of 40 CFR Part 82. Such measures may include, but are not limited to, such things as training, record keeping, replacement, repair, installation of non-ODS systems. See Annex E for additional, required Compliance Plan elements. Participating Company agrees to implement this Plan.

Audit Compliance Program

18. For all Class I appliances Participating Company will complete an audit and submit plans for the retrofit of these appliances with an ODS having an ozone depleting potential of 0.1 or less or retirement/replacement with a non-ODS system. Plans for these Class I appliances must be submitted by July 15, 2002, with a schedule for the completion of these activities within one year, unless additional time is allowed pursuant to 40 CFR 82.156(i)(7). These plans will be incorporated in an Administrative Order on Consent [AOC]. See Annex B.

19. For Class II appliances, Participating Company will sign an Administrative Order on Consent agreeing to develop, within the next twelve months, plans, where needed, for the replacement of these Class II appliances with non-ODS systems.

20. If any appliance within a facility owned by Participating Company contains a refrigerant that is not an EPA-approved refrigerant for that particular end-use (such as R–409A use in an industrial process refrigeration appliance) or is not in compliance with use restrictions of an approved refrigerant, Participating Company must take immediate steps to properly recover said refrigerant from the appliance (in accordance with the Regulations) and replace it with an approved refrigerant, in accordance with any use restrictions. Recovered refrigerant must be sent to an EPA-certified refrigerant reclaimer for ultimate reclamation or disposal.

Certification of Complete Compliance

21. Participating Company shall sign and submit to EPA a Certification of Complete Compliance (Annex D) when all plans, retrofits and other steps necessary to ensure continuous compliance have been finalized.

Employee Participation

22. Participating Company shall provide a procedure for its employees to report violations or potential problems to the auditing team. Participating Company agrees to ensure that employees who disclose violations or potential violations to the auditing team under the Act and the Regulations are not subject to adverse job actions (including without limitation disciplinary action, denial of promotion, bonuses or pay) on the basis of such employee disclosing such violations or potential violations in accordance with company policies.

Participating Company Records Retention

23. Participating Company agrees to keep and retain on site or readily available any and all records from April 26, 1999 until two years after the conclusion of all obligations under this Agreement. Records for appliances that have been converted to non-ODS systems need not be retained for more than three years prior to the completion of the conversion to the non-ODS system. Such records shall be kept by both Participating Company and its employees, agents and any contractors working for Participating Company. All records are required to be retained for this period of time to facilitate review by EPA, should EPA choose to conduct such a review. Participating Company agrees to notify all employees, agents and contractors that any such record is not to be destroyed.

Penalties

24. A ''per applicance'' penalty of $10,000, with a cap of $50,000 per facility, shall be due and owing for each industrial process refrigeration appliance that does not qualify as a non-ODS system by April 26, 2002. A ''per pound'' penalty, as specified in the above-referenced Federal Register notice, shall be calculated for each appliance, unless equipment conversions to non-ODS systems eliminate this penalty.

25. The total penalty shall be paid within 30 days of receipt of the signed CAFO which should be shortly after July 2003.

Forbearance

26. EPA agrees to forbear on Part 82 civil enforcement activity against Participating Company during the course of this Agreement, provided that Participating Company is in compliance with this Agreement. EPA may, however, inspect and request information to ensure that the audits are being conducted fully and properly. EPA does not forbear or relinquish any right to access and inspection under this agreement.

27. Participating Company understands that any violations discovered by EPA subsequent to the completion of the audit or compliance efforts and/or the expiration of this Agreement are subject to standard regulatory enforcement. That is, nothing in this Agreement, other than the release from civil liability for problems/violations disclosed and corrected, is to the derogation of EPA's full enforcement and compliance authority at the conclusion of the Partnership.

28. If EPA believes that the Participating Company has miscategorized or mischaracterized any problem/violation under this Agreement, the Dispute Resolution section of this Agreement shall be utilized.

Release From Liability/CAFO

29. Participating Company understands and acknowledges that participation in the Program will not absolve Participating Company or its employees from any criminal liability. In considering whether to refer a matter for criminal prosecution, EPA will be guided by its Self-Audit Policy. In general, it is EPA's policy to refer matters for criminal prosecution only in cases involving a high degree of harm and/or misconduct.

30. EPA agrees to execute an administrative Consent Agreement Final Order conditionally releasing Participating Company from civil liability for any and all violations or potential violations that have been self-disclosed and corrected, on condition that Participating Company pays penalties that may be due and completes the plans with compliance schedules that have been submitted and agreed upon by the Participating Company and the EPA. A complete release from civil liability will be granted for any appliance that is converted to a non-ODS system. Good faith participants in this Partnership Program will receive a civil release for the period of time prior to September 30, 2000, even though this period may not be audited.

31. EPA and Participating Company will execute an Administrative Compliance Order on Consent and CAFO confirming the plans and penalties agreed upon by the parties.

Publicity

32. Participating Company may publicize that it is partnering with the EPA in an effort to reduce ODS emissions.

33. Upon request by the Participating Company, EPA will recognize and acknowledge Participating Company's participation and assistance under the Program.

Access and Inspection

34. Without prior notice, any authorized representative of EPA (including a designated contractor), upon presentation of credentials at any of Participating Company's facilities, may enter such location(s) at reasonable times to determine compliance with this Agreement. Access under this clause is subject to the normal health and safety and

confidentiality requirements in effect at such facilities.

Dispute Resolution

35. Should the need arise, Participating Company agrees to first engage in informal dispute resolution with EPA's Air Enforcement Division/Regional staff concerning any determination made by EPA in its review of the program. Such informal dispute resolution will consist of negotiations between Participating Company and the designated attorney(s) and/or Division Director of the Air Enforcement Division at the address in paragraph 42. To exercise informal dispute resolution, Participating Company shall send a written notice to EPA outlining the nature of the dispute or disagreement and request informal negotiations to resolve the dispute. EPA will respond to such requests within 15 days. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when EPA responds, unless the parties agree otherwise in writing. Both parties will attempt to achieve a solution acceptable to all.

36. Should the Participating Company be dissatisfied with the results of the informal dispute resolution, the Participating Company may request that the dispute be negotiated with the assistance of a non-binding mediator, by notifying in writing the Director of the Air Enforcement Division and other members of the informal negotiations team. EPA will respond to such requests within 15 days. The costs of such mediation will be shared equally by the Participating Company and EPA. EPA may reject the request for mediation if costs are deemed unreasonable. A convenor will assist in the selection of a mutually acceptable neutral mediator. Mediation shall not extend beyond thirty (30) days from the date when the mediator first meets with the parties, unless the parties agree otherwise in writing.

37. It is anticipated that any disputes will be resolved by the process of negotiation outlined above. Participating Company agrees that resolution within EPA is the sole and final dispute resolution mechanism.

Effective Date

38. This Agreement shall become effective upon the date signed by the parties to this agreement (below).

Miscellaneous

39. Nothing in this Agreement will relieve the Participating Company of its obligation to comply with any other Clean Air Act provision, other environmental law, or applicable environmental regulations, either state or Federal.

40. Participating Company agrees to accept service from EPA by mail with respect to all matters relating to this Agreement at the address listed below (if different from the one listed in Annex A).

_____

_____

_____

_____

41. EPA agrees to accept service from Participating Company by mail with respect to all matters relating to this Agreement at the address listed below.

Electronically preferred: *docket.oeca@epa.gov* or Title VI Coordinator, Attention: Charlie Garlow, US EPA Air Enforcement Division, 1200 Pennsylvania Ave NW., Mail Code 2242A, Washington, DC 20460 202–564–1088.

Integration

42. This Agreement, and the Annexes and **Federal Register** notice incorporated by reference in this Agreement, represents the final form of the contract between EPA and Participating Company. No oral modifications to the Agreement will be binding upon either party.

Signatures

43. EPA and the Participating Company represent that they have examined this Agreement and the attached and incorporated Annexes and **Federal Register** notice and agree to the terms by signing and dating below.

44. Each person signing this Agreement represents that he or she is authorized to legally bind the party on whose behalf he or she is signing.

45. Agreed To:

By: _____

[Participating Company]

Date: _____

By: _____

US Environmental Protection Agency

Date: _____

Annex A Sample Identification of All Facilities Owned by Participating Company

Note: EPA's Regions are shown on a map at http://www.epa.gov/epahome/aboutepa.htm.

Participating company/facility name	Location, mailing address, city, zip	State	Region	No. of ODS-containing and non-ODS appliances, if known
Marvy Bread/Plant 4	123 Main St, Lodi 94588	CA	9	15 ODS, 5 non-ODS.

Annex B Sample Administrative Order on Consent

United States Environmental Protection Agency

In the Matter of: [Participating Company] Respondent. Bakery Partnership Program, Agreement Number_____, Findings and Order

Pursuant to Sections 113(a)(3) and 114 of the Clean Air Act (''CAA''), consistent with the Bakery Partnership Program identified above and entered into between the United States Environmental Protection Agency (''EPA'') and Respondent, and based upon available information, EPA hereby makes and issues the following Findings and Order, with the expressed consent of Respondent:

Findings

1. Respondent is a Participating Company under the above-identified Bakery Partnership Program.

2. EPA promulgated regulations for the control of Ozone Depleting Substances, appearing in 40 CFR Part 82, Subpart F.

3. Respondent owns or operates certain affected equipment under Part 82 that contains or contained Ozone Depleting Substances, at facilities identified in Attachment A attached hereto.

Order

4. Respondent shall retrofit or replace the referenced equipment as specified in Attachment A by the date(s) there indicated. Where additional time may be required to complete these actions, application to EPA shall be timely made pursuant to 40 CFR 82.156(i)(7).

5. Within 12 months of this Order, Respondent shall prepare and submit to EPA plans for the conversion of Class II appliances to non-ODS systems, for the appliances identified in Attachment B, attached hereto.

6. Consistent with the Bakery Partnership Agreement entered into between EPA and [the Participating Company], per appliance and per pound penalties shall be calculated and submitted to EPA by July 15, 2003.

7. Pursuant to Section 113(a) of the CAA, failure to comply with this Order may lead to a civil action to obtain compliance or an action for penalties.

Issued this _____ day of _____, 2003

_____

U.S. Environmental Protection Agency

8. [Participating Company] consents to the issuance of this Order and further agrees not to contest EPA's authority to issue this Order.

Signed this _____ day of _____, 2003

_____

For [Participating Company]

Annex C Leak Rate Calculation Sheet for each Appliance Sample

Beanie Bread/Plant 4. The Appliance Serial Number 456789 containing 350 pounds full charge of R–22.

The leak rate is calculated by dividing the number of pounds added by the full charge [here 350 pounds]. Then multiply that number by 365 days. Then divide that number by days since the last add. Multiply that number by 100 to express it as a percentage, if over 35%.

Date	Lbs added	Days since last add	Percent of leak rate	Comments
10/28/00	112	base		
2/20/01	60	115	54	
2/27/01	14	7		
5/31/01	30	93	33	
6/18/01	166	18	961	
12/3/01	100	168	62	
				Total pounds added since high leak rate = 310 pounds × $20 per pound = $6200, the ''per pound'' penalty.

Annex D Certification of Completion and Compliance

I certify, based on personal inspection, that correction of the violations/problems identified as a part of the Bakery Partnership Agreement with the United States Environmental Protection Agency, dated_____is complete.

I certify that _____, Participating Company, has corrected all violations, and training, recordkeeping, equipment replacement, and all other necessary and prudent measures have been taken to ensure complete compliance with Title VI, Clean Air Act (42 U.S.C. 7671 *et seq.*).

I certify that the following summary of the actions taken are true and complete:

_____

_____

_____

I certify that I am an officer of _____, Participating Company, and am duly authorized to sign and complete this Certification of Compliance on behalf of Participating Company.

_____

Name (print)

_____

Signature

_____

Date

Annex E Compliance Plan Required Elements—For Appliances Containing Greater Than 50 Pounds of a Class I or Class II Substance

A. Each Participating Company will have at least one employee in each facility responsible for ensuring compliance with the refrigerant Compliance Plan.

B. Only technicians certified in accordance with 40 CFR Part 82 will perform refrigerant-related service on refrigerant containing appliances.

C. Technicians will have available for use and use, as required, recycle/recovery equipment certified pursuant to 40 CFR 82.156.

D. Repairs to refrigerant-leaking appliances will be conducted within the time frames outline in 40 CFR 82.156.

E. Initial verification tests on industrial process equipment will be conducted following any refrigerant-related repairs.

F. Follow-up verification tests on industrial process equipment will be conducted within thirty days of any refrigerant-related repairs.

G. Leak rates will be calculated (a) when refrigerant is added to appliances containing greater than 50 pounds of a Class I or Class II substance and (b) when the follow-up verification test reveals an unsuccessful repair.

H. Procedures documenting what additional action will be taken as a result of a failed repair will be written.

I. Each Participating Company will maintain the following records in a single location at each facility:

1. An inventory of appliances containing greater than 50 pounds of a Class I or Class II substance and their refrigerant capacities.

2. A unique identification for each appliance containing greater than 50 pounds of a Class I or Class II substance.

3. Date the refrigerant-related service is performed on each appliance containing greater than 50 pounds of a Class I or Class II substance.

4. Type of refrigerant-related service performed on each appliance containing greater than 50 pounds of a Class I or Class II substance.

5. Amount and type of refrigerant added to each appliance containing greater than 50 pounds of a Class I or Class II substance.

6. Name of the technician performing work on each appliance containing greater than 50 pounds of a Class I or Class II substance.

7. A copy of the technician certification card for all technicians performing work.

8. Refrigerant purchase records.

9. A copy of the recycle/recovery equipment owner's certification.

J. Each participant will provide refresher training on the refrigerant compliance program annually for facility personnel responsible for oversight of maintenance and service of refrigerant-containing appliances.

Sample CAFO

United States Environmental Protection Agency, Washington, DC

In the Matter of: [Participating Company] Respondent. Docket No. CAA–HQ–2003–XXX, Consent Agreement and Final Order

I. Preliminary Statement

1. The United States Environmental Protection Agency (''EPA'') and [Participating Company] have entered into a voluntary Bakery Partnership Agreement, pursuant to which an audit of compliance status and self-correction program has been undertaken. It was further agreed by the parties that certain civil penalties would be paid pursuant to the administrative authority of Section 113(d) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(d).

2. This Consent Agreement and Final Order [CAFO] is issued pursuant to the authority of 40 CFR 22.13(b), 22.18(b)(2) and (3), which pertain to the quick resolution and settlement of matters without the filing of a complaint.

3. This Consent Agreement and Final Order resolves the liability for violations that may have been discovered pursuant to an audit of the Respondent's facilities regarding compliance with Title VI of the Clean Air Act, Stratospheric Ozone Protection, and more particularly 40 CFR Part 82, Subpart F, relating to recycling and emissions reductions from appliances containing ozone depleting substances.

II. Consent Agreement

4. As a result of the voluntary audit conducted pursuant to the Bakery Partnership Agreement, EPA and Respondent have agreed to resolve this matter by executing this Consent Agreement.

5. For the purpose of this proceeding, Respondent does not contest the jurisdiction of this tribunal, consents to the assessment of a civil penalty as specified below, and consents to implement the corrective action Plans and Other Conditions, attached hereto.

6. The execution of this Consent Agreement is not an admission of liability by Respondent, and Respondent neither admits nor denies any specific factual allegations contained herein. EPA alleges that one or more of the conditions contained in the attached Summary of Audit Findings constitutes a violation of 40 CFR part 82.

7. As a complete settlement for all conditions specified in the attached Summary of Audit Findings, Respondent hereby agrees to pay to the United States a civil penalty as specified in the attached Penalty Calculation. EPA agrees to conditionally release Respondent from civil liability for the conditions, and only those conditions, identified in the attached Summary of Audit Findings, except for those appliances that are identified as having been or being converted to non-ozone depleting substances, for which a complete release of civil liability is granted. This release is conditioned upon the satisfactory completion of the Plans and Other Conditions attached hereto, and the timely payment of the civil penalty. Good faith participants in this Partnership Program will receive a release for the period of time prior to September 30, 2000, even though this period may not be audited. The parties agree that the attached Summary of Audit Findings, Penalty Calculation and Plans and Other Conditions are incorporated herein by reference and made a part of this CAFO.

8. Respondent waives its right to request an adjudicatory hearing on any issue addressed in this Consent Agreement.

9. Respondent and EPA represent that they are duly authorized to execute this Consent Agreement and that the parties signing this Agreement on their behalf are duly authorized to bind Respondent and EPA to the terms of this Consent Agreement.

10. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

11. Respondent and EPA stipulate to issuance of the proposed Final Order below.

[Participating Company], Respondent

By _____

(Print name) _____

Title: _____

Dated: _____

U.S. Environmental Protection Agency, Complainant

By _____

Dated: _____

Headquarters EPA

III. Final Order

It is hereby ordered and *adjudged* as follows:

12. Respondent shall comply with all terms of the Consent Agreement.

13. For the reasons set forth above, Respondent is hereby assessed a penalty in the amount of $_____.

14. Respondent shall pay the assessed penalty no later than thirty (30) calendar days from the date a conformed copy of this Consent Agreement and Final Order (''CAFO'') is received by Respondent.

15. All payments under this CAFO shall be made by certified check or money order, payable to the United States Treasurer, mailed to: U.S. Environmental Protection Agency, (Washington D.C. Hearing Clerk), P.O. Box 360277, Pittsburgh, Pennsylvania 15251–6277.

A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall file a copy of the check and of the transmittal letter with the Headquarters Hearing Clerk.

16. Failure to pay the penalty assessed under this CAFO may subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), to collect any unpaid portion of the assessed penalty, together with interest, handling charges, enforcement expenses, including attorneys fees, and nonpayment penalties. In any such collection action, the validity, amount, and appropriateness of this order or the penalty assessed hereunder are not subject to review.

17. Pursuant to 42 U.S.C. 7413(d)(5) and 31 U.S.C. 3717, Respondent shall pay the following amounts:

a. *Interest.* Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. 6621(a)(2) from the date a conformed copy of this CAFO is received by Respondent; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the date a copy of this CAFO is received by Respondent.

b. *Attorney Fees, Collection Costs, Nonpayment Penalty.* Pursuant to 42 U.S.C. 7413(d)(5), should Respondent fail to pay on a timely basis the amount of the assessed penalty, Respondent shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

18. This document constitutes an ''enforcement response'' as that term is used in the CAA Penalty Policy for the purposes of determining Respondent's ''full compliance history'' as provided in Section 113(e) of the CAA, 42 U.S.C. 7413(e).

19. Each party shall bear its own costs, fees, and disbursements in this action.

20. The provisions of this CAFO shall be binding on Respondent, its officers, directors, employees, agents, servants, authorized representatives, successors and assigns.

It is so ordered.

Dated this _____ day of _____, 1999.

_____

Environmental Appeals Judge
Environmental Appeals Board
U.S. Environmental Protection Agency

Certificate of Service

I certify that the forgoing Consent Agreement and Final Order was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Eurika Durr, EAB Hearing Clerk, U.S. Environmental Protection Agency, Mail Code 1103B, 607 14th Street NW Suite 500, Washington, D.C. 20005.

Copy by certified mail, return receipt requested:

_____, Registered Agent for
[Participating Company]
[Participating Company's address]

Dated: _____

_____

U.S. EPA

Sample Summary of Findings

Annex C Leak Rate Calculation Sheet for each Appliance Sample

Marvy Bread/Plant 4. The Appliance Serial Number 456789 containing 350 pounds full charge of R–22.

The leak rate is calculated by dividing the number of pounds added by the full charge [here 350 pounds]. Then multiply that number by 365 days. Then divide that number by days since the last add. Multiply that number by 100 to express it as a percentage, if over 35%.

Date	Lbs added	Days since last add	Percent of leak rate	Comments
10/28/00	112	base		
2/20/01	60	115	54	
2/27/01	14	7		
5/31/01	30	93	33	
6/18/01	166	18	961	
12/3/01	100	168	62	
				Total pounds added since high leak rate = 310 pounds × $20 per pound = $6200, the ''per pound'' penalty.

Technician Certifications for two technicians, Joe Jones and Sam Spade, at Plant 4 were missing. Those certifications are now on file.

Service records before September 30, 2000 were missing.

Sample Penalty Calculation

Marvy Bread Plant 4 The Appliance Serial Number 456789 containing 350 pounds full charge of R–22.

Per pound penalty: $6,200—waived as this machine is being converted to non-ODS.

Per appliance penalty: 10,000.

Total Penalty: $10,000.

Sample Plans and Other Conditions

Beanie Bread agrees to convert the Bun Mixer at Plant 4, Serial Number 45678, to a non-ODS system.

Completion date: July 30, 2004.

Beanie Bread agrees to develop a computer based recordkeeping program to ensure that complete and accurate records are retained as required.

Completion date: September 30, 2003.

[FR Doc. 02–2837 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7138–3]

Meeting on Development of a Metals Assessment Framework

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA assesses the hazard and risk of metals and metal compounds in implementing its various legislative mandates. Public comments on recent Agency actions and examination of lead's bioaccumulation potential by an ad hoc technical panel of the Agency's Risk Assessment Forum have demonstrated the need for the development of comprehensive, cross-agency guidance for assessing the hazards and risks of metal and metal compounds that could be the basis for future Agency actions. The goal of this cross-agency guidance will be to articulate a consistent approach for assessing the hazards and risks of metals and metal compounds, based on application of all available data to a uniform and expanded characterization framework. This guidance will be applied to assessments of human health and ecological risk, ranging from site-specific situations to national assessments carried out for the purposes of priority setting, information collection, and/or air and water quality standards setting. This could involve reviewing a broad range of physico-chemical properties and may suggest more of a case-by-case (*i.e.,* metal by metal) approach to evaluating metals and metal compounds.

Under the auspices of the Agency's Science Policy Council, the Agency is embarking on the development of this assessment framework for metals. The first step in the process is formulation of an Action Plan that will identify key scientific issues specific to metals and metal compounds that need to be addressed by the framework, potential approaches to consider for inclusion in the framework including models and methods, an outline of the framework, and the necessary steps to complete the framework.

EPA is announcing a public meeting to provide an opportunity for interested parties to provide the Agency with information relevant to development of the framework. Eastern Research Group, Inc., (ERG) an EPA contractor, is organizing and convening the meeting. EPA is particularly interested in the public's perspectives on the following:

a. What organizing principles should the framework follow?

b. What scientific issues should the framework address?

c. What methods and models should be considered for inclusion in the framework?

d. What specific steps should be taken to further involve the public and the scientific community in the development of the framework?

The purpose of this meeting is for EPA to collect comments from the public. Therefore, although EPA staff will be present to accept the comments, EPA will not evaluate or respond to comments at the meeting. In addition, although EPA will review the comments submitted as it proceeds, it will not formally respond to each individual comment. EPA is not reconsidering any past Agency actions, and therefore EPA is not soliciting comments on past Agency actions. Because EPA is not soliciting comments on past Agency actions, comments regarding past Agency actions will not be considered.

EPA plans to provide the Action Plan to the Science Advisory Board in a consultation. Following the consultation, EPA will proceed with development of the framework which will be subsequently reviewed by the Science Advisory Board.

DATES: The public meeting will be held Wednesday, February 20, 2002 from 9 a.m. to 4 p.m. EPA urges participants to register with ERG by February 14, 2002 to attend.

ADDRESSES: The public meeting will be held at the Holiday Inn Washington Capitol Hotel, 550 C Street SW., Washington DC 20024. To attend, register by February 14, 2002 by calling ERG at 781–674–7374 or sending a facsimile to 781–674–2906. You may also register by sending e-mail to *meetings@erg.com.* If registering by e-mail, please provide complete contact information and identify the meeting by name and date. Space is limited, and reservations will be accepted on a first-come, first-served basis. Please let ERG know if you wish to make comments.

Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW, 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. The EPA mail room does not accept courier deliveries. Electronic comments may be e-mailed to: nceadc.comment@epa.gov.

FOR FURTHER INFORMATION CONTACT: For meeting information, registration, and logistics, contact ERG, 110 Hartwell Avenue, Lexington, Massachusetts 02421; telephone: 781–674–7374; facsimile: 781–674–2906.

For information on development of the framework, contact John Whalan; USEPA (Code 7601D), 1200 Pennsylvania Avenue NW., Washington DC 20460, telephone: 202–564–8461; facsimile: 202–564–8452; or e-mail: *whalan.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Presentations

Members of the public who are interested in making a short presentation on a particular issue at the meeting are requested to indicate this interest at the time of registration. EPA would appreciate provision of a short summary of the presentation, which should be no more than one page. Please provide this summary in written and electronic format upon arrival at the meeting. Presentations should be no more than 15 minutes in duration. Because EPA is seeking a variety of opinions, the facilitator will ensure that there is a balance of viewpoints.

Comments

Comments should be in writing. Please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Please note that all comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

Dated: February 1, 2002.

William H. Farland,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 02–2836 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00758; FRL–6822–5]

Tribal Pesticide Program Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC), will hold a 2–day

meeting, beginning on March 7, 2002, and ending on March 8, 2002. This notice announces the location and times for the meetings and sets forth the tentative agenda topics.

DATES: The meeting will be held on March 7, 2002, from 9 a.m. to 5 p.m., and March 8, 2002, from 9 a.m. to 5 p. m. On March 7 and 8 at 1:15 to 2:15 p.m; the Tribal caucus is closed to EPA and the general public.

ADDRESSES: This meeting will be held at the Embassy Suites Hotel-Crystal City, 1300 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@epa.gov.

Lillian Wilmore, Tribal Pesticide Program Council Facilitator, P.O. Box 470829; Brookline Village, MA 02447–0829; telephone number: (617) 232–5742; fax number: (617) 277–1656; e-mail address: naecology@aol.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to Tribes with pesticide programs or pesticide interests. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–00758. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00758 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00758. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. TPPC State of the Council Report.
2. Presentation and questions and answers by EPA's Office of Pesticide Programs, Field and External Affairs Division.
3. Reports from Working Groups and TPPC participation in other meetings:

Subsistence, Tribal Strategy, Pesticide Program Dialogue Committee Spray Drift, Environmental Justice (Fish Consumption), FOSTTA and POPs Issue, Water Quality and Pesticides Management, Worker Protection, and basic elements of Tribal Pesticide Program - Pesticide Assessment.

4. Tribal caucus.

5. EPA Office of Enforcement and Compliance Assurance (OECA) related issues:

i. New guidance for cooperative agreements and funding.

ii. Data collections issues - Form 5700–33H.

6. Section 18 and other Tribal authority issues - including a training session on section 18s.

7. Institute for Tribal Environmental Professionals (ITEP) - Report on Tribal training.

8. Federal inspector credentials criteria.

9. Tribal caucus.

10. Report from: American Indian Environmental Office (AIEO), Report from Tribal Operations Committee (TOC), Report from Tribal Science Council (TSC), and Report from National Tribal Environmental Council (NTEC).

List of Subjects

Environmental protection, Pesticides.

Dated: January 24, 2002.

Jay S. Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 02–2835 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181084; FRL–6821–8]

Tetraconazole; Receipt of Application for Emergency Exemption,Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Minnesota and North Dakota Departments of Agriculture to use the pesticide tetraconazole (CAS No. 112281–77–3) to treat up to 1,660,000 acres of sugar beets to control *Cercospora* leaf spot. The Applicants propose the use of a new chemical which has not been registered by the EPA. Therefore, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments, identified by docket control number OPP–181084, must be received on or before February 21, 2002..

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181084 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; fax number: (703) 308–5433; e-mail address: conrath.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of potentiallyaffected entities
State government	9241	State agencies that petition EPAfor section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of thisdocument, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–181084. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181084 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records

Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181084. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Minnesota and North Dakota Departments of Agriculture have requested the Administrator to issue specific exemptions for the use of tetraconazole on sugar beets to control *Cercospora* leaf spot. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

As part of these requests, the Applicants assert that emergency conditions exist because the registered alternative fungicides (benomyl and thiophanate methyl, TPTH, EBDC fungicides mancozeb, maneb, and copper hydroxide) no longer provide the level of control of *Cercospora* leafspot that they historically did, or which would avoid decreased productivity and yields. Without this use, the Applicants assert that significant economic losses will occur for the sugar beet industry in these states.

The Applicants propose to make no more than three applications of tetraconazole, formulated as a liquid with 1 pound active ingredient (a.i.) per gallon at a rate of 1.625 ounces a.i. per acre, on up to 1,660,000 acres of sugar beets in North Dakota and Minnesota. Use at this rate on the maximum number of acres could result in application of a total of 168,594 pounds a.i., or 168,594 gallons of formulation. The proposed use season is June 15 through September 30, 2002.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA. The notice provides an opportunity for public comment on the applications.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Minnesota and North Dakota Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 18, 2002.

Rachel C. Holloman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–2514 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2529]

Petition for Reconsideration of Action in Rulemaking Proceeding

February 1, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 21, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotments (MM Docket No. 99–196).

Number of petitions f

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2528]

Petition for Reconsideration of Action in Rulemaking Proceeding

February 1, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 21, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Telecommunications Industry's Environmental Civil Violattions in U.S. Territorial Waters (South Florida and the Virgin Islands and along the Coastal Wetlands of Maine—FCC Accountability and Responsibility for Rulemaking regarding the NEPA, NHPA (RM–9913).

Number of Petitions Filed: 1.

William F. Caton,

Acting Secretary.

[FR Doc. 02–2867 Filed 2–5–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNCIATIONS COMMISSION

[CS Docket No. 01–129, FCC 01–389]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document is in compliance with the Communications Act of 1934, as amended, which requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. On December 27, 2001, the Commission adopted its eighth annual report (''*2001 Report*''). The *2001 Report* contains data and information that summarize the status of competition in markets for the delivery of video programming and updates the Commission's prior reports.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman or Anne Levine, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *2001 Report* in CS Docket No. 01–129, FCC 01–389, adopted December 27, 2001, and released January 14, 2002. The complete text of the *2001 Report* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2890, or e-mail at *qualex@aol.com.* In addition, the complete text of the *2001 Report* is available on the Internet at *http://www.fcc.gov/csb.*

Synopsis of the 2000 Report

1. The Commission's *2001 Report* to Congress provides information about the cable television industry and other multichannel video programming distributors (''MVPDs''), including direct broadcast satellite (''DBS'') service, home satellite dishes (''HSDs''), wireless cable systems using frequencies in the multichannel multipoint distribution service (''MMDS'') and instructional television fixed service (''ITFS''), private cable or satellite master antenna television (''SMATV'') systems, as well as broadcast television service. The Commission also considers several other existing and potential distribution technologies for video programming, including the Internet, home video sales and rentals, local exchange telephone carriers (''LECs''), and electric and gas utilities. In addition, for the first time, this year, the Commission addresses broadband service providers (''BSP''), a new category of entrant into the video marketplace.

2. The Commission also examines the market structure and competition. We evaluate horizontal concentration in the multichannel video marketplace and vertical integration between cable television systems and programming services. In addition, the *2001 Report* addresses competitors serving multiple dwelling unit (''MDU'') buildings, programming issues, technical issues, and examines communities where consumers have a choice between an incumbent cable operator and another MVPD and reports on the incumbent cable operator's response to such competition in several cases. The *2001 Report* is based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a *Notice of Inquiry* (66 FR 35431) in this docket.

3. In the *2001 Report*, the Commission finds that competitive alternatives and consumer choices continue to develop. Cable television still is the dominant technology for the delivery of video programming to consumers in the MVPD marketplace, although its market share continues to decline. As of June 2001, 78 percent of all MVPD subscribers received their video programming from a local franchised cable operator, compared to 80 percent a year earlier. There has been an increase in the total number of subscribers to non-cable MVPDs over the last year, which is primarily attributable to the growth of DBS service. However, generally, the number of subscribers to, and market shares of, MVPDs using other distribution technologies (i.e., MMDS, SMATV, and OVS) have remained stable, although the number of HSD subscribers continues to decline. Significant competition from local telephone companies has not generally developed even though the Telecommunications Act of 1996 (''1996 Act'') removed some barriers to LEC entry into the video marketplace.

4. *Key Findings:*

• *Industry Growth:* A total of 88.3 million households subscribed to multichannel video programming services as of June 2001, up 4.6 percent over the 84.4 million households subscribing to MVPDs in June 2000. This subscriber growth accompanied a 2.7 percentage point increase in multichannel video programming distributors' penetration of television households to 86.4 percent as of June 2001. The number of cable subscribers continued to grow, reaching 69 million as of June 2001, up about 1.9 percent over the 67.7 million cable subscribers in June 2000. The total number of non-cable MVPD households grew from 16.7 million as of June 2000 to 19.3 million homes as of June 2001, an increase of more than 15 percent. The growth of non-cable MVPD subscribers continues to be primarily attributable to the growth of DBS. Between June 2000 and June 2001, the number of DBS subscribers grew from almost 13 million households to about 16 million households, which is nearly two times the cable subscriber growth rate. DBS subscribers now represent 18.2 percent of all MVPD subscribers, up from 15.4 percent a year earlier.

• *Convergence of Cable and Other Services:* The 1996 Act removed barriers to LEC entry into the video marketplace

in order to facilitate competition between incumbent cable operators and telephone companies. It was expected that local exchange telephone carriers would begin to compete in video delivery markets, and cable operators would begin to provide local telephone exchange service. The Commission previously reported that there had been an increase in the amount of video programming provided to consumers by telephone companies, although the expected technological convergence that would permit use of telephone facilities for video service had not yet occurred. This year, we find that incumbent local exchange carriers (''ILECs'') have largely exited the video business, instead mainly reselling DBS service. A few smaller LECs offer, or are preparing to offer, MVPD service over existing telephone lines. Alternatively, a few cable operators offer telephone service, but their strategies for deployment remain varied, with some companies deploying circuit-switched cable telephone service and others waiting until Internet Protocol (''IP'') technology becomes available and continuing to test such service. The most significant convergence of service offerings continues to be the pairing of Internet service with other services. There is evidence that a wide variety of companies throughout the communications industries are attempting to become providers of multiple services, including data access.

• *Promotion of Entry and Competition:* Noncable MVPDs continue to report that regulatory and other barriers to entry limit their ability to compete with incumbent cable operators and to thereby provide consumers with additional choices. Non-cable MVPDs also continue to experience some difficulties in obtaining programming from both vertically integrated cable programmers and unaffiliated programmers who continue to make exclusive agreements with cable operators. In MDUs, potential entry may be discouraged or limited because an incumbent video programming distributor has a long-term and/or exclusive contract. Other issues also remain with respect to how, and under what circumstances, existing inside wiring in MDUs may be made available to alternative video service providers.

• *Horizontal Concentration:* Consolidations within the cable industry continue as cable operators acquire and trade systems. The ten largest operators now serve close to 87 percent of all U.S. cable subscribers. In terms of one traditional economic measure, the Herfindahl-Hirschman Index or HHI, national concentration among the top MVPDs has decreased since last year, and remains below the levels reported in earlier years. DBS operators DirecTV and EchoStar rank among the ten largest MVPDs in terms of nationwide subscribership along with eight cable multiple system operators (''MSOs''). As a result of acquisitions and trades, cable MSOs have continued to increase the extent to which their systems form regional clusters. Currently, 55 million of the nation's cable subscribers are served by systems that are included in regional clusters. By clustering their systems, cable operators may be able to achieve efficiencies that facilitate the provision of cable and other services, such as telephony.

• *Vertical Integration:* The number of satellite-delivered programming networks has increased by 13 from 281 in 2000 to 294 in 2001. Vertical integration of national programming services between cable operators and programmers, measured in terms of the total number of services in operation, remained at 35 percent after several years of decline. The *2001 Report* also identifies 80 regional networks, 29 of which are sports channels, many owned at least in part by MSOs, and 29 regional and local news networks that compete with local broadcast stations and national cable networks.

• *Technological Issues:* Cable operators and other MVPDs continue to develop and deploy advanced technologies, especially digital compression techniques, to increase the capacity and enhance the capabilities of their transmission platforms. These technologies allow MVPDs to deliver additional video options and other services (e.g., data access, telephony, and interactive services) to their subscribers. As reported last year, MVPDs are beginning to develop and deploy interactive television (''ITV'') services. In particular, this year, cable operators and other MVPDs have devoted most of their attention to the development of video-on-demand services. In the last year, there have been a number of developments regarding navigation devices and cable modems used to access a wide range of services offered by MVPDs. CableLabs is continuing its efforts to develop next generation navigation devices with its initiative for the OpenCable Application Platform (''OCAP'') or ''middleware'' specification. The Consumer Electronics Association maintains that until this software standard is complete, manufacturers will not be able to build advanced set-top boxes for a retail market. In another effort intended to facilitate retail availability of set-top boxes, cable operators announced an initiative to encourage their set-top box suppliers to make their digital set-top boxes with embedded security available at retail

Ordering Clauses

5. This *2001 Report* is issued pursuant to authority contained in sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g).

6. The Office of Legislative and Intergovernmental Affairs shall send copies of the *2001 Report* to the appropriate committees and subcommittees of the United States House of Representatives and United States Senate.

7. The proceeding in CS Docket No. 01–129 IS TERMINATED.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–2869 Filed 2–5–02; 8:45 am]

BILLING CODE 6712–01–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 March 1, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. CNB Bancorp, Inc., Windsor, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank (in organization), Windsor, Virginia.

Board of Governors of the Federal Reserve System, January 31, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–2799 Filed 2–5–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.
Time: 2 p.m.
Date: February 11, 2002.
Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC.
Status: Closed.
Matter To Be Considered: Litigation.

For further information, contact Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: January 31, 2002.

Elizabeth S. Woodruff

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 02–2809 Filed 2–5–02; 8:45 am]

BILLING CODE 6760–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EST),

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 22, 2002, Board member meeting.
2. Labor Department audit briefing.
3. Thrift Savings Plan activity report by the Executive Director.
4. Investment policy review.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 4, 2002.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–2966 Filed 2–4–02; 11:54 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 4, 2002, from 10 a.m. to 5 p.m., and on March 5, 2002, from 8 a.m. to 3 p.m.

Location: Gaithersburg Marriott Washingtonian Center, Salons A, B, C, and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact: Lesley L. Ewing, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 161, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 4, 2002, the committee will discuss, make recommendations, and vote on a supplement to a premarket approval application (PMA) for a left ventricular assist device to be used as destination therapy in patients with end stage congestive heart failure. On March 5, 2002, the committee will discuss, make recommendations, and vote on a PMA for an implantable pacemaker/defibrillator used for treatment of both congestive heart failure and life threatening dysrhythmias. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material for the March 4 session will be posted on March 1, 2002; material for the March 5 session will be posted on March 4, 2002.

Procedure: On March 4, 2002, from 10 a.m. to 4 p.m., and on March 5, 2002, from 8 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 21, 2002. On both days, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of each topic and for approximately 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 21, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Closed Committee Deliberations: On March 4, 2002, from 4 p.m. to 5 p.m., the meeting will be closed to permit FDA staff to present to the committee trade secret and/or confidential commercial information regarding pending and future device submissions. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 30, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–2883 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 25, 2002, from 8:30 a.m. to 5:30 p.m., and February 26, 2002, from 8 a.m. to 5 p.m.:

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Nancy Chamberlin, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail: CHAMBERLINN@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 25, 2002, the subcommittee will: (1) Identify and define technology and regulatory uncertainties/hurdles, possible solutions, and strategies for the successful implementation of process analytical technologies (PATs) in pharmaceutical development and manufacturing; (2) discuss general principles for regulatory application of PATs including principles of method validation, specifications, use and validation of chemometric tools, and feasibility of parametric release concept; and (3) discuss the need for a general FDA guidance to facilitate the implementation of PATs.

On February 26, 2002, the subcommittee will discuss strategies to explore issues in the following four focus areas: (1) Product and process development, (2) process and analytical validation, (3) chemometrics, and (4) process analytical technologies, applications and benefits.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions maybe made to the contact person by February 15, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on February 25, 2002, and between approximately 1:30 p.m. and 2 p.m. on February 26, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 15, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nancy Chamberlin at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 31, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–2882 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0027]

Swine Mycoplasmal Pneumonia Technical Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop: Swine Mycoplasmal Pneumonia Technical Workshop. The topic to be discussed is how to evaluate drug effectiveness against swine mycoplasmal respiratory disease.

Date and Time: The public workshop will be held on March 6 and 7, 2002, 8:30 a.m. to 4:30 p.m. Submit written or electronic comments by May 6, 2002.

Addresses: The public workshop will be held at the DoubleTree Hotel Kansas City, 1301 Wyandotte St., Kansas City, MO 64105, 816–474–6664. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

For General Information Contact: Gillian A. Comyn, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7568, FAX 301–594–2298.

For Information About Registration Contact: Irma Carpenter, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7580, FAX 301–594–2298.

Registration: Registration is required. There is no registration fee for the meeting. Space is limited. Registration will be on a first come, first served basis. Information about the workshop is available on the Internet at the Center for Veterinary Medicine (CVM) Web site at http://www.fda.gov/cvm. Electronic registration for the workshop is available at http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm. Alternatively, please send registration information (including name, title, firm name, address, telephone, and fax number) to Irma Carpenter (address above). If you need special accommodations due to a disability, please contact the DoubleTree Hotel Kansas City at least 7 days in advance at 816–474–6664, and Irma Carpenter at 301–827–7580.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is seeking scientific input from a broad public forum to help the agency determine an acceptable method, in light of the current state of scientific knowledge, for evaluating drug effectiveness against swine mycoplasmal respiratory disease. *Mycoplasma hyopneumoniae* is a major pathogen in ''porcine respiratory disease complex'' (PRDC). PRDC is a significant problem in the swine industry in the

United States and abroad. This workshop will provide a necessary forum for leveraging scientific resources, including top experts in swine mycoplasmal pneumonia. The workshop is part of CVM's leveraging initiative aimed at increasing interaction with industry, academia, practitioners, and other government agencies.

II. Agenda

The preliminary agenda is as follows:
Session 1: The disease—history, clinical presentation, epidemiology, and economics;
Session 2: Cutting edge—new findings on the organism;
Session 3: Perspectives from industry, producers, veterinarians, and government regulators;
Session 4: Breakout exercise;
Panel discussion;
Adjourn.

Proposed core items for discussion include:

1. Define swine mycoplasmal pneumonia.
   - *M. hyopneumoniae* as a pathogen in PRDC, enzootic pneumonia.
   - The disease(s) in clinical and field settings.
   - Epidemiology: Disease determinants, risk factors, and confounders.
   - Methods for diagnosing pneumonia associated with *M. hyopneumoniae*.
   - The disease contribution of *M. hyopneumoniae* in PRDC.
2. Methods of detection of *M. hyopneumoniae* in body tissues and fluids.
   - Proper sampling for different methods.
   - Comparison of detection methods for sensitivity, specificity, and positive and negative predictive test values.
3. What is the best study design for demonstrating effectiveness of treatments against pneumonia associated with *M. hyopneumoniae* infection?
   - What is a ''cure'' in swine mycoplasmal pneumonia, and what are the best clinical and laboratory indicators?
   - Study designs.
   - Perspectives on designing studies to demonstrate effectiveness of therapeutic modalities against pneumonia in swine associated with *M. hyopneumoniae* infection.
   - Substantial evidence.

III. Submission of Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this workshop until May 6, 2002. Comments are to be identified with the docket number found in the brackets in the heading of this document.

Dated: January 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2752 Filed 2–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0032]

Guidance for Industry; Implementation of Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, Pub. L. No. 107–76, § 755 (2001) Regarding Common or Usual Names for Catfish; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry; Implementation of Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, Pub. L. No. 1076–76, § 755 (2001) regarding Common or Usual Names for Catfish.'' Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, provides that FDA may not spend any of its 2002 appropriation to allow admission of fish or fish products labeled in whole or in part with the term ''catfish'' unless the fish are from the *Ictaluridae* family. This guidance discusses how FDA plans to exercise enforcement discretion with regard to certain fish whose common or usual name contains the term ''catfish.''

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Seafood (HFS–400), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-adhesive address label to assist that office in processing your request, or include a fax number to which the guidance may be sent. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this guidance document.

FOR FURTHER INFORMATION CONTACT: Mary I. Snyder, Center for Food Safety and Applied Nutrition (HFS–415), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2303, FAX 301–436–2599.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of guidance for industry implementing section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002 (Public Law 107–76, § 755 (2001), which provides that FDA may not spend any of its 2002 appropriation to allow admission of fish or fish products labeled in whole or in part with the term ''catfish'' unless the fish are from the *Ictaluridae* family. This guidance discusses how FDA plans to exercise enforcement discretion with regard to certain fish whose common or usual name contains the term ''catfish''.

This guidance is a level 1 guidance issued consistent with FDA's regulation on good guidance practices (GGPs) (§ 10.115 (21 CFR 10.115)) relating to the development, issuance, and use of guidance documents. Consistent with GGPs, the agency is soliciting public comment, but is implementing the guidance document immediately in accordance with § 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate. FDA's 2002 appropriation law was enacted on November 28, 2001, and section 755 is now in effect and must be implemented immediately. There is a need for guidance to help effect such implementation. Thus, FDA is making the guidance effective immediately.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written or electronic comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http:/

/www.cfsan.fda.gov/dms/guidance/html or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: January 18, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2753 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0005]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on ''Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30); Request for Comments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#143) entitled ''Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30). This draft guidance has been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft guidance addresses the process for developing a controlled list of terms in order to assure that terms are used consistently in adverse event reports, and to allow comparison between products and across product classes. This draft guidance is limited to developing a controlled list of terms describing veterinary medicinal products (VMPs), animals, clinical signs, and associated body systems and organs for reporting an adverse event associated with the use of a VMP.

DATES: Submit written or electronic comments on the draft guidance by March 8, 2002, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6642, e-mail: *wkeller@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for VMPs. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Controlled List of Terms

The VICH Steering Committee held a meeting on June 28, 2001, and agreed that the draft guidance document entitled ''Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30) should be made available for public comment.

A controlled list of terminology is essential to ensure consistent evaluation of adverse event reports and electronic submission of these reports on a national and international basis. This draft guidance provides recommendations for adopting and managing a controlled list of terminology used to describe veterinary medicinal products, animals, clinical signs, and associated body systems and organs in adverse event reports. Components of the recommendations are directed at regulatory authorities and should be implemented by these agencies as well as by regulated industry.

The VICH closely followed the progress of its human counterpart, ICH (International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use), in implementing a standardized controlled terminology and believes that with appropriate modification the same approach will be viable for the VICH. Thus, the approach outlined in the guidance document is based on identification of similar technical terminology needs and an approach for meeting those needs used by ICH to develop MedDRA (Medical Dictionary for Drug Regulatory Activities), the international terminology for reports to regulatory authorities describing human adverse events.

These recommendations include that government and industry partner together in development,

implementation, and ongoing maintenance necessary to keep an adverse event terminology updated and distributed to users. It recommends adopting VEDDRA (Veterinary Medicinal Dictionary for Drug Regulatory Authorities) as the controlled list of terminology for adverse event reports. Specific recommendations include an independent joint industry and government oversight board as well as a funding model that will allow use by all regulatory agencies and even the smallest companies in industry. The two background paragraphs provide insight into the deliberations, recommendations, and comments from the Expert Working Group charged by VICH to the VICH Steering Committee on this issue.

FDA and the VICH will consider comments about the draft guidance document. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and publish it as a final guidance.

III. Significance of Guidance

This draft document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as ''must,'' ''shall,'' and ''will'' in the original VICH documents have been substituted with ''should.'' Similarly, words such as ''require'' or ''requirement'' have been replaced by ''recommendation'' or ''recommended'' as appropriate to the context.

The draft guidance represents the agency's current thinking on developing a controlled list of terms for reporting an adverse event associated with the use of an approved new animal drug. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written or electronic comments regarding this draft guidance document. Written or electronic comments should be submitted to the Dockets Management Branch (address above). Submit written or electronic comments by March 8, 2002, to ensure adequate consideration in preparation of the final guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this Internet site, select ''02D–0005 Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms (VICH GL30)'' and follow the directions.

Copies of the draft guidance entitled ''Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30) may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*. The draft guidance is also available at *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2881 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME) (OMB No. 0915–0247): Revision

The CHGME Payment Program was enacted by Public Law 106–129 to provide Federal support for graduate medical education (GME) to ''freestanding'' children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Technical assistance workshops and consultation with applicant hospitals resulted in an opportunity for hospital representatives to raise issues and provide suggestions resulting in proposed revisions in the CHGME application forms and instructions.

Eligible children's teaching hospitals submit relevant data such as weighted and unweighted full-time equivalent (FTE) resident counts, inpatient discharges and case mix index information by which direct and indirect payments are made to the participating hospitals. Data are submitted by children's hospitals in an annual CHGME application in order to receive funding. Through a reconciliation process, participating hospitals are required to correct and furnish final FTE resident count numbers reflecting changes in counts reported in the annual application form. The reconciliation process begins with fiscal year (FY)2002 and occurs before the end of the fiscal year.

The estimated burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
HRSA 99–1	60	1	24	1,440
HRSA 99–1 (Reconciliation)	60	1	8	480

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
HRSA 99–2	60	1	14	840
HRSA 99–4	60	1	14	840
Total	60			3,600

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, 725 17th St., NW, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 30, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–2754 Filed 2–5–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Teleconference Call meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in February 2002.

The agenda of the open meeting will include an update of CSAP's budget, updates on strategic planning and restructuring, and administrative matters and announcement.

If anyone needs special accommodations and for persons with disabilities, please notify the contact listed below.

A summary of this meeting and roster of committee members may be obtained from Carol Watkins, Committee Management Specialist, Rockwall II Building, Suite 900, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–0365.

Substantive program information may be obtained from the contact listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Date: February 15, 2002, 12 noon–2 p.m.

Place: Center for Substance Abuse Prevention, 5515 Security Lane, 9th Floor, Conference Room I, Rockville, Maryland 20852.

Contact: Carol Watkins, 5515 Security Lane, Rockwall II Building, Suite 900, Rockville, Maryland 20852, Telephone: (301) 443–0365.

Dated: January 30, 2002.

Toian Vaughn,

Executive Secretary, Committee Management Officer, Substance Abuse and Mental, Health Services Administration.

[FR Doc. 02–2755 Filed 2–5–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of Historical Trust Accounting; Historical Accounting of Individual Indian Money Accounts: Collection of Documents Related to Oil and Gas Production on Allotted Lands

AGENCY: Office of Historical Trust Accounting, Interior.

ACTION: Notice regarding records relating to indian allotted land and individual indian money accounts.

SUMMARY: Notice is hereby given that the Department of the Interior is requesting that anyone who possesses records related to the Individual Indian Money (IIM) trust funds to notify the Department, and to preserve and maintain such records indefinitely until further notice. If preferred, such records custodians should contact the Office of Historical Trust Accounting, 1951 Constitution Avenue, NW., MS 16 SIB, Washington, DC, 20240, so that arrangements can be made for the Department to take custody of such records. The purpose of this request is to ensure that such records are not destroyed so that they may be used to support an accounting of IIM trust funds. Generally, this request applies to entities that have or had business with the Department or individual Indians involving the payment of money for use of or access to Indian allotted lands, and would include entities in the oil and gas industry, the timber industry, farming and grazing operations, financial institutions, public utilities (*e.g.,* gas, electric and telephone companies), Indian Tribes, other federal agencies, state and local government archives, and non-governmental depositories such as historical societies, and possibly others. Relevant records would include any records which pertain to revenue generated on Indian allotted land from 1887 to the present, revenue generated due to Tribal judgment or per capita payments, and any other records which pertain to IIM trust institutions, public utilities (*e.g.,* gas, electric and telephone companies), Indian Tribes, other federal agencies, state and local government archives, and non-governmental depositories such as historical societies, and possibly others. This request is pursuant to the Department's duty to account for trust funds held in IIM accounts.

FOR FURTHER INFORMATION CONTACT: Stephen Swanson, Project Coordinator, Office of Historical Trust Accounting, 1951 Constitution Avenue, NW., MS 16 SIB, Washington, DC 20240, telephone 202/208–3405, or by facsimile at 202/219–1139.

SUPPLEMENTARY INFORMATION: On December 21, 1999, the United States District Court for the District of Columbia declared that the Department must provide individual Indian Money (IIM) account holders ''an accurate accounting of all money in the IIM trust held in trust for the benefit of [IIM account holders] without regard to when the funds were deposited.'' *Cobell v. Norton,* 92 F.Supp.2d, 1, 58 (D.D.C. 1999). This accounting will include, at an appropriate level of detail, an assessment of the accuracy of the balances in IIM accounts, reports to individual beneficiaries of the money and real property held in trust for their benefit, and reports to individual beneficiaries that contain sufficient information to allow beneficiaries to determine whether the trust has been faithfully performed. In furtherance of accomplishing the overall duty to account, the District Court held that the Department was in breach of a specific duty to have ''written policies and procedures for collecting from outside sources missing information necessary to render an accounting of the IIM trust[.]'' *Id.* On appeal, the Court of Appeals for the District of Columbia Circuit stated that written policies and procedures for the collection of such records are ''necessary for the government to discharge its fiduciary

obligation'' to account for IIM trust funds. *Cobell v. Norton,* 240 F.3d 1081, 1105–06 (D.C. Cir, 2001).

The Department is in the process of developing written policies and procedures for the collection of such records. However, the Department recognizes that it is important to reach out to non-Interior sources of these records to encourage them to preserve and maintain them so that they are available to support the accounting of IIM funds. The Department will provide further guidance based upon the information obtained from record custodians.

Dated: February 1, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–2931 Filed 2–1–02; 5:04 pm]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act Grants Programs Authorized by the North American Wetlands Conservation Act (NAWCA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The collection of information described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address provided below.

DATES: Consideration will be given to all comments received on or before April 8, 2002. OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

ADDRESSES: Comments and suggestions on the requirement should be sent to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222—ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION:

The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). On May 26, 1999, the U.S. Fish and Wildlife Service (Service) was given regular approval by OMB for collection of information in order to continue the grants programs currently conducted under the North American Wetlands Conservation Act (Pub. L. 101–233, as amended; December 13, 1989). The assigned OMB information collection control number is 1018–0100, and approval expires on May 31, 2002. The Service is requesting a three year term of approval for this information collection activity. 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.

Comments are invited on : (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the 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.

Title: Information Collection In Support of Grant Programs Authorized by the North American Wetlands Conservation Act of 1989 (NAWCA).

Approval Number: 1018–0100.

Service Form Number(s): N/A.

Description and Use: The North American Waterfowl Management Plan (NAWMP), first signed in 1986, is a tripartite agreement among Canada, Mexico and the United States to enhance, restore and otherwise protect continental wetlands to benefit waterfowl and other wetland associated wildlife through partnerships between and among the private and public sectors. Because the 1986 NAWMP did not carry with it a mechanism to provide for broadly-based and sustained financial support for wetland conservation activities, Congress passed and the President signed into law the NAWCA to fill that funding need. The purpose of NAWCA, as amended, is to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat through partnerships. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated habitat.

As well as providing for a continuing and stable funding base, NAWCA establishes an administrative body, made up of a State representative from each of the four Flyways, three representatives from wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Service. This administrative body is chartered, under the Federal Advisory Committee Act, by the U.S. Department of the Interior as the North American Wetlands Conservation Council (Council). As such, the purpose of the Council is to recommend wetlands conservation project proposals to the Migratory Bird Conservation Commission (MBCC) for funding.

Subsection (c) of Section 5 (Council Procedures) provides that the ''* * * Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section * * *,'' which are consideration of projects and recommendations to the MBCC, respectively. The means by which the Council decides which project proposals are important to recommend to the MBCC is through grants programs that are coordinated through the Council Coordinator's office (NAWWO) within the Service.

Competing for grant funds involves applications from partnerships that describe in substantial detail project locations and other characteristics, to meet the standards established by the Council and the requirements of NAWCA. The Council Coordinator's office publishes and distributes Standard and Small Grants instructional booklets that assist the applicants in formulating project proposals for Council consideration. The instructional booklets and other instruments, e.g., **Federal Register** notices on request for proposals, are the basis for this information collection request for OMB clearance. Information collected under this program is used to respond to such needs as: audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application For Federal Assistance), grant agreements, budget reports and

justifications, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by NAWCA, etc.

In summary, information collection under these programs is required to obtain a benefit, i.e., a cash reimbursable grant that is given competitively to some applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Occasional. The Small Grants program has one project proposal submissions window per year and the Standard Grants program has two per year.

Description of Respondents: Households and/or individuals; business and/or other for-profit; not-for-profit institutions; farms; Federal Government; and State, local and/or Tribal governments.

Estimated Completion Time: The reporting burden, or time involved in writing project proposals, is estimated to be 80 hours for a Small Grants submission and 400 hours for a Standard Grants submission.

Number of Respondents: It is estimated that 150 proposals will be submitted each year, 70 for the Small Grants program and 80 for the Standard Grants program.

Annual Burden Hours: 37,600.

Dated: January 29, 2002.

Rebecca Mullin,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–2832 Filed 2–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by March 8, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to ''*victoria__davis@fws.gov*''. Please submit comments over the Internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the Service that we have received your Internet message, contact us directly at either telephone number listed above (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to the Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Jerry L. Farris, Arkansas State University, State University, Arkansas TE051013–0.

The applicant requests authorization to take (remove, tag, collect shells, remove glochidia, exam, measure, transport, hold in raceways and/or recirculating trough units)the Ouachita-rock pocketbook, (*Arkansia wheeleri*) for the following purposes: To characterize the population size, sex ratio, age structure, and associated fish and mussel species; to determine gravidity and glochidial release periods for currently reported populations; and to determine suitable host fish that occur within the Little River and the Kiamichi River. The activities will occur in the Little Red River, Sevier and Little River counties, Arkansas and the Kiamichi River in Le Flore and Pushmataha Counties, Oklahoma.

Applicant: National Park Service, Big Cypress National Preserve, Superintendent John J. Donahue, Ochopee, Florida, TE051015–0.

The applicant requests authorization to take (capture, tranquilize, hold temporarily, transport, radio collar, provide medical treatment for injury or illness, release, and euthanize) the Florida panther (*Puma concolor coryi*) for the following purposes: To maintain a healthy panther population, to assess the habitat potential to support panthers, to monitor the effects of the genetic restoration project, and to make sound management decisions regarding the increasing recreational demands on the resources as well as the proposed restoration projects affecting the Big Cypress National Preserve. The proposed activities will take place on the Big Cypress National Preserve, Collier, Dade, and Monroe Counties, Florida.

Applicant: Peter Frederick, University of Florida, Gainesville, Florida, TE051429–0.

The applicant requests authorization to take (monitor, capture, collect blood, radio and satellite tag, and perform necropsies when necessary) 120 young wood storks (*Mycteria americana*). The purposes of the study are to measure the survival rates of young storks for up to 3 years of age, develop a demographic model, describe movement patterns and habitats used by storks, and develop an interactive educational Web site for K–12 use. The capture and handling of young birds will occur in Dade, Broward, Collier, Monroe, Lee and Palm Beach counties, Florida.

Applicant: Florida Fish and Wildlife Conservation Commission, Frank Montalbano, Tallahassee, Florida, TE051553–0.

The applicant requests authorization to take (capture, tranquilize, hold temporarily, transport, radio collar, provide medical treatment for injury or

illness, release, and euthanize) the Florida panther (*Puma concolor coryi*) for the following purposes: To maintain a healthy panther population, to assess the habitat potential to support panthers, to monitor the effects of the genetic restoration project, and to make sound management decisions. The activities will take place throughout the state of Florida.

Applicant: USDA Forest Service, Bankhead Ranger District, Tom Counts, Double Springs, Alabama, TE052205–0.

The applicant requests authorization to take (survey, capture, identify, and release) gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) to determine if maternity colonies are present in caves and to determine more accurate dates of entry and exit at hibernacula. The proposed activities will take place on the Bankhead Ranger District in Winston, Lawrence, and Franklin Counties, Alabama.

Applicant: Dowling Environmental Services, Inc., Hugh Dowling, Mobile, Alabama, TE052208–0.

The applicant requests authorization to take (capture and release) the Alabama beach mouse (*Peromyscus polionotus ammobates*) to conduct surveys to determine the presence of beach mice for the future development of a Habitat Conservation Plan. The activities will take place in Baldwin County, Alabama.

Dated: January 24, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–2808 Filed 2–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment and Habitat Conservation Plan for an Incidental Take Permit for the Six Points Road Interchange and Related Development in Marion and Hendricks Counties, Indiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of comment period extension.

SUMMARY: This notice advises the public and other agencies that the comment period for the draft Environmental Assessment (EA), Habitat Conservation Plan (HCP) and Incidental Take Permit (ITP) application is extended due to the department-wide prohibition on the use of electronic mail and the Internet. The original notice of availability was published in the **Federal Register** on November 20, 2001, (Vol. 66, No. 224, 58159–58160). Early in December 2001, the U.S. District Court issued a temporary restraining order on all Department of Interior employees use of the Internet. The original notice listed an e-mail address where comments could be sent. However, the public access to this e-mail address and Internet site has been invalid since December 2001. The Service is concerned that any comments sent via e-mail would not be available for our review. This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). Send comments on the draft HCP and EA to the Regional HCP Coordinator, at the address below.

DATES: Written comments must be received on or before March 8, 2002.

ADDRESSES: Persons wishing to review the documents may obtain copies by writing, telephoning, or faxing: Regional HCP Coordinator, U.S. Fish and Wildlife Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, Telephone: (612) 713–5343, Fax: (612) 713–5292.

Public Involvement: Documents will be available for public inspection during normal business hours (8:00–4:30), at the U.S. Fish and Wildlife Service Regional Office in Fort Snelling, Minnesota, and at the Bloomington Field Office in Bloomington, Indiana. The draft HCP and EA are available for public review and comment for a period of 30 additional days.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional HCP Coordinator, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota, Telephone: (612) 713–5343.

Dated: January 24, 2002.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–2807 Filed 2–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: new collection, Tribal Hiring Renewal Grant Program Application.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10. If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Tribal Hiring Renewal Grant Program Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Federally Recognized Tribal Government. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine whether Federally Recognized Tribal Governments are eligible for two-year grants to renew previously funded COPS hiring grants. The program is specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement capabilities by renewing grant officer positions for an additional two-years of funding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

There will be an estimated 15 responses. *The estimated amount of time required for the average respondent to respond is:* 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 37.5 hours annually.

If additional information is required contact: Brenda Dyer, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2787 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Civil Division; Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Revision of a currently approved collection; Claims Under the Radiation Exposure Compensation Act.

The Department of Justice (DOJ), Civil Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dianne Spellberg, Senior Counsel, Torts Branch, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the 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 the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Claims Under the Radiation Exposure Compensation Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* N/A. Torts Branch, Civil Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals who resided near the Nevada Test Site; former uranium miners and millers; individuals employed in the transport of uranium ore; and, individuals who participated onsite in an atmospheric nuclear test. *Other:* None. *Abstract:* This form collects information to determine whether an individual is entitled to compensation under the Radiation Exposure Compensation Act, 42 U.S.C.A. § 2210 note (West Supp. 2001).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3000 responses are estimated annually with an average of 2.5 hours per response.

(6) *An estimation of the total public burden (in hours) associated with the collection:* 7500 hours annually.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 31, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–2783 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS); Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of Collection under review: New Collection; Tribal Resources Grant Program Hiring Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* COPS Tribal Resources Grant Program Hiring Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal governments: *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is: 1.0 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2785 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS): Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: New Collection; Tribal Resources Grant Program Equipment and Training Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Tribal Resources Grant Program Equipment and Training Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal Governments. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses, one for each respondent. The estimated amount of time required for the average respondent to respond is: 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, D.C. 20530.

Dated: January 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2786 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: new collection;

Mental Health and Community Safety Initiative Grant Application Kit.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 18, 2002. This process is conducted in accordance with 5 CFR 1320.10. If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Mental Health and Community Safety Initiative Grant Application Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal Governments. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine whether Federally Recognized Tribal Governments are eligible for three-year grants specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement infrastructures and community policing efforts in these communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15 responses. *The estimated amount of time required for the average respondent to respond is:* 4.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 67.5 hours annually.

If additional information is required contact: Brenda Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2788 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: new collection; Mental Health and Community Safety Initiative Hiring Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Mental Health and Community Safety Initiative Hiring Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal governments. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: There will be an estimated 10 responses, one for each respondent. *The estimated amount of time required for the average respondent to respond is:* 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2789 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: new collection; COPS in Schools/Safe Schools Healthy Students Annual Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* COPS in Schools/Safe Schools Healthy Students Annual Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Awardees of the COPS in Schools/Safe Schools Healthy Students Grant Programs. *Other:* None. *Abstract:* COPS in Schools/Safe Schools Healthy Students Annual Report is a survey instrument that the COPS Office uses to monitor the community policing activities of the COPS in Schools hiring grant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of agencies that are eligible to receive and complete the COPS in Schools/Safe Schools Healthy Students Annual Report is 2,800. The estimated amount of time required for the average respondent to complete and return the form is 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The hours associated with this information collection is 1,400 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2790 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 28, 2001, a proposed consent decree in *United States* v. *State of California,* Civil No. 01–11161 CAS (RZx), was lodged with the United States District Court for the Central District of California.

This consent decree represents a settlement of claims brought against the State of California (''State'') relating to the Casmalia Resources Hazardous Waste Disposal Site (''Site'') located near Casmalia, California. The United States alleges in its complaint that the State disposed hazardous substances at the Site and seeks the recovery of response costs incurred and to be incurred related to the Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*

The consent decree requires the State to pay $15 million, in addition to agreeing not to seek reimbursement of $1.4 million in response costs incurred by the California Department of Toxic Substances Control. The total value of the State's settlement is $16.4 million.

The Department of Justice will receive, for a period of sixty (60) days from the date of this publication, comments relating to the consent decree. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and

Sent: (1) C/o Bradley R. O'Brien; U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 301 Howard Street, Suite 1050, San Francisco, California, 94105 and/or (2) by facsimile to Bradley R. O'Brien at (415) 744–6476; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *State of California,* Civil No. 01–11161 CAS (RZx), DOJ Ref. 90–7–1–611/1.

The proposed Consent Decree may be examined at the Region 9 office of the Environmental Protection Agency, U.S. Environmental Protection Agency, 95 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $9.00, to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *State of California,* Civil No. 01–11161 CAS (RZx), DOJ Ref. 90–7–1–611/1.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–2856 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 C.F.R. § 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Heinz Gros and Roy Gros (d/b/a H&R Plating, a/k/a Gateway Plating Co.,* No. 4:02CV00125CDP (E.D. Mo.), was lodged with the United States District Court for the Eastern District of Missouri on January 23, 2002, pertaining to the payment of a civil penalty and injunctive relief, in connection with the Defendants' violations of the Clean Air Act (CAA), 42 U.S.C. § 7412 *et seq.*

Under the proposed consent decree, Defendants will pay a civil penalty of $15,000 and will perform injunctive relief. The Consent Decree includes a release of claims alleged in the complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Heinz Gros and Roy Gros,* No. 4:02CV00125CDP (E.D. Mo.), and DOJ Reference No. 90–5–2–1–2203.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Eastern District of Missouri, 111 South 10th Street, St. Louis, MO 63102 (314) 539–2200; and (2) the United States Environmental Protection Agency (Region 7), 901 North Fifth Street, Kansas City, KS 66101 (contact Henry Rompage in the Office of Regional Counsel). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097 phone confirmation number (202) 514–1547. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $4.25 for 17 pages (at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

Robert E. Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–2852 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act

Under 28 CFR § 50.7, notice is hereby given that on January 16, 2002, a proposed Consent Decree in was lodged with the United States District Court for the Western District of Kentucky in *United States* v. *LWD, Inc.,* Civ. No. 5:99 CV–151–R (W.D. Ky.)

The United States' Complaint filed in this action seeks assessment of civil penalties and injunctive relief against LWD for its failure to comply with a Unilateral Administrative Order issued by EPA pursuant to Section 3013(a) of the Resource Conservation and Recover Act (''RCRA''), 42 U.S.C. § 6934(a). EPA's Order required LWD to conduct a trial burn at its hazardous waste incinerator at its facility in Calvert City, Kentucky.

Under the proposed Consent Decree, LWD will pay a lump sum civil penalty of $275,000, and conduct the trial burn at its hazardous waste incinerator, according to a plan to be developed under the Decree. Within 45 days after entry of the Decree, LWD must submit its proposed trial burn plan for EPA approval, and then conduct the trial burn within six months after EPA approves the plan.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) By regular, first-class mail through the U.S. Postal Service, c/o Frank Ney, U.S. Environmental Protection Agency, Region 4, EAD, 61 Forsyth Street, SE., Atlanta, Georgia 30303; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each comment and communication relating to the proposed Consent Decree should refer on its face to *U.S.* v. *LWD, Inc.,* Civil No. 5:99 CV 151–R, and also to D.J. Ref. 90–7–3–05156/1.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Kentucky, 510 West Broadway, 10th Floor, Louisville, Kentucky, and at the Region 4 Office of the Environmental Protection Agency, U.S. Environmental Protection Agency, 61 Forsyth Street, SE., Atlanta, Georgia. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is not charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $7.50, to:

Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *U.S.* v. *LWD, Inc.,* Civil No. 5:99 CV151–R, D.J. Ref. 90–11–7–05156/1.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 02–2851 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 42 U.S.C. § 9622(i), notice is hereby given that on January 22, 2002, a proposed Consent Decree in *United States* v. *Mountain Metal Co., et al.,* Civil Action No. CV–98–C–2562–S was lodged with the United States District Court for the Northern District of Alabama.

In this action, the United States sought reimbursement of costs incurred in responding to the release and threatened release of hazardous substances at the ILCO battery cracking site in Leeds, Alabama. In this Consent Decree, G. J. Batteries, Inc., and Jowers Battery, Inc., are settling their liability to the United States by paying a total of $40,000 plus interest. This settlement is based on the defendants' showing of an inability to pay their allocable share. Prior to this Consent Decree, the United States obtained partial reimbursement of its costs through judicial settlement with 58 parties and administrative settlements with 286 parties.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail proceeding center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Cheryl L. Smout, 17 N. Greenbrier Street, Arlington, Virginia, 22203; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Mountain Metal Co., et al.,* D.J. Ref. 90–11–2–108/2.

The Consent Decrees may be examined at the Office of the United States Attorney, 200 Robert S. Vance Fed. Bldg., 1800 5th Avenue N., Room 200, Birmingham, Alabama, and at U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia. A copy of the Consent Decrees may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cents per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'' in the amount of $10.75, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Mountain Metal Co., et al.,* D.J. Ref. 90–11–2–108/2.

Ellen Mahan,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 02–2857 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act

Notice is hereby given, in accordance with 28 CFR § 50.7, that on January 24, 2002, the United States lodged a proposed Consent Decree with the United States District Court for the Western District of Wisconsin, in *United States* v. *Murphy Oil USA, Inc.,* Case No. 00–C–409–C (W.D. Wis.), under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. The proposed consent Decree resolves specific allegations and claims of the United States and the State of Wisconsin against Murphy Oil USA, Inc. (''Murphy Oil''), and specific violations found by the United States District Court for the Western District of Wisconsin, arising out of the company's operation of a petroleum refinery located at 2400 Stinson Avenue, Superior, Wisconsin. Under the settlement, Murphy will (1) Pay a civil penalty of $5.5 million, $750,000 of which the United States will share with the State, (2) implement two Supplemental Environmental Projects (''SEPs'') which will reduce sulfur dioxide (''SO_2'') emissions from certain units at the Refinery that were outside the lawsuit, at a cost of $7.5 million over five years, and (3) install a new pollution control device and perform other injunctive measures to remedy past violations and prevent future violations.

To address violations of the CAA's Prevention of Significant Deterioration (''PSD'') requirements and New Source Performance Standards at the Refinery's Sulfur Recovery Unit (''SRU''), Murphy will install a tail gas treatment unit which will substantially reduce SO_2 emissions from the SRU and comply with stringent emission limitations that both EPA and the Wisconsin Department of Natural Resources (''WDNR'') believe are very close to Best Available Control Technology (''BACT''). The Decree further requires Murphy to apply to WDNR for a PSD permit, which will include a formal determination of BACT, and provides that, if BACT includes a more stringent SO_2 emission limitation than that already in the Consent Decree, the Decree will be modified to incorporate the final BACT limitation. In addition, to address violations of the CAA's Leak Detection and Repair requirements, Murphy will implement for five years a Refinery-wide program the goal of which is to minimize volatile organic compound emissions from Refinery components. Finally, to address the CWA's Spill Prevention Control and Countermeasures requirements, Murphy will undertake measures to bring certain tanks into compliance, including measuring certain containment areas and increasing their capacity, if necessary.

To partially mitigate the penalty, Murphy will implement two SEPs: (1) A project to reduce Murphy's use of high sulfur fuel oil in process heaters and boilers to meet an SO_2 emission limitation of 33.3 tons per month, averaged over a rolling 12-month period; and (2) a project in which Murphy will use a SO_X transfer catalyst at its FCCU to reduce SO_2 emissions from the FCCU to no greater than 34.7 tons per month, averaged over a rolling 12-month period. These two SEPs will reduce SO_2 emissions from the Refinery by at least 580 tons per year beyond legal requirements.

The Department of Justice will accept written comments relating to the proposed Consent Decree for 30 days after publication of this Notice. Comments should be addressed to the Assistant Attorney General,

Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Murphy Oil USA, Inc.,* DOJ # 90–7–1–06523. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, Madison, Wisconsin, and at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed consent decree may also be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547.

In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $18.75 for the decree, payable to the United States Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 02–2855 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on December 31, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, eMotion, Inc., Los Angeles, CA; and Incite Multimedia, Inc., Geneva, SWITZERLAND have been added as parties to this venture. The following members have changed their names: Discreet Logic to Discreet, Montreal, Quebec, CANADA; 4MC to Liberty Livewire, Burbank, CA; Pinnacle to Pinnacle Systems, Mountain View, CA and Informix Software, Inc. to Ascential Software, Oakland, CA. Also, Encoda Systems (formerly Enterprise Systems Group), Boulder, CO; Front Porch Digital, Cherry Hill, NJ; and Matrox, Quebec, CANADA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on September 17, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 15, 2001 (66 FR 52452).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–2853 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Clean Metal Nucleated Casting (CMNC) of Superalloys

Notice is hereby given that, on January 4, 2002, pursuant to Section 6(a) of the National Cooperative Research and production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Clean Metal Nucleated Casting (CMNC) of Superalloys has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Allvac, Monroe, NC and GE Corporate Research and Development Niskayuana, NY. The nature and objectives of the venture are to develop and demonstrate clean metal nucleated casting of superalloys. The activities of this project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–2854 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; Application for Employment/Federal Bureau of Investigation.

The Department of Justice (DOJ), Federal Bureau of Investigation, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged for 60 days until [The **Federal Register** will insert the date 60 days from the date of this notice is published in the **Federal Register**]. this process is conducted in accordance with 5 CFR 1320.10.

If you have comments or suggestions, especially on the estimated public burden or associated response time, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Paul F. Garner, Chief of the Bureau Applicant Employment Unit, Federal Bureau of Investigation, Washington, D.C. 20535; 202–324–6770.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment/Federal Bureau of Investigation.

(3) The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection. *Form Number:* FD–140. *Applicable Component:* Federal Bureau of Investigation, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. *Primary:* Individuals or households. *Other:* None. *Abstract:* The FD–140, Application for Employment, is utilized to collect pertinent background information on all applicants for FBI positions. The FD–140 is issued in lieu of Standard Form 86, Questionnaire for National Security Positions, to address suitability and security concerns beyond the scope of the SF–86. Furthermore, the FD–406, Authority to Release Information, is also incorporated into the FD–140 in order for the FBI to obtain necessary records.

(5) An estimate of the total number of respondents and the estimated amount of time for an average person to respond or reply: 50,000 respondents with an average response rate of 10 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 500,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, N.W., Washington, DC 20530.

Dated: January 31, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–2784 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

National Summit on Retirement Savings

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: This document provides notice of the agenda for the National Summit on Retirement Savings, as called for by the Savings Are Vital to Everyone's Retirement (SAVER) Act, which amends Title I of the Employee Retirement Income Security Act of 1974.

DATES: The National Summit on Retirement Savings will be held on Wednesday, February 27, 2002 beginning at 6 pm EST and ending on Friday, March 1, 2002 at 12:45 pm EST.

ADDRESSES: The Summit will be held at the Capital Hilton, 16th and K Streets, NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Julie Roberts, Office of the Assistant Secretary, Pension and Welfare Benefits Administration, US Department of Labor, Room S–2524, 200 Constitution Ave., NW., Washington, DC 20210, (202) 693–8300, or Mary Jost, Senior Director of Education, International Foundation of Employee Benefit Plans, 18700 West Bluemond Road, P.O. Box 69, Brookfield, WI 53008–0069, (262) 786–6700. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On November 20, 1997, the President signed Public Law 105–92 (1997), the ''Savings Are Vital to Everyone's Retirement Act of 1997'' (SAVER). The SAVER legislation is aimed at advancing the public's knowledge and understanding of the importance of retirement savings by: (1) Providing a bipartisan National Summit on Retirement Savings co-hosted by the President and the Congressional Leadership in the House and Senate; and (2) establishing an ongoing educational program coordinated by the Department of Labor. The Summit will be held February 27 through March 1, 2002 in Washington, DC. The purpose of the Summit is to: (1) Increase public awareness of the value of personal savings for retirement, (2) advance the public's knowledge and understanding of retirement savings and its importance to the well being of all Americans, (3) facilitate the development of a broad-based, public retirement savings education program, (4) identify the barriers faced by workers who want to save for retirement, (5) identify the barriers which employers, especially small employers, face in assisting their workers in accumulating retirement savings, (6) examine the impact and effectiveness of individual employers who promote personal savings and retirement savings plan participation among their workers, (7) examine the impact and effectiveness of government programs at the Federal, State, and local levels to educate the public about retirement savings principles, (8) develop recommendations for governmental and private sector action to promote pensions and individual retirement savings, and (9) develop recommendations for the coordination of Federal, State, and local retirement savings education initiative. The Agenda for the National Summit on Retirement Savings follows.

This agenda is subject to change.

Draft Agenda

National Summit on Retirement Savings February 27–March 1, 2002

Saving For a Lifetime: Advancing Generational Prosperity

PRE-SUMMIT—Wednesday, February 27, 2002

3:00pm to 7:00pm Summit Registration Pick-up
5:45pm to 6:00pm Bus Departs Hotel for Reception, United States Botanic Garden
6:00pm to 7:30pm Delegate Reception

DAY 1—Thursday, February 28, 2002

8:00am to 10:00am Summit Registration Pick-up
8:00am to 9:00am Continental Breakfast
9:00am to 9:10am Presentation of Color Guard and National Anthem, Kathleen Stapleton of OSHA
9:10am to 9:30am Opening Remarks, Secretary Elaine L. Chao
9:30am to 9:35am Introduction of President Bush, Secretary Elaine L. Chao
9:35m to 9:50am Keynote Address, President George W. Bush (invited)
9:50am to 10:15am Retirement Security, Secretary Elaine L. Chao
10:15am to 10:45am Current State of Retirement Savings, Cynthia Drinkwater, Senior Director of Research, International Foundation of Employee Benefit Plans
10:45am to 10:55am Generational Theme, Assistant Secretary Ann Combs, Pension and Welfare Benefits Administration
10:55am to 11:00am Generational Video
11:00am to 11:15am Break
11:15am to 12:15pm Four Concurrent Breakout Sessions, Delegates will

work in one of four teams, each charged with creating a retirement savings campaign for their assigned generation and lifestage. Facilitators and Generational Experts
Group A: The Millennial Generation in Youth (under 20)
Group B: Generation X in Rising Adulthood (20–39)
Group C: The Baby Boom Generation in Midlife (40–59)
Group D: The Silent Generation in Elderhood (60 and above)
12:30pm to 2:00pm Lunch, Importance of Retirement Savings, Federal Reserve Chairman Alan Greenspan
2:00pm to 5:15pm Concurrent Breakout Sessions, Delegates will review model programs and then develop action plans for retirement savings campaigns targeting the assigned generation and lifestage. Facilitators and Generational Experts
5:15pm to 5:45pm Break
5:45pm to 6:00pm Bus Departs Hotel for Reception and Dinner, The Great Hall, Thomas Jefferson Building, Library of Congress
6:00pm to 7:00pm Cocktail Reception
7:00pm to 9:00pm Dinner, Neil Howe and William Strauss, Generational Experts

DAY 2—Friday, March 1, 2002

8:00am to 9:00am Congressional Breakfast, Introduction of Congressional Members, Secretary Elaine L. Chao
9am to 11am Concurrent Breakout Sessions, Delegates will continue to develop and then share proposed action plans for feedback, improvement and discussion. Facilitators and Generational Experts
11am to 12:30pm Final Plenary Session, Action plans and insights for retirement savings campaigns Facilitators
12:30pm to 12:45pm Closing Remarks, Secretary Elaine L. Chao

Signed at Washington, DC, this 31st day of January 2002.

Paul R. Zurawski,

Deputy Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 02–2743 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–015)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Ice Management Systems, Inc., of Temecula, CA, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,772,912, entitled ''Environmentally Friendly Deicing/Anti-Icing Fluid,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATE(S): Responses to this notice must be received by March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: January 31, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–2880 Filed 2–5–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before March 8, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on October 26, 2001 (66 FR 54289 and 54290). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Researcher Application.
OMB number: 3095–0016.
Agency form number: NA Forms 14003 and 14003A.
Type of review: Regular.
Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.
Estimated number of respondents: 22,728.
Estimated time per response: 8 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 3,030 hours.
Abstract: The information collection is prescribed by 36 CFR 1254.6. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

2. *Title:* Order Forms for Genealogical Research in the National Archives.
OMB number: 3095–0027.
Agency form numbers: NATF Forms 81, 82, 83, 84. 85, and 86.
Type of review: Regular.
Affected public: Individuals or households.
Estimated number of respondents: 97,600.
Estimated time per response: 10 minutes.
Frequency of response: On occasion.

Estimated total annual burden hours: 16,267 (rounded up).

Abstract: Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 12,000 per year for the NATF 81, approximately 600 per year for the NATF 82, approximately 1,000 per year for the NATF 83, approximately 6,000 per year for the NATF 84, approximately 46,000 per year for the NATF 85, and approximately 32,000 per year for the NATF 86) and the need to obtain specific information from the researcher to search for the records sought. The form will be printed on carbonless paper as a multi-part form to allow the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies.

Dated: January 23, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–2759 Filed 2–5–02; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Agency Information Collections Activities; Submission for OMB Review, Comment Request Evaluation General Operating Support Program

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of Requests for New Information Collection Approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by March 8, 2002. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Send comments to: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

Pub. L. 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization Pub. L. 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Evaluation of IMLS General Operating Support program.

OMB Number: None.

Agency Number: 3137.

Frequency: One-time.

Affected Public: Museums.

Number of Respondents: 1,500.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 750.

Total Annualized capital/startup costs: $46,508.

Total Annual Costs: $0.

Contact. Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 02–2819 Filed 2–5–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 445, Request for Approval of Official Foreign Travel.
2. *Current OMB approval number:* 3150–0193.
3. *How often the collection is required:* One time per trip.
4. *Who is required or asked to report:* Consultants, contractors and NRC-invited travelers.
5. *The number of annual respondents:* 200.
6. *The number of hours needed annually to complete the requirement or request:* 1,200.
7. *Abstract:* NRC Form 445, ''Request for Approval of Foreign Travel,'' is supplied by consultants, contractors and NRC invited travelers who must travel to foreign countries in the course of conducting business for the NRC. In accordance with 48 CFR 20, ''NRC Acquisition Regulation,'' contractors traveling to foreign countries are required to complete this form. The information requested includes the name of the Office Director/Regional Administrator recommending travel, approved by the Office Director, Regional Administrator or Chairman, as appropriate, the traveler's identifying information, purpose of travel, a listing of the trip coordinators, other NRC travelers and contractors attending the same meeting, and a proposed itinerary.

Submit, by April 8, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to

properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 31st day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2811 Filed 2–5–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission:* Revision.

2. *The title of the information collection:* NUREG/BR–0238, Materials Annual Fee Billing Handbook, NRC Form 628, ''Financial EDI Authorization'', NUREG/BR–0254, Payment Methods, NRC Form 629, ''Authorization for Payment by Credit Card''.

3. *The form number if applicable:* NRC Form 628, ''Financial EDI Authorization'', NRC Form 629, ''Authorization for Payment by Credit Card''.

4. *How often the collection is required:* Annually.

5. *Who will be required or asked to report:* Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

6. *An estimate of the number of responses:* 530 (50 for NRC Form 628 and 480 for NRC Form 629 and NUREG/BR–0254).

7. *The estimated number of annual respondents:* 530 (50 for the NRC Form 628 and 480 for NRC Form 629 and NUREG/BR–0254).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 42 (4 hours for NRC Form 628 and 38 for NRC Form 629 and NUREG/BR–0254).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit cards. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 8, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0190), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 31st day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2813 Filed 2–5–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 20—Standards for Protection Against Radiation.

2. *Current OMB approval number:* 3150–0014.

3. *How often the collection is required:* Annually for most reports and at license termination for reports dealing with decommissioning.

4. *Who is required or asked to report:* NRC licensees, including those requesting license termination.

5. *The number of annual respondents:* The total annual number of NRC licensees responding to this requirement by either reporting or recordkeeping is 5,048.

6. *The number of hours needed annually to complete the requirement or request:* 141,183.

7. *Abstract:* 10 CFR part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC. These standards require the establishment of radiation protection programs, maintenance of radiation records, recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report

to NRC of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

Submit, by April 8, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 31st day of January, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2812 Filed 2–5–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board Panel

[Docket No's. 50–369–LR, 50–370–LR, 50–413–LR, and 50–414–LR; ASLBP No. 02–794–01–LR]

In the Matter of Duke Energy Corporation, (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2); Notice of Hearing Before Administrative Judges: Ann Marshall Young, Chair, Dr. Charles N. Kelber, Lester S. Rubenstein

January 31, 2002.

This proceeding concerns the license renewal application (LRA) of Duke Energy Corporation (Duke), seeking approval under 10 CFR part 54 to renew the operating licenses for its McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2, for additional twenty-year periods commencing in 2021, 2023, 2024 and 2026, respectively. After noting receipt of the application, *see* 66 FR 37,072 (July 16, 2001), the NRC Staff determined it to be complete and acceptable for docketing and on August 15, 2001, provided a notice of opportunity for hearing with regard to the application. *See* 66 FR 42,893 (Aug. 15, 2001). In response to this notice, Petitioners Nuclear Information and Resource Service (NIRS) and Blue Ridge Environmental Defense League (BREDL), both appearing through non-attorney representatives, timely filed petitions to intervene and requests for hearing on September 14, 2001. By Order dated October 4, 2001, the Nuclear Regulatory Commission referred the hearing requests and intervention petitions to the Atomic Safety and Licensing Board Panel, CLI–01–20, 54 NRC 211 (2001), and on October 5, 2001, an Atomic Safety and Licensing Board, consisting of the members listed above, was established to preside over the proceeding. *See* 66 FR 52,158 (Oct. 12, 2001).

Notice is hereby given that, by Memorandum and Order dated January 24, 2002, the Board granted Petitioners NIRS and BREDL a hearing, after holding oral argument in Charlotte, North Carolina, on December 18–19, 2001. LBP–02–04, 54 NRC (Jan. 24, 2002). In this Memorandum and Order, the Board found that both NIRS and BREDL have standing to proceed, admitted contentions relating to the anticipated use of plutonium mixed oxide (MOX) fuel in the Duke plants and to ice condensers and station blackout risks, and certified one question relating to terrorism risks to the Commission for its consideration.

This proceeding will be conducted under the Commission's hearing procedures set forth in 10 CFR part 2, subpart G. During the course of the proceeding, the Board may conduct additional oral argument as provided in 10 CFR 2.755, hold additional prehearing conferences pursuant to 10 CFR 2.752, and conduct an evidentiary hearing in accordance with 10 CFR 2.750–.751. The time and place of these sessions will be announced in Licensing Board Orders. Except as limited by the parameters of telephone conferences (which will in any event be transcribed), members of the public are invited to attend any such sessions.

Additionally, as provided in 10 CFR 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in the proceeding. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff. A copy of the statement should also be served on the Chair of the Atomic Safety and Licensing Board. At a later date, the Board will entertain oral limited appearance statements at a location in the vicinity of the Duke plants, which are both situated within a 20-mile radius of Charlotte, North Carolina. Notice of these oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR).

Documents related to this proceeding are available electronically through the Agencywide Documents access and Management System (ADAMS), with access to the public through the NRC's Internet Web site (Public Electronic Reading Room Link, *http://www.nrc.gov/reading-rm/adams.html.* The NRC Public Documents Room (PDR) and many public libraries have terminals for public access to the Internet. Documents that may relate to this proceeding that are dated earlier than December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the PDR, Room 0–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Rockville, Maryland.
Dated: January 31, 2002.

For the Atomic Safety and Licensing Board[1]

Ann Marshall Young,

Chair, Administrative Judge.

[FR Doc. 02–2810 Filed 2–5–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through January 2003.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

Amy C. Smith,

Associate Director for Economic Policy, Office of Management and Budget.

Appendix C (Revised February 2002)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of January 2003. Copies of the updated appendix and the Circular can be obtained in an electronic form through the OMB home page, http://www.whitehouse.gov/OMB/circulars/index.html. Updates of the appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381), as is a table of past years' rates.

Nominal Discount Rates. Nominal interest rates based on the economic assumptions from the budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-year	5-year	7-year	10-year	30-year
4.1	4.5	4.8	5.1	5.8

Real Discount Rates. Real interest rates based on the economic assumptions from the budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-year	5-year	7-year	10-year	30-year
2.1	2.8	3.0	3.1	3.9

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 02–2771 Filed 2–5–02; 8:45 am]

BILLING CODE 3110–01–P

[1] Copies of this Notice of Hearing were sent this date by Internet e-mail or facsimile transmission, if available, to all participants or counsel for participants.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration on the Pacific Exchange, Inc. (Leggett & Platt, Inc., Common Stock, $.01 Par Value, and Preferred Stock Purchase Rights) File No. 1–7845

January 31, 2002.

Leggett & Platt, Inc., a Missouri corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and Preferred Stock Purchase Rights (''Securities'') from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved a resolution on November 14, 2001 to withdraw its Securities from listing on the Exchange. The Board cited low trading volume and negligible benefit derived from the Issuer's listing as reasons for delisting its Securities from the PCX. The Issuer will continue to list its Securities on the New York Stock Exchange, Inc. (''NYSE'').

The Issuer has stated in its application that it has met the requirements of PCX Rule 5.4(b) governing an issuer's voluntary withdrawal of a security from listing and registration on the Exchange. The Issuer's application relates solely to the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

withdrawal of the Securities from listing on the PCX and shall have no affect upon the Securities' continued listing on the NYSE and registration under Section 12(b) of the Act.[3]

Any interested person may, on or before February 22, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–2864 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the American Stock Exchange LLC (Scientific Games Corporation, Class A Common Stock, $.01 par value) File No. 1–11693

January 31, 2002.

Scientific Games Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

On January 9, 2002, the Board of Directors of the Issuer approved resolutions to withdraw the Issuer's Security from listing on the Amex and to list it on the Nasdaq National Market, Inc. (''Nasdaq''). The Issuer stated in its application that trading in the Security on the Amex ceased on January 29, 2002, and trading of the Security began on the Nasdaq at the opening of business on January 29, 2002. The Issuer made the decision to withdraw its Security from the Amex and list the Security on Nasdaq in order to increase the visibility and liquidity of the Security.

Any interested person may, on or before February 22, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–2863 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25406; 812–12764]

Credit Suisse First Boston Corporation, et al.; Notice of Application

January 30, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Applicants have received a temporary order exempting them and other entities of which Credit Suisse First Boston Corporation (''CSFB'') is or becomes an affiliated person from section 9(a) of the Act, with respect to a securities-related injunction entered into on January 29, 2002, until the Commission takes final action on an application for a permanent order. Applicants also have requested a permanent order.

Applicants: CSFB, Credit Suisse Asset Management, LLC (''CSAM Americas''), Credit Suisse Asset Management Securities, Inc. (''CSAM Securities''), Credit Suisse Asset Management Limited (''CSAM London''), and Credit Suisse First Boston, Inc. (''CSFBI'').

Filing Date: The application was filed on January 30, 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 25, 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, CSFB and CSFBI, Eleven Madison Avenue, New York, NY 10010–3629; CSAM Americas and CSAM Securities, 466 Lexington Avenue, New York, NY 10017–3147; CSAM London, Beaufort House, 15 St. Botolph Street, London (England), United Kingdom EC3A 7JJ.

FOR FURTHER INFORMATION, CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Michael W. Mundt, Senior Special Counsel, 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 (tel. 202–942–8090).

Applicants' Representations

1. CSFB, a Massachusetts corporation, is a full service investment banking firm and is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'') and as an investment adviser under the

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[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Investment Advisers Act of 1940 (''Advisers Act''). CSAM Americas, a Delaware limited liability company, is registered as an investment adviser under the Advisers Act. CSAM Securities, a New York corporation, is registered as a broker-dealer under the Exchange Act. CSAM London, a corporation organized under the laws of England and Wales, is registered as an investment adviser under the Advisers Act. CSFB, CSAM Americas, and CSAM Securities are indirect wholly owned subsidiaries of CSFBI, which is an indirect wholly owned subsidiary of Credit Suisse Group (''Group'') that functions as the holding company for most of the Group's US investment banking and asset management operations. CSAM London and CSFB are indirect subsidiaries of Credit Suisse First Boston. CSAM Americas and CSAM London currently serve as investment advisers (in some case, as subadvisers) to a number of registered open-end and closed-end management investment companies, and CSAM Securities currently serves as principal underwriter to a number of registered open-end management investment companies (together, such investment companies are ''Funds'').[1]

2. On January 29, 2002, the U.S. District Court for the District of Columbia entered a Final Judgment of Permanent Injunction and Other Relief (''Final Judgment'') in a matter brought by the Commission.[2] The Commission alleged that CSFB allocated ''hot'' initial public offerings (''IPOs'') to customers willing to pay higher than normal commissions to CSFB and violated section 17(a) of the Exchange Act, rule 17a–3 under the Exchange Act, and Conduct Rules 2110 and 2330 of the National Association of Securities Dealers, Inc. (''NASD''). The Final Judgment, among other things, enjoined CSFB, directly or through its officers, directors, agents, and employees, from violating section 17(a), rule 17a–3, and NASD Conduct Rules 2110 and 3220. Additionally, the Final Judgment ordered CSFB to pay disgorgement of $70 million, pay a civil penalty of $30 million, and comply with certain undertakings, including an undertaking to adopt and implement certain policies and procedures relating to the allocation of IPO shares.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Applicants state that, as a result of the Final Judgment, applicants may be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) of the Act seeking temporary and permanent orders exempting the Covered Persons from the provisions of section 9(a) of the Act.

3. Applicants state that the prohibitions of section 9(a) as applied to the Covered Persons would be unduly and disproportionately severe and that the conduct of applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants state that the matters forming the basis of the Final Judgment did not involve any registered investment companies. Applicants state that no current or former employee of any of the applicants who is or was involved in providing advisory or underwriting services to registered investment companies advised or underwritten by the applicants was involved in the conduct resulting in the Final Judgment. CSFB also will adopt and implement certain policies and procedures, as required in the Final Judgment, regarding allocation of IPO shares.

4. CSAM Americas, CSAM London, and CSAM Securities will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds regarding the Final Judgment and the reasons they believe relief pursuant to section 9(c) is appropriate. CSAM Americas, CSAM London, and CSAM Securities will provide the Funds with all information concerning the Final Judgment and the exemptive application necessary for those Funds to fulfill their disclosure and other obligations under the federal securities laws.

5. Applicants assert that the inability of CSAM Americas and CSAM London to continue providing advisory services to the Funds and the inability of CSAM Securities to continue to serve as principal underwriter to Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that if they were prohibited from providing services to registered investment companies, the effect on their businesses and employees would be severe.

6. Applicants note that they have previously received exemptive orders pursuant to section 9(c) of the Act. In 1986, The First Boston Corporation (''FBC,'' a former name of CSFB) became subject to a permanent injunction arising out of a violation of section 10(b) of the Exchange Act and rule 10b–5 under the Exchange Act involving purchases for its own account of certain securities while in possession of material nonpublic information (''1986 Injunction'').[3] The Commission issued orders under section 9(c) with respect to the 1986 Injunction.[4] In 1975, Credit Suisse (currently known as Credit Suisse First Boston) became subject to a permanent injunction arising out of violations of various provisions of the federal securities laws in connection with the distribution of unregistered gold-related securities (''1975 Injunction'').[5] The Commission issued orders under section 9(c) with respect to the 1975 Injunction.[6] Applicants do not believe that the existence of these prior

[1] Applicants request that any relief granted pursuant to the application also apply to any other entity of which CSFB is or hereafter becomes an affiliated person (together with the applicants, the ''Covered Persons'').

[2] *Securities and Exchange Commission* v. *Credit Suisse First Boston Corporation*, Final Judgment of Permanent Injunction and Other Relief as to Credit Suisse First Boston Corporation, 02 Civ. 00090 (RWR) (D.D.C., Jan. 29, 2002).

[3] *Securities and Exchange Commission v. The First Boston Corporation,* Final Judgment of Permanent Injunction and Other Relief as to The First Boston Corporation, 86 Civ. 3524 (S.D.N.Y. May 5, 1986).

[4] *See, e.g., First Boston Asset Management Corporation, et al.,* Investment Company Act Release Nos. 15086 (May 5, 1986) (notice and temporary order) and 15221 (July 24, 1986) (permanent order).

[5] *Securities and Exchange Commission v. American Institute Counselors, Inc., et al.,* Final Judgment of Permanent Injunction and Other Relief as to American Institute Counselors, Inc., et al., 75 Civ. 1965 (D.D.C. Nov. 25, 1975).

[6] *See, e.g., First Boston Corporation,* Investment Company Act Release Nos. 12867 (Dec. 3, 1982) (notice and temporary order) and 12928 (Dec. 27, 1982) (permanent order).

violations should preclude them from obtaining the requested relief.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly, *it is hereby ordered*, under section 9(c), that the Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Final Judgment, subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2794 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXHANGE COMMISSION

(Release No. 34–45360; File No. SR–Amex–2001–102)

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change Relating to a Retroactive Increase in Floor, Membership and Options Trading Fees

January 29, 2002.

I. Introduction and Description of the Proposal

On December 6, 2001, the American Stock Exchange LLC (''Amex'' 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 apply retroactively fee increases made under SR–Amex–2001–101,[3] which was filed for immediate effectiveness pursuant to section 19(b)(3)(A)(ii) of the Act.[4] Specifically, the Exchange proposed to increase floor, membership and option trading fees and to impose the increased license fees and to eliminate of the fee cap for options as of October 1, 2001. Amendment No. 1 was filed with the Commission on December 17, 2001.[5]

The proposed rule change was published for comment, as amended, in the **Federal Register** on December 27, 2001.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act [7] and the rules and regulations thereunder applicable to a national securities exchange.[8] The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act [9], which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the increase reflects additional costs that Amex has represented it has incurred since August 2001 for services provided to issuers. The Amex stated that it has committed additional resources to provide enhancements to the Floor, and major improvements in technology, facilities and services, which included a major expansion of the Amex Trading Floor in 2001. The Exchange represented that the increase in options transactions charges is necessitated by the large and increasing costs incurred by the Exchange in implementing options trading technology. The Exchange further represented that it has subsidized such expenses before August 1, 2001.

III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [10], that the proposed rule change (File No. SR–Amex–2001–102), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2791 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) for a description of these increased fees. (SR–Amex–2001–101).

[4] 15 U.S.C. 78s(b)(3)(a)(ii).

[5] *See* letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 14, 2001 (''Amendment No. 1''). In Amendment No. 1, the Amex provided greater detail as to the basis for the proposed rule change.

[6] *See* Securities Exchange Act Release No. 45165 (December 27, 2001), 66 FR 66957.

[7] 15 U.S.C. 78f.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45365; File No. SR–AMEX–2001–106]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Unlisted Trading Privileges in Nasdaq National Market Securities

January 30, 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 American Stock Exchange LLC (''Amex'' 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 Amex filed an amendment to its proposal on January 14, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission (January 11, 2002) (''Amendment No. 1'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt new Amex Rule 118 and to amend Amex Rules 1, 3, 7, 24, 115, 170, 175, 190, 205 and Section 950 of the Amex Company Guide to provide for the trading of Nasdaq National Market securities pursuant to unlisted trading privileges. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 1. Hours of Business

No change.

Commentary

.01 through .04. No change.

.05 The hours of business for a security traded on the Exchange pursuant to unlisted trading privileges shall be the same as the hours during which the security is traded in the primary market for such security.

Rule 3. Excessive Dealing

(a) No change.

(b) Trading with non-member.

No regular or options principal member shall effect, in the rooms of the Exchange, a transaction with an associate member or with a non-member, in any security dealt in on the Exchange; but this rule shall not prohibit transactions permitted by *Rule 118*, Rule 152 or by Section 7 of Part II of the Rules of the Exchange or with an employee of the Exchange or American Stock Exchange Clearing Corporation engaged in carrying out arrangements approved by the Board of Governors to facilitate the borrowing and lending of money.

(c) through end. No change.

Rule 7. Short Sales

No change.

Commentary

.01 No change.

.02 This Rule 7 does not apply to transactions on the Exchange in Nasdaq National Market securities pursuant to unlisted trading privileges effected under Exchange Rule 118.

Rule 24. Block Transactions

(a) No change.

(b) The restrictions of paragraph (a) shall not apply to:

(i) through (v) No change.

(vi) orders in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

Rule 115. Exchange Procedures for Use of Unusual Market Exception

No change.

Commentary .01.

1. and 2. No change.

3. The Market Operations Division, either upon receiving notification from a Floor Official with respect to a specialist as provided in paragraph 1(b) or upon making its own determination with respect to the Exchange as provided in paragraph 2, shall notify the Securities Industry Automation Corporation (and request that it notify quotation vendors) *or, with respect to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, the Processor for Nasdaq National Market securities,* regarding the Exchange's inability to accurately collect, process, and make available the quotation data required by SEC.

Rule 11Ac1–1.

4. No change.

Commentary .02 No change.

Trading in Nasdaq National Market Securities

Rule 118. (a) Definitions

(i) The term ''Nasdaq National Market security'' shall mean any security designated as such pursuant to National Association of Securities Dealers (''NASD'') Rule 4200 and as to which the Exchange has extended unlisted trading privileges pursuant to Section 12(f) of the Securities Exchange Act of 1934.

(ii) The term ''Nasdaq System'' shall mean the Nasdaq's Automated Quotation System.

(b) Except to the extent that the provisions of Rule 118 govern, or unless the context otherwise requires, the provisions of the Constitution and Rules of the Exchange are applicable to trading in Nasdaq National Market securities.

(c) Each Exchange specialist shall permit each Nasdaq System market maker, acting in its capacity as market maker, direct telephone access to the specialist post in each Nasdaq National Market security in which such market maker is registered as a market maker. Such access shall include appropriate procedures to assure the timely response to communications received through telephone access. Nasdaq System market makers may use such telephone access to transmit orders for execution on the Exchange. Any order received on the Floor via telephone from a Nasdaq System market maker shall be effected in accordance with the rules relating to the making of bids and offers and transactions on the Floor, subject to exceptions to Exchange rules applicable to trading in Nasdaq National Market Securities as set forth in Commentary .01 to this Rule.

(d) The Exchange will display on its trading floor the quotations distributed by any Nasdaq System market maker in Nasdaq National Market securities. Exchange specialists may send orders from the Floor of the Exchange for execution via telephone to any Nasdaq System market maker in each Nasdaq National Market security in which it displays quotations. Quotations in Nasdaq National Market securities from other market centers shall have no standing in the trading crowds on the Floor.

(e) Pursuant to the Nasdaq Unlisted Trading Privileges Plan (''Plan''), the Exchange shall report to the Plan Processor intermarket transactions effected on the Exchange for which the Exchange member is the seller.

(f) Comparison of intermarket transactions in Nasdaq National Market securities will be made pursuant to procedures to be established between Nasdaq and the Exchange.

(g) Registration of Specialists—Specialists who wish to trade Nasdaq National Market securities must be registered and qualified by the Exchange. Such persons will be required to:

(1) if conducting business with the public, obtain a Series 7, General Securities Representative license; and,

(2) complete a training period as deemed adequate by the Exchange.

(h) Non-Liability of Exchange-Article IV, Section 1(e) of the Exchange Constitution shall apply to trading of Nasdaq National Market securities on the Exchange pursuant to unlisted trading privileges, and the Exchange, its affiliates, and any of its or their respective officers, governors, committee members, employees or agents shall not be liable to a member of the Exchange, a member organization, or a person associated with a member or member organization to the extent provided in Article IV, Section 1(e).

(i) Specialists in Nasdaq National Market securities are subject to the financial requirements set forth in Rule 171, Commentary .04.

Commentary

.01 The following rules refer to trading in Nasdaq National Market securities and should be consulted by members and member organizations trading Nasdaq National Market securities on the Floor: Rule 1 (Commentary .05); Rule 3; Rule 7 (Commentary .02); Rule 24(b); Rule 115 (Commentary .01); Rule 170 (Commentary .11); Rule 175 (Commentary .01); Rule 190

(Commentary .06); and Rule 205 (Commentary .05).

Rule 170. Registration and Functions of Specialists

(a) through (e) No change.

Commentary

.01 through .10 No change.

.11 The following provisions of this Rule shall not apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges: paragraph (e), Commentary .01, .02, .05, .07, .08 and .09.

Rule 175. Specialist Prohibitions

(a) through (c) No change.

Commentary

.01 Paragraph (a)(1) and paragraph (b) of this Rule shall not apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges. In addition, ''Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175'' shall not apply to such trading.

Rule 190. Specialists' Transactions with Public Customers

(a) through (e) No change.

Commentary

.01 through .05 No change.

.06 Paragraph (b) of this Rule shall not apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

Rule 205. Manner of Executing Odd-Lot Orders

No change.

Commentary

.01 through .04. No change.

.05 With respect to odd-lot market and marketable limit orders in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, orders to sell (buy) shall be filled at the best bid (offer) disseminated pursuant to SEC Rule 11Ac1–1 at the time the order has been received at the trading post or through the Amex Order File.

Company Guide Sec. 950 Explanation of Difference Between Listed and Unlisted Trading Privileges

First paragraph—No change.

Subject to Commentary .01 of this section, [S]securities other than those fully listed on the Exchange were, in the past, admitted to dealings on the Exchange under the designation ''admitted to unlisted trading privileges''. Securities in this category were admitted to dealings without a formal listing application or request for listing by the issuing company. Most of these securities were admitted to dealings prior to 1934, and further admission of securities to this type of dealings has been virtually terminated. Since companies whose securities are admitted to unlisted trading privileges never filed any listing application or request with the Exchange for trading privileges in their securities, they are not subject to any of the listing agreements applicable to fully listed companies.

Commentary

.01 Notwithstanding the provisions of Section 950, the Exchange may extend unlisted trading privileges to Nasdaq National Market securities pursuant to Section 12(f) of the Securities Exchange Act of 1934. Nasdaq National Market securities are designated as such by the NASD, pursuant to NASD rules. The Exchange has implemented certain rules applicable to trading in Nasdaq National Market securities. See Amex Rule 118.

* * * * *

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 is proposing rules to accommodate trading of Nasdaq National Market securities on the Exchange pursuant to unlisted trading privileges (''UTP''), in accordance with provisions of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Plan''). The Exchange is a participant in the Plan. Exchange trading in Nasdaq National Market securities will be governed by proposed Amex Rule 118. The Exchange intends to limit Nasdaq UTP trading to Nasdaq National Market issues and not to include Nasdaq SmallCap issues at this time.

Proposed Rule 118 includes the following provisions:

(a) Defines Nasdaq National Market security and Nasdaq System.

(b) States that the Exchange Constitution and rules apply to trading Nasdaq National Market securities, except to the extent that Rule 118 governs or unless the context otherwise requires.

(c) Requires Amex specialists to permit Nasdaq market makers direct telephone access to the specialist post and allows Nasdaq market makers to use telephone access to transmit orders for execution on the Amex.

(d) Provides that quotations distributed by Nasdaq market makers will be displayed on the Floor, that Amex specialists may send orders from the Floor for execution via telephone to Nasdaq market makers, and that quotations in Nasdaq securities from other market centers have no standing on the Floor.

(e) Provides that the Exchange will report intermarket transactions in which the Exchange member is the seller to the Nasdaq UTP Processor.

(f) Provides that comparison of intermarket transactions in Nasdaq National Market securities will be made pursuant to procedures to be established between Nasdaq and the Exchange.[4]

(g) Provides that specialists in Nasdaq securities must be registered and qualified, and includes specified testing and training requirements.

(h) Provides for a disclaimer of Exchange liability with request to transactions on the Exchange in Nasdaq National Market securities, in accordance with Article IV, Section 1(e) of the Exchange Constitution.

(i) Provides that the specialist financial requirements of Rule 171, Commentary .04 apply to specialists in Nasdaq securities. Rule 171, Commentary .04 currently provides that a specialist in a security principally traded or priced in another U.S. market must maintain a cash or net liquid asset position sufficient to assume a position of 20 trading units. For Amex-listed securities, the requirement is 60 trading units.

[4] The Commission notes that these procedures must be established before the Commission can take final action on this proposal.

The following existing Amex rules also would be amended to accommodate Nasdaq UTP trading[5]:

Rule 1, Comm. .05

Provides that the hours of business for securities traded on the Exchange pursuant to UTP are the same as the hours of trading in the primary market for such securities (Comm. .05).[6]

Rule 3

Exempts trading with non-member Nasdaq market makers from the prohibition on trading with non-members.

Rule 7

States that Rule 7, which includes the short selling ''tick-test'' restriction of SEC Rule 10a–1, does not apply to transactions in Nasdaq National Market securities effected under Rule 118.

Rule 24

Exempts Nasdaq National Market securities from the rule's block transactions restrictions. Rule 24 states that, after learning about a trade executed or about to be executed on the Floor involving 10,000 shares or more, a member or employee of a member or member organization cannot initiate or transmit to the Floor an order for the account of a member or member organization for two minutes following the print of such trade on the tape. The Exchange does not believe it is appropriate to apply the restrictions in Rule 124 to Nasdaq National Market securities, for which Amex would not be the primary market.

Rule 115

Amends Commentary .01(3) to provide for notification to the Processor for Nasdaq National Market securities in the event unusual market activity or an unusual condition exists that prevents the specialist from updating quotations on a timely basis.

Rule 170, Comm. .10

Exempts specialists from Rule 170, paragraph (e) and specified Commentary to the rule. Rule 170(e) restricts members or persons affiliated with a specialist or the specialist's member organization from purchasing or selling a specialty security for an account in which such person or party has an interest, except when the specialist is acting pursuant to Rule 170(c) or (d) (*e.g.,* is engaged in dealings reasonably necessary to maintain a fair and orderly market, and to maintain price continuity and reasonable depth). The requirements of Rule 170 are imposed by Amex as a primary market but are not imposed by regional exchanges or Nasdaq. Therefore, the proposed exemption provides regulatory parity with other markets trading Nasdaq securities. The Exchange notes that the requirements of Rules 150 and 155 will apply to orders entered with a specialist in Nasdaq National Market securities from affiliates of the specialist.

The rationale underlying the proposed exemption from paragraph (e) also underlies the proposed exemptions from the stabilization and liquidating transaction restrictions of Commentaries .01 and .02;[7] restrictions on adjustment of a LIFO inventory (Commentary .05), and restrictions on assignment to the specialist's investment account (Commentary .07). Commentaries .08 and .09, which relate to transactions in the Intermarket Trading System (''ITS'') are inapplicable insofar as Nasdaq securities are not traded in ITS.

Rule 175

Provides that Rule 175(a)(1) and (b) and Rule 175 ''Guidelines'' shall not apply to Nasdaq UTP securities. Rule 175(a)(1) provides that a specialist, the specialist's member organization, or other specified persons cannot acquire, hold or grant an interest in any option to purchase or sell or to receive or deliver shares of the specialist's specialty stock, except as provided by Rule 175. Paragraph (b) sets out restrictions on specialists' ability to establish or maintain positions in listed options overlying their specialty securities, which positions must conform to the rule's ''Guidelines.'' The Exchange does not believe these provisions are appropriately applied to options positions overlying Nasdaq UTP securities insofar as the Exchange would not be the primary market for these securities, and restrictions such as those in Rule 175 are not imposed by regional exchanges or Nasdaq.

Rule 190

Provides that paragraph (b) shall not apply to Nasdaq UTP securities. Paragraph (b) prohibits specialists from accepting an order to buy or sell the specialist's specialty securities directly from specified entities, including the issuer; an officer, director or 10% shareholder in the issuer; a pension fund; or a bank, insurance company or investment company. The Exchange does not view the potential abuses addressed by paragraph (b) as raised by trading in Nasdaq UTP securities insofar as the Exchange would not be the primary market for these securities, and restrictions such as those in Rule 190(b) are not imposed by regional exchanges or Nasdaq.

Rule 205, Comm. .05

Provides that odd-lot and marketable limit orders should be filled at the best bid or offer disseminated through Nasdaq.

Company Guide

Section 950.

Adds Commentary .01 to state that the Exchange may trade Nasdaq securities pursuant to UTP. This provision would distinguish Nasdaq UTP trading from Amex securities that were admitted to unlisted trading privileges and that, for the most part, were traded on the Amex prior to 1934.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] The Exchange has separately filed pursuant to Rule 19b–4 allocation procedures applicable to Nasdaq National Market securities (SR–Amex–2001–107).

[6] The Commission notes that the Plan defines Primary Market. However, in draft Plan Amendment No. 13, the Plan participants propose to delete the Primary Market definition and add a Listing Market definition. If the Primary Market definition is ultimately deleted and the Listing Market definition is added to the Plan, the Exchange should reflect this change in its rules where applicable.

[7] Stabilization requirements refer to Amex rules that generally prohibit Amex specialists from buying on plus ticks (*i.e.,* a trade at a positive variation from the prior transaction) or selling on minus ticks (*i.e.,* a trade at a negative variation from the prior transaction). The Exchange currently has a proposed rule change pending with the Commission that would revise stabilization requirements as applied to Amex specialists. *See* SR–Amex–2001–54.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–2001–106 and should be submitted by February 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2793 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45366; File No. SR–Amex–2002–06)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Implementation of a Fee for the Issuance of Temporary Identification Badges

January 30, 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 24, 2002, the American Stock Exchange LLC (''Amex'' 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b–4 of the Act, proposes to charge a flat fee of $50 per occasion for the issuance of temporary identification badges for any member or member firm employee who fails to bring his or her badge to the Exchange. According to the Exchange, members and/or their firms will be automatically billed monthly for each temporary idenitification badge for both affiliated employees and members.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, 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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, sest forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex represents that current circumstances require heightened security measures, and thus, that the Amex's Security Department's resources need to be focused on these measures. According to the Amex, issuing temporary identification badges interferes with more important duties and is an expense to the Exchange. As a result, the Amex is proposing to charge a flat fee of $50 per occasion for the issuance of temporary identification badges for any member or member firm employee who fails to bring his or her badge to the Exchange. Members and/or their firms will be automatically billed monthly for each temporary identification badge for both affiliated employees and members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)[3] of the Act, in general, and Section 6(b)(4) of the Act,[4] in particular, because 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 propposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4[6] 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

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–06 and should be submitted by February 27, 2002.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2865 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45351; File No. SR–PCX–2001–51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Schedule of Fees and Charges for Options Market Share Shortfall Fee, Surcharge Fee, and Options Issue Transfer Fee

January 29, 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 26, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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 the Exchange. 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify its Schedule of Fees and Charges to reflect a new options market share shortfall fee, surcharge fee, and options issue transfer fee.

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 PCX 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 PCX 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

Option Market Share Shortfall Fee

The Exchange is proposing to adopt a new Lead Market Maker (''LMM'') shortfall fee, of $.35 per contract, to be paid by the LMM allocated any ''Top 120 Option'' if at least 10 percent of the total national monthly contract volume (''total volume'') for such Top 120 Option is not achieved on the PCX in that month.[3] A ''Top 120 Option'' is defined by the proposal as one of the 120 most actively traded equity options in terms of the total number of contracts traded nationally for a specified month based on volume reflected by the Options Clearing Corporation (''OCC'')[4].

The PCX states that at the end of each trading month, the total number of contracts executed on the PCX (the ''PCX volume'') in a particular Top 120 Option will be subtracted from the amount that represents 10 percent of the total national volume for that option (''10% total volume'') to determine the number of contracts that represent the ''shortfall'' for that Top 120 Option for purposes of calculating this fee.

Specifically, the PCX will apply the following calculation: 10% total volume minus PCX volume equals the shortfall volume. If the shortfall volume is a number of contracts greater than zero, the shortfall volume will be multiplied by $.35 per contract to determine the LMM shortfall fee for that month for that Top 120 Option.[5]

In sum, if the PCX fails to garner 10 percent of the total volume for a particular month for a Top 120 Option, the LMM for that Top 120 Option would be required to pay the Exchange the LMM shortfall fee for each contract that falls below 10 percent up to the amount that would represent 10 percent of the total volume for that option.[6]

The total volume for purposes of the 10 percent threshold is based on the current month's volume.[7] However, the determination of whether an equity option is considered a Top 120 Option for purposes of the fee is based on a different time period. The Top 120 Options for January will be based on November's volume. Thereafter, the Exchange will continue the two-month differentiation, so that February's Top 120 Options will be based on December's volume, and March's Top 120 Options will be based on January's volume, and so forth.

The purpose of the proposed rule change is to amend PCX's schedule of dues, fees and charges to impose a fee for any deficiency between what the PCX actually traded and 10 percent of the total volume for each respective month. PCX intends the proposed fee to provide the PCX with the approximate revenue it would have received had a Top 120 Option traded at least 10 percent of the total volume in a given month on the PCX. The PCX represents that the options LMM shortfall fee

[3] The shortfall fee is similar to the Philadelphia Stock Exchange's shortfall fee. *See* Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000).

[4] The PCX intends to divide by two the total volume amount reported by OCC, which reflects both sides of an executed transaction, thus avoiding one trade being counted twice for purposes of determining overall volume.

[5] If the result of the first equation (10% total volume minus PCX volume) was negative, meaning the PCX volume exceeded 10% total volume for a Top 120 Option, then there would be no shortfall to which the LMM shortfall fee would apply. Under the proposal, any excess volume (over the 10% total volume target) could not be carried over to another month, nor could any excess volume in one option be assigned to another option. Telephone conversation between Cindy Sink, Senior Attorney, Regulatory Policy, PCX, and Ira Brandriss, Special Counsel, and John Riedel, Attorney-Advisor, Division of Market Regulation (''Division''), Commission, January 15, 2002 (''Telephone conversation with the PCX'').

[6] Telephone conversation with the PCX.

[7] For example, for the month of December, the LMM shortfall fee would apply to 10 percent of total December volume minus the PCX December volume.

generally parallels the amount that the Exchange would have received if an equity option contract were traded on the PCX with an LMM.[8]

Pursuant to PCX rules, options are allocated to LMMs based on certain factors. LMMs submit written applications that include the LMMs experience and capitalization, a demonstration of the LMM's ability to trade the particular option, and any other reasons why the LMM believes it should be assigned or allocated the security.[9] Once an option is allocated to an LMM, certain performance reviews may be conducted.[10] A Top 120 Option is unique and may require specific qualifications as determined by the Options Allocation Committee (''OAC'') and strategic efforts.

Moreover, the PCX believes that the options traded by the LMM and the transactions related thereto, may be especially valuable to that LMM and to the Exchange due to their potential profitability. Therefore, the Exchange believes that the LMM should compete for order flow in the national market, because that LMM is the key party responsible for marketing and receiving order flow in that particular option. The PCX believes that an LMM's willingness to apply to be or continue to be an LMM in a Top 120 Option, in light of the shortfall fees, is an important tangible demonstration of commitment to making the efforts required to achieve at least a 10 percent national volume level at the PCX.

The Exchange believes that it is necessary to continue to attract order flow to the Exchange in order to remain competitive. The proposed fee should encourage LMMs to vigorously compete for order flow, which not only enhances the LMM's role, but also provides additional revenue to the Exchange. Moreover, the Exchange expects that LMMs' efforts to maintain at least 10 percent of the total volume should contribute to deeper, more liquid markets and tighter spreads. Thus, competition should be enhanced, and important auction market principles preserved.

The above-described proposed fee will be effective the January 2002 trade month.

Surcharge Fee

The Exchange proposes to adopt a surcharge fee of 2.5% on the total amount billed on regular PCX member monthly invoices. The rate will be applied to total invoice amounts excluding registered representative fees, marketing fees and member dues and fines. This fee includes fees, charges, and pass through fees, and applies only to Options billings, not Equities and Clearing billings. The PCX states that the purpose of the fee is to generate revenue for the Exchange.

The above-described proposed fee will be effective the January 2002 trade month.

Options Issue Transfer Fee

The Exchange proposes to establish a new fee for transfers of options issues. The fee imposes a charge of $1000 per option issue transferred upon the transferor. PCX Rule 6.82(e) provides for allocation of option issues to LMMs by the Options Allocation Committee (''OAC''). The OAC selects the candidate who appears best able to perform the functions of an LMM in the designated option issue. Factors to be considered for selection include, but are not limited to, experience with trading the option issue; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; and trading crowd evaluations.[11] Issues may only be transferred by a firm or between nominees with the express approval of the OAC.[12] To transfer issues, the transferor must file an application with the Exchange. That application is posted to the floor for comment. After the comment period, the OAC evaluates and approves or denies the transfer. The Exchange researches the relevant statistics for the OAC evaluation. Each issue transferred expends Exchange resources.

Transfers of issues were first permitted in June 2000. Since that time, the Exchange has processed 37 transfers involving over 452 issues. The PCX states that the purpose of the fee is to cover administrative fees relating to transfers.

The above described proposed transfer fee will be effective January 1, 2002.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[13] in general, and section 6(b)(4),[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 not solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[15] and subparagraph (f)(2) of Rule 19b–4[16] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, 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

[8] The $.35 is intended by the PCX to represent the following amounts, which, the PCX believes, may be generated by a trade on the PCX with an LMM: a $0.21 LMM transaction fee, an estimated $.06 from Options Price Reporting Authority (recognizing that tape revenue can fluctuate significantly due to changes in trade and pool size), and a $.05 options comparison fee, all of which could have been collected by the Exchange per contract traded by the crowd. Transactions not involving an LMM would generate less revenue. The above listing of fees commonly charged in an LMM transaction does not represent the fees generated by every such transaction, but has been utilized by the PCX on a general basis, with room for fluctuation, to calculate what it believes to be an appropriate shortfall fee. Telephone conversation with the PCX.

[9] *See* PCX Rule 6.82(e)(1).

[10] *See* PCX Rule 6.82(f).

[11] *See* PCX Rule 6.82(e)(1).

[11] *See* PCX Rule 6.82(e)(2).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b-4(f)(2).

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 PCX. All submissions should refer to file number SR–PCX 2001–51 and should be submitted by February 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2792 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #3885]

Notice of Meetings; United States International Telecommunication Advisory Committee, Radiocommunication Sector

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU).

The ITAC will meet from 1 to 5 on Wednesday, February 20, 2002 to complete preparations for ITU–R Study Group 6 (Broadcasting). This meeting will be held in room 8–B411 at the Federal Communications Commission, 445 12th St., SW., Washington, DC, 20554.

Members of the general public may attend these meetings. Directions to meeting location and actual room assignments may be determined by e-mailing *holidaycc@state.gov.*

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Dated: January 30, 2002.

Cecily Holiday,

Director, Radiocommunication, U.S. Department of State.

[FR Doc. 02–2862 Filed 2–5–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Notice Number 3883]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee, will conduct an open meeting at 9:30 a.m. on Tuesday, February 26, 2002, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting will be to review the agenda items to be considered at the forty-seventh Session of the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC 47) to be held at the IMO headquarters in London from 4 through 8 March 2002. Proposed U.S. positions on the agenda items for MEPC 47 will be discussed. The major items for discussion for MEPC 47 include the following:

a. Harmful aquatic organisms in ballast water;

b. Recycling of ships;

c. Prevention of air pollution from ships;

d. Implementation of the Convention on the Prevention on Oil Pollution Preparedness, Response and Co-operation (OPRC) and the OPRC Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 and relevant conference resolutions;

e. Interpretation and amendments of Convention on the Prevention of Oil Pollution from Ships (MARPOL 73/78) and related Codes;

f. Harmful effects of the use of anti-fouling paints for ships;

g. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

h. Inadequacy of reception facilities;

i. Promotion of implementation and enforcement of MARPOL 73/78 and related Codes;

j. Preparation for the Ten-Year Review Conference of the United Nations Conference on Environment and Development (RIO+10);

k. Future role of formal safety assessment and human element issues; and

l. Matters related to the 1973 Intervention Protocol.

Please note that hard copies of documents associated with MEPC 47 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD-ROM on the day of the meeting. To requests documents prior to the meeting date, please write to the address provided below or download the documents from our web site.

Members of the public are invited to attend this meeting up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Lieutenant Dave Beck, U.S. Coast Guard, Environmental Standards Division (G–MSO–4), 2100 Second Street, SW., Washington, DC 20593–0001; telephone (202) 267–0713; fax (202) 267–4690, e-mail *dbeck@comdt.uscg.mil*; or on-line at: *http://www.uscg.mil/hq/g-m/mso/mso4/mepc.html.*

Dated: January 28, 2002.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–2861 Filed 2–5–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Virginia Highlands Airport, Abingdon, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 0.45 acres of land at the Virginia Highlands Airport, Abingdon, Virginia to Highlands Properties, Inc. in exchange for 1.4 acres of land within the Runway Protection Zone. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land has been assessed for both parcels and will be an even exchange for the Airport Sponsor.

DATES: Comments must be received on or before March 8, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, P.O. Box 16780, Washington, DC 20041–6780.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ronald Deloney, Airport Manager, Virginia Highlands Airport, at the following address: Ronald Deloney, Airport Manager, Virginia Highlands Airport Commission, P.O. Box 631, Abingdon, Virginia 24212–0631.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington

Airports District Office, P.O. Box 16780, Washington, DC 20041–6780; telephone (703) 661–1354, fax (703) 661–1370, e-mail *Terry.Page@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia, on November 2, 2001.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 02–2829 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–08]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington DC., on February 1, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10932 (previously Docket No. 29058).

Petitioner: Mr. John Leo Heverling.

Section of 14 CFR Affected: 14 CFR 91.109(a) and 9(b)(3).

Description of Relief Sought/Disposition: To permit Mr. Heverling to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, 11/09/2001, Exemption No. 6719B.*

Docket No.: FAA–2001–10875 (previously Docket No. 29534.

Petitioner: Fresh Water Adventures, Inc.

Section of 14 CFR Affected: 14 CFR 91.323(b)(4).

Description of Relief Sought/Disposition: To permit FWA to operate its Grumman goose G–21A amphibian aircraft at a weight that is in excess of that airplane's maximum certificated weight. *Grant, 11/06/2001, Exemption No. 7070A.*

Docket No.: FAA–2001–9940 (previously Docket No. 28639).

Petitioner: Peninsula Airways, Inc., dba PenAir.

Section of 14 CFR Affected: 14 CFR 121.574(a)(1) and (3).

Description of Relief Sought/Disposition: To permit the carriage and operation of oxygen storage and dispensing equipment for medical use by patients requiring emergency or continuing medical attention while onboard an aircraft operated by PenAir when the equipment is furnished and maintained by a hospital treating the patient. *Grant, 11/06/2001, Exemption No. 6523C.*

[FR Doc. 02–2831 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–GPT To Impose and use the Revenue From a Passenger Facility Charge (PFC) at Gulfport-Biloxi International Airport, Gulfport, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gulfport-Biloxi International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before date which is 30 days after date of publication in the **Federal Register**.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce Frallic of the Gulfport-Biloxi Regional Airport Authority at the following address: 14035–L Airport Road, Gulfport, MS 39503 Air carriers and foreign air carriers may submit copies of written comments previously provided to the Gulfport-Biloxi Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Jackson Airports District Office, Patrick D. Vaught, Program Manager, 100 West Cross Street, Suite B, Jackson MS 39208–2307, Phone Number (601) 664–9885. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gulfport-Biloxi International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (145 CFR part 158).

On January 30, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Gulfport-Biloxi Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application in whole or in part, no later than May 17, 2002.

The following is a brief overview of the application.

Proposed charge effective date: June 1, 2002.

Proposed charge expiration date: June 1, 2005.

Level of the proposed PFC: $3.00.

Total Estimated PFC revenue: $3,765,993.

Brief description of proposed projects:

1. Land Acquisition RPZ, Runways 14, 18, and 36.

2. Blast Study
3. Clear, Grub, and Preserve Padgett & Cuevas Property
4. Upgrade Closed Circuit Television, Security Improvements for Terminal, General Aviation, and Cargo Areas
5. Acquire Explosives Detection Dog
6. Construct Perimeter Road—Schedule B (North)
7. Rehabilitate Perimeter Fence—Security Improvements
8. South Central Cargo Area Expansion—Road, Utilities, and Site Work
9. Construct South West General Aviation Area, Phase II
10. Terminal Expansion—Baggage Claim Area, Federal Inspection Service, Baggage Search Area at Ticket Counters, and Security Screening
11. Conduct Pavement Condition Index Update, All Taxiways, Ramps, and Runway 18/36.

Class or classes of air carriers which the public agency had requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 1701 Columbia Avenue, College Park, GA 30337. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Gulfport-Biloxi International Airport.

Issued in Jackson, Mississippi on January 30, 2002.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 02–2830 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Silicon Valley Rapid Transit Corridor—BART Extension to Milpitas, San Jose, and Santa Clara, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Santa Clara Valley Transportation Authority (VTA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) and an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) for the proposed BART Extension to Milpitas, San Jose, and Santa Clara in the Silicon Valley Rapid Transit Corridor. The proposed extension was selected following completion of the Silicon Valley Rapid Transit Corridor Major Investment Study (MIS) in November 2000. The MIS evaluated 11 alternatives representing various modes of travel (express bus, bus rapid transit, commuter rail, diesel and electric light rail, and BART) and various alignments and stations located in the cities of Fremont, Milpitas, San Jose, and Santa Clara, California. The MIS screening and evaluation process resulted in the adoption of a Preferred Investment Strategy by the VTA Board of Direcctors on November 9, 2001. The Preferred Investment Strategy consists of an approximate 16.3-mile extension of the BART system, which would begin at the planned Warm Springs BART station in Fremont, extend along the Union Pacific Railroad line to Milpitas, and then continue to 28th and Santa Clara Streets in San Jose. From there, BART would leave the railroad right-of-way, tunneling under downtown San Jose to the Diridon Caltrain Station. The BART extension would then turn north under the Caltrain line and terminate at the Santa Clara station. The BART extension will be further refined during the conceptual design phase of the project and carried forward in the EIS/EIR. The EIS/EIR will evaluate a No-Action Alternative, a future ''New Starts'' Baseline Alternative, the BART Extension Alternative including alignment and station options, and additional alternatives that emerge from the scoping process. Scoping will be accomplished through correspondence and discussions with interested persons; organizations; federal, state and local agencies; and through public meetings.

DATES: Comment Due Date: Written comments on the scope of alternatives and impacts to be considered in the EIS/EIR must be received no later than March 29, 2002, and must be sent to VTA at the address indicated below. Scoping Meetings: Public scoping meetings will be held on: (1) February 7, 2002, from 6 p.m. to 8 p.m. at Pomeroy Marshall Elementary School, 1505 Escuela Parkway, Multi-purpose Room, Milpitas, CA; (2) February 11, 2002, from 6 p.m. to 8 p.m. at San Jose Fire Training Center, 255 S. Montgomery Street, San Jose, CA; and (3) February 13, 2002, from 6 p.m. to 8 p.m. at Bowers Park, 2582 Cabrillo Avenue, Santa Clara, CA. The project purpose and alternatives will be presented at these meetings. The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact VTA Community Outreach at (408) 321–7575 or TDD only at (408) 321–2330. Scoping material will be available at the meeting.

ADDRESSES: Written comments should be sent to Ms. Lisa Ives, Project Manager, VTA, 3331 North First Street, San Jose, CA 95134–1906. Phone: (408) 321–5744. Fax: (408) 321–9765, E-mail: *svrtc@vta.org.*

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Ives, Project Manager, VTA, 3331 North First Street, San Jose, CA 95134–1906. Phone (408) 321–5744 or Mr. Jerome Wiggins, Office of Planning and Program Development, FTA, 201 Mission Street, Room 2210, San Francisco, CA 94105. Phone: (415) 744–3115. People with special needs should contact VTA Community Outreach at (408) 321–7575 or TDD only at (408) 321–2330.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and VTA invite all interested individuals and organizations, and federal, state, regional, and local agencies to provide comments on the scope of the project and environmental considerations. The Silicon Valley Rapid Transit Corridor, Major Investment Study Final Report (November 2000) is available for public review at the following public libraries: (1) Dr. Martin Luther King, Jr. Main Library, 180 West San Carlos Street, San Jose, CA 95113; (2) Fremont Main Library, 2400 Stevenson Boulevard, Fremont, CA 94538; (3) Milpitas Library, 40 N. Milpitas Boulevard, Milpitas, CA 95035; and (4) Mission Library, 1098 Lexington Avenue, Santa Clara, CA 95050. The Silicon Valley Rapid Transit Corridor, Major Investment Study Final Report is also available by contacting Ms. Ives at the address and phone number given above. Ms. Ives should also be contacted to be placed on the project mailing list and to receive additional information about the project. Written comments on the alternatives and potential impacts to be considered should also be sent to Ms. Ives.

II. Project Purpose and Need

The project purpose is to improve public transit service in the Silicon Valley Rapid Transit Corridor by addressing the following specific goals established in the MIS: (1) Improve

public transit service in this severely congested corridor by providing increased transit capacity and faster, convenient access throughout the San Francisco Bay Area Region, including southern Alameda County, central Contra Costa County, Tri-valley, San Joaquin Valley, and Silicon Valley; (2) enhance regional connectivity through expanded, interconnected rapid transit services between BART in Alameda County and light rail and commuter rail in Silicon Valley; (3) accommodate future travel demand in the corridor by expanding modal options; (4) alleviate severe and ever-increasing traffic congestion on the I–880 and I–680 freeways between Alameda County and Silicon Valley; (5) improve regional air quality by reducing auto emissions; (6) improve mobility options to employment, education, medical, retail, and entertainment centers for corridor residents, in particular low income, youth, elderly, disabled, and ethnic minority populations; and (7) support local economic and land use plans and goals. In general, the project would provide improved transit service to address an anticipated 52 percent growth in corridor travel over the next 20 years. The proposed BART extension would better connect corridor workers and residents with such rail transit systems as VTA light rail, Caltrain, Altamont Commuter Express (ACE), Capitol Corridor Intercity Rail Service, and Amtrak and would enhance direct public transit access to other regional activity centers.

III. Alternatives

The Silicon Valley Rapid Transit Corridor Project is examining several alternatives to be carried forward into the environmental review process. The No-Action Alternative will consist of the existing conditions, in accordance with both NEPA and CEQA requirements. The future ''New Starts'' Baseline Alternative includes programmed transportation improvements in the corridor and expanded express bus service. The Build or BART Extension Alternative includes an extension of the BART system from the proposed Warm Springs Station, south along the UPRR right-of-way to east San Jose, tunneling through downtown San Jose to the Diridon multi-modal Station, and north to a terminal station in Santa Clara near the Caltrain Station. Along the alignment, seven conceptual station locations have been proposed: (1) Montague/Capital, (2) Berryessa, (3) Alum Rock, (4) Civic Plaza/San Jose State University, (5) Market Street, (6) Diridon/Arena, and (7) Santa Clara. An optional North Calaveras station is also proposed in Milpitas. More precise station locations and alignment options will be developed during preparation of the Draft EIS/EIR. The EIS/EIR will also address any additional alternatives that are identified during the scoping process.

IV. Probable Effects

The purpose of the EIS/EIR is to fully disclose the environmental consequences of building and operating the BART Extension in advance of any decisions to commit substantial financial or other resources towards its implementation. The EIS/EIR will explore the extent to which project alternatives and design options result in environmental impacts and will discuss actions to reduce or eliminate such impacts. Environmental issues to be examined in the EIS/EIR include: changes in the physical environment (natural resources, air quality, noise/vibration, water quality, floodplains, geology/seismicity, visual/aesthetics, hazardous materials, energy, utilities, and electromagnetic fields/interference); changes in the social environment (land use, business, community facilities, and neighborhood disruptions); changes in traffic and pedestrian circulation; changes in transit service and patronage; associated changes in traffic congestion; and impacts on parklands and historic and cultural resources. Impacts will be identified for both the construction period and the long-term operation of the alternatives. The proposed evaluation criteria include transportation, environmental, social, economic, and financial measures, as required by current federal (NEPA) and state (CEQA) environmental laws and current Council on Environmental Quality and FTA guidelines. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interests parties. Comments or questions concerning this proposed action and the EIS/EIR should be directed to VTA, as noted above.

V. FTA Procedures

The Draft EIS/EIR for the proposed BART extension will be prepared simultaneously with conceptual design for station and alignment options. The Draft EIS/EIR/conceptual design process will address the potential use of federal funds for the proposed project, as well as assess the social, economic, and environmental impacts of station and alignment design options. Station design and alignment options will be refined to minimize and mitigate any adverse impacts identified. After publication, the Draft EIS/EIR will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS/EIR and comments received, VTA will select a preferred alternative for further assessments in the Final EIS/EIR.

Issued on January 31, 2002.

Leslie T. Rogers,

Region IX Administrator.

[FR Doc. 02–2828 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11453]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BLUE LAGOON.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11453. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through

Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: BLUE LAGOON. Owner: Joseph Vincer.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''47 feet in length, 24 feet 7 inches in beam, 3 feet 7 inches draft'' ''19 tons gross, 15 tons net''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

> Vessel would be used for 6 to 12 passengers for evening sunset sailing cruises, and sailing cruises of Sarasota Bay, FL and mouth of Tampa Bay, FL. On occasion I might like to take people on overnight sails to Naples, FL and the Upper Keys, departing from Sarasota and returning to Sarasota.

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1989. Place of construction: Marseilles, France. Major refit at Bob & Annies Boatyard, Pine Island FL, 1996 in excess of $100,000.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''Approval of this waiver will have minimal impact on other commercial passenger vessel operators'As there [is] no other sailboat operator engaged in the day sail business in my area, there would be no competition to other operators.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant:

> Blue Lagoon was rescued from abandonment and ill-care by myself and have had extensive work done on her in US boatyards, and by my own labor in the US to bring her back to her ''full glory''. I have spent well over $100,000 doing so, helping the us marine industry. She continues to have work done in the US, and nowhere else * * * therefore, there is no competition to US boat builders, but may actually help local boat builders as some people who would take a ride upon BLUE LAGOON may decide to buy a catamaran of US origin.

Dated: January 31, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–2796 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11454]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CINNABAR.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11453. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: CINNABAR. Owner: Capt. Bruce F. Benike, Kimberly D. Benike.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''22 net tons, 38.6 Ft.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Sportfishing Charters in San Francisco Bay and Calif. Oceans.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1978. Place of construction: Kaohsiung Taiwan R.O.C.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:

I don't believe having a small sportfishing charter vessel will impact the 50+ charter boats in the area, who are bigger and faster. My clientele will mostly exist of friends and fellow club members from Bay Sportsman Fishing Club. My vessel goes a maximum of 9Kts. And would not compete with the larger and faster boats.'' (6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''There have been no new charter Boat in San Francisco area for the past 15 years. Several new boats have come into the area that are built in Seattle WA. These vessels are 50+ ft. catamarans and very fast.

Dated: January 31, 2002.

By Order of the Maritime Administrator.

Murrary A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–2798 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11452]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FIN'S & PINS.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11452. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: FIN'S & PINS. Owner: Mr. Howard Rettberg and Raquel Rettberg.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''The boat size is 44.1 feet in length and weighs 31,000 gross.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

The vessel has been equipped for the specific purpose of operating as a commercial sport fishing vessel. * * * The vessel will be primarily based in San Diego, California and operate south into Mexican waters up to 300 miles and North to the waters off of Moro Bay California.

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1985. Place of construction: Kaohsiung, Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:

There is currently operating in the Southern California area approximately 18 Six Pac Sport Fishing Boats that conduct the same fishing operation as contemplated by applicant. There should be no impact as the skipper/operators Ron Baker has been in this business or operating a Six PAC Sport Vessel for the last two years on another boat. Captain Ron Baker is simply seeking to switch boats and continue a business that already exists. No new business is being started.

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant:

A Six Pac Sport fishing operation does not generate enough cash flow for any of the operators in Southern California to purchase a large new boat. They all operate used vessels. * * * The boat will receive service and repair only at a ship yard in Southern California. The twin Caterpillar engines on board the boat that power the vessel are made in the USA and will require US made parts and service. The boat has been upgraded substantially with materials made and purchased in the USA.

By Order of the Maritime Administrator.
Dated: January 31, 2002.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–2795 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11456]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PILGRIM.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the

effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–11456. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: PILGRIM. Owner: Ocean Institute.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Sparred length: 130′, Beam: 24′6″, Rig height: 104′ * * * Tons: 99 GRT, * * * Capacity: 55 Crew.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: '' * * * fundraising activities to help support our educational goals. During these times the Pilgrim would travel from Dana Point Harbor to no further north than Point Conception and no further south than Ensenada, Mexico and remain within 50 miles of the coast.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1945. Place of construction: Holbaek, Denmark.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''The Ocean Institute does not foresee any impact that this waiver would have on other commercial passenger vessel operators * * * ''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The Ocean Institute does not foresee any impact that this waiver would have on * * * U.S. shipyards.''

By Order of the Maritime Administrator.
Dated: January 31, 2002.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–2797 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 17, 2001 (66 FR 52827).

DATES: Comments must be submitted on or before March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Filbert at the National Highway Traffic Safety Administration, Office of State and Community Services (NSC–01), 202–366–2701. 400 Seventh Street, SW, Room 5238, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration

Title: Uniform Criteria for State Observational Surveys of Seat Belt Use.

OMB Number: 2127—0597.

Type of Request: Extension of a currently approved collection.

Abstract: This collection requires the respondents, which are the States, the District of Columbia, and Puerto Rico to provide seat belt use survey information to NHTSA before they receive grant money. To be eligible for funding, the surveys must be completed by end of the calendar year and submitted to NHTSA by March 1 of the following calendar year.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 17,942.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 31, 2002.

Delmas Johnson,

Associate Administrator for Administration.

[FR Doc. 02–2823 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 17, 2001 (66 FR 52827–52828).

DATES: Comments must be submitted on or before March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Filbert at the National Highway Traffic Safety Administration, Office of State and Community Services (NSC–01), 202–366–2701. 400 Seventh Street, SW, Room 5238, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 23 CFR, part 1345, Occupant Protection Incentive Grant—Section 405.

OMB Number: 2127–0600.

Type of Request: Extension of a currently approved collection.

Abstract: An occupant protection incentive grant is available to states that can demonstrate compliance with at least four of six criteria. Demonstration of compliance requires submission of copies of relevant seat belt and child passenger protection statutes plan and/or reports on statewide seat belt enforcement and child seat education programs and possibly some traffic court records. In addition, States eligible to receive grant funds must submit a Program Cost Summary (Form 217), allocating section 405 funds to occupant protection programs.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 1,736.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 31, 2002.

Delmas Johnson,

Associate Administrator for Administration.

[FR Doc. 02–2824 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–11420, Notice 1]

DaimlerChrysler Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

DaimlerChrysler Corporation (DaimlerChrysler) has determined that approximately 28,265 of its model year 2002 RS vehicles (Dodge and Chrysler mini vans) do not meet the labeling requirements of paragraph S5.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 ''Tire Selection and Rims for Motor Vehicles Other than Passenger Cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), DaimlerChrysler has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

DaimlerChrysler determined that the rim size was inadvertently omitted from the tire size designation included on the certification label affixed to 28,265 of its model year 2002 RS vehicles. The recommended tire size designation for these vehicles is P215/65R16. Due to an error in the printing process, the rim size designation number, specifically the number 16, was inadvertently omitted from the certification label. As a result, the recommended tire size designation on the vehicle's certification label reads as ''P215/65R,'' rather than ''P215/65R16.''

DaimlerChrysler believes that the noncompliance is inconsequential to motor vehicle safety for several reasons. First, the noncompliant 2002 RS vehicles were constructed with P215/65 R16 tires. DaimlerChrysler believes that most vehicle owners, dealers, and tire service technicians would refer to the vehicles' existing tires (specifically P215/65 R16 tires) to determine the appropriate size for a replacement tire rather than to the certification label. Second, the certification label lists the complete designated rim size, including the rim diameter, appropriate for the P215/65 R16 tires.

The purpose of S5.3 is to ensure that vehicle owners can readily determine the appropriate size replacement tire for their particular vehicle. DaimlerChrysler is confident that sufficient information is available to fulfill the safety purpose of S5.3 despite the noncompliance. As discussed above, individual vehicle owners can refer to the tire currently installed on the vehicle, the vehicle's recommended rim size, and the vehicle owner's manual to determine the appropriate tire size for the vehicle. DaimlerChrysler believes, therefore, that the noncompliance is inconsequential to motor vehicle safety because, despite the noncompliance, sufficient information is available to inform the owners as to the appropriate size for a replacement tire for the vehicles at issue.

DaimlerChrysler cited several petitions for inconsequential noncompliance filed by tire and vehicle manufacturers over the past 15 years. The petitions, which were granted by the agency, involved tire, rim and vehicle placard labeling issues similar to noncompliance issues in this petition.

Interested persons are invited to submit written data, views and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department to Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible.

When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 8, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 1, 2002.

Stephen R. Kratzke,

Associate Administrator, for Safety Performance Standards.

[FR Doc. 02–2827 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–195–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–195–78 (TD 8426), Certain Returned Magazines, Paperbacks or Records (§ 1.458–1).

DATES: Written comments should be received on or before April 8, 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 regulation should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Returned Magazines, Paperbacks, or Records.

OMB Number: 1545–0879.

Regulation Project Number: IA–195–78.

Abstract: The regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of retaining physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect a certain method of accounting, are affected.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 19,500.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 8,125 hours.

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 31, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–2872 Filed 2–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209485–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209485–86 (TD 8812), Continuation Coverage Requirements Application to Group Health Plans (§§ 54.4980B–6, 54.4980B–7, and 54.4980B–8).

DATES: Written comments should be received on or before April 8, 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 regulation should be directed to Carol Savage, (202) 622–3945, or through the internet *CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Continuation Coverage Requirements Applicable to Group Health Plans.

OMB Number: 1545–1581.

Regulation Project Numbers: REG–209485–86.

Abstract: The regulations require group health plans to provide notices to individuals who are entitled to elect COBRA (The Consolidated Omnibus Budget Reconciliation Act of 1985) continuation coverage of their election rights. Individuals who wish to obtain the benefits provided under the statute

are required to provide plans notices in the cases of divorce from the covered employee, a dependent child's ceasing to be a dependent under the terms of the plan, and disability. Most plans will require that elections of COBRA continuation coverage be made in writing. In cases where qualified beneficiaries are short by an insignificant amount in a payment made to the plan, the regulations require the plan to notify the qualified beneficiary if the plan does not wish to treat the tendered payment as full payment. If a health care provider contacts a plan to confirm coverage of a qualified beneficiary, the regulations require that the plan disclose the qualified beneficiary's complete rights to coverage.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 1,800,000.

The estimated time per respondent varies from 30 seconds to 330 hours, depending on individual circumstances, with an estimated average of 14 minutes.

Estimated Total Annual Burden Hours: 404,640.

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 31, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–2873 Filed 2–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans

Employment and Training

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice of availability of funds and Solicitation for Grant Applications (SGA) for Veterans' Workforce Investment Program (VWIP), Section 168, Program Year 2001—Female Veterans Program Competitive Grants (SGA 02–02).

SUMMARY: All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service, (VETS) announces a grant competition for Veterans' Workforce Investment Program (VWIP), Section 168, Program Year 2001—female veteran competitive grants. These grants will assist eligible female veterans who: have service-connected disabilities; served on active duty in the armed forces during a war, campaign or expedition for which a campaign badge was authorized; are recently separated veterans, and veterans with significant barriers to employment, by providing training, employment and supportive service assistance in areas of high demand, non-traditional occupations.

Under this solicitation, VETS anticipates that up to $400,000 will be available for grant awards in Program Year (PY) 2001 and expects to award up to two grants. The VWIP programs are designed to be flexible in addressing the universal as well as local or regional problems barring veterans from the workforce. The program in PY 2001 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of supportive service resources for veterans entering the labor force, and strategies for employment and retention.

This notice describes the background, application process, description of program activities, evaluation criteria, and reporting requirements for this SGA. The information and forms contained in the Supplementary Information Section constitute the official application package. All necessary information and forms needed to apply for grant funding is included.

Forms or Amendments: If another copy of a form is needed, go online to *http://www.nara.gov.* To receive amendments to this Solicitation (Please reference SGA 02–02), *all applicants must register their name and address with the Grant Officer at the following address:* U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

Closing Date: Applications are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., Eastern Standard Time, March 8, 2002.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 02–02, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline.

SUPPLEMENTARY INFORMATION:

Veterans' Workforce Investment Program, Section 168, Program Year 2001—Female Veterans Program Competitive Grants Solicitation

I. Purpose

The U.S. Department of Labor (DOL) VETS is requesting grant applications that will provide employment and training services for female veterans who meet the eligibility criteria set forth in the VWIP, section 168 of the Workforce Investment Act, Pub.L. 105–220 (WIA). These instructions contain general program information, requirements, and forms to apply for funds to operate a veterans employment and training program in areas of high demand occupations non-traditional for women. Accordingly, the Assistant Secretary for Veterans' Employment and

Training (ASVET) is making up to $400,000 of the funds available to award grants for unique and innovative Employment and Training programs.

Programs should maximize the eligible female veterans' military skills, training, and experience by effectively exploring the transitional or transferable occupational opportunities of the geographical area in which the grant would be awarded.

II. Background

Section 168 of the Veterans' Workforce Investment Program provides that the Secretary will conduct, directly or through grants or contracts, such employment and training programs as the Secretary deems appropriate to assist veterans who have service-connected disabilities, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, recently separated veterans, and those veterans with significant barriers to employment, to obtain gainful employment.

III. Application Process

A. Eligible Applicants

Applications for funds will be accepted from State and local workforce investment boards, local public agencies, and private nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and populations to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBs), as defined in sections 111 and 117 of the Workforce Investment Act, are eligible applicants.

2. Local public agencies, meaning any public agency of a general purpose political subdivision of a State that has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction. Applicants are encouraged to utilize, through sub-grants, experienced public agencies, private nonprofit, private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are private nonprofit organizations that have operated an employment and training program for females and proven a capacity to manage grants and have or will provide the necessary linkages with other service providers. *Entities described in section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement* as section 18 of the Lobbying Disclosure Act of 1995, Pub. L. No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

B. Funding Levels

The total funds anticipated for this solicitation is $400,000. It is anticipated that two awards will be made under this solicitation. Individual Awards will not exceed $200,000. The Federal Government reserves the right to negotiate the amounts to be awarded under this competition. Applicant requests exceeding the $200,000 will be considered non-responsive.

C. Period of Performance

The VWIP funds for this competition are for a maximum period of one year. The period of performance will be for twelve months from the date of the award. VETS expects that successful applicants will commence program operations under this solicitation on or before April 1, 2002. Funds must be expended by March 31, 2003, not including the 6-month follow-up period referred to in the budget narrative. VETS has no plans to provide second year funding beyond this period.

D. Requirements of Submission

A cover letter, an original proposal, and three (3) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal must consist of two (2) separate and distinct parts: (1) One completed, blue ink-signed original SF 424 grant application; three (3) copies of the Technical Proposal; and three (3) copies of the Cost Proposal.

E. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services after 4:45 p.m. EST, March 8, 2002, will *not* be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail no later than the fifth calendar day before March 8, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to March 8, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline.

F. Proposal Content

The proposal will consist of two (2) separate and distinct parts:

Part I—The *Technical Proposal* will consist of a narrative proposal that demonstrates the applicant's knowledge

of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal will consist of a narrative not to exceed fifteen (15) pages double-spaced—font size no less than 11pt., and typewritten on one side of the paper only. The applicant must complete the forms i.e., quarterly goals chart provided or referred to in the SGA. Charts and exhibits are not counted toward the page limit.

G. Required Features

There are four program activities that all applications must contain to be found technically acceptable under this SGA. These activities are:

—Pre-Enrollment Assessments;
—Employment Development Plans for all clients;
—Core Training for eighty percent (80%) or more of the clients; (training does not have to be received from an eligible provider under WIA. This requirement is only for formula grants covered under WIA.)
—Job Placement and 90 and 180 day follow-up Services for all clients.

The following format is strongly recommended:

1. *Need for the project:* The applicant must identify the geographical area to be served and provide an estimate of the number of veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to employment and other employment barriers faced by the targeted veterans and how the project would respond to these needs. Also, include the outlook for job opportunities in the service area.

2. *Approach or strategy to provide training, employment and job retention:* The applicant must be responsive to the Rating Criteria contained in Section VIII, and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (1) Provide the type(s) of training to be offered, the length of the training, the training curriculum and describe how the training will enhance the eligible veterans' employment opportunities within that geographical area; (2) describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (3) provide a plan for follow up to address retention after 90 and 180 days with participants who entered employment. (*See* discussion on results in Section X. D., 2.); and (4) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. *Linkages with other providers of employment and training services to veterans:* The applicant must: describe the linkages this program will have with other providers of services to veterans outside of the grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) program, and programs operated under the Workforce Investment Act; and list the types of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system [including State Employment Security Agencies (State Workforce Agencies'')] must be delineated. Describe any linkages with any other resources and/or other programs for veterans. Indicate how the program will be coordinated with any efforts for veterans that are conducted by agencies in the community.

4. *Proposed supportive service strategy for veterans:* Describe how supportive or ancillary service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local, or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary.

5. *Organization's capability to provide required program activities:* The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant which has operated a Veterans program, JTPA IV–C program, or VWIP program, must include final or most recent technical performance reports. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit. The applicant must also provide evidence of key staff capability. Nonprofit organizations must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

(This information is subject to verification by the government. Veterans' Employment and Training Service reserve the right to have a representative within each State provide programmatic and fiscal information about applicants and forward those findings to the VETS National Office during the review of the applications.)

Note: Resumes, charts, and standard forms, transmittal letters, letters of support are not included in the page count. [If provided, include these documents as attachments to the technical proposal.]

Part II—The *Cost Proposal* must contain: (1) The Standard Form (SF) 424, ''Application for Federal Assistance''; (2) the Standard Form (SF) 424A ''Budget Information Sheet'' in Appendix B; and (3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the ''Budget Narrative'' and ensure that costs reported on the SF424A correspond accurately with the Budget Narrative.

In addition to the cost proposal, the applicant must include the Assurance and Certification signature page, Appendix C, and copies of all required forms with instructions for completion provided as appendices to this SGA.

The Catalog of Federal Domestic Assistance number for this program is 17.802. It must be entered on the SF 424, Block 10.

IV. Budget Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on a separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub-grantees);

(b) An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-grants/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges must not exceed 34.5 cents per mile;

(d) In order that the Department of Labor meet legislative requirements, the applicant must submit a plan for, along with all costs associated with, retaining participant information pertinent to a longitudinal follow-up survey for at least six months after the ninety-day closeout period;

(e) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, and personal property having a useful life of

more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

(f) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

V. Participant Eligibility

Female veterans who have service-connected disabilities, female veterans who are recently separated, or female veterans with significant barriers to employment are eligible for participation under this program.

A. The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 U.S.C. 4101(2)]

B. The term ''Campaign veteran''—refers to any veteran who served on active duty in the United States armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized. A list of the Wars, Campaigns and Expeditions can be found at the Office of Personnel Management Web site at *http://www.opm.gov/veterans/html/vgmedal2.htm.*

C. The term ''service-connected disabled''—refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (DVA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C. 1503(27)(B)).

D. The term ''recently-separated veteran''—refers to any veteran who applies for participation in a VWIP funded activity within 48 months after separation from military service. (29 U.S.C. 2801 (49))

VI. Project Summary

A. Program Concept and Emphasis

The grants awarded under this SGA are intended to address two objectives: (1) To provide services to assist in reintegrating female veterans into meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing female veterans trying to transition into non-traditional employment.

In addition to the mandatory activities, proposed programs should include, if applicable, optional program activities, such as ancillary and/or support services, to assure that participants are placed in unsubsidized employment that meets their ''minimum economic need.'' Both categories of program activities are more fully described below.

1. Mandatory Program Activities

a. Pre-Enrollment Assessments.

The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff for pre-enrollment assessments is strongly encouraged.

A definition of pre-enrollment assessment can be found in the Glossary of Terms. Costs are allowed for pre-enrollment assessments that enable grantees to determine the employability needs of applicants by conducting meaningful evaluations of applicant skills and barriers. Grantees are then able to refer those applicants who may not be appropriate for the services of the proposed program to other service providers. The assessment of applicants prior to enrollment is an allowable cost to VWIP provided it has been determined that the assessed applicants meet the legislative criteria for VWIP eligibility. In the Program Design, the grant applicant must identify the means of pre-enrollment assessment that it intends to use and the purpose for the information to be derived from those assessments.

b. The Employment Development Plan (EDP). The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff in the EDP process is strongly encouraged. A definition of Employment Development Plan (EDP) can be found in the Glossary of Terms.

The implementation of an EDP is required for all female veterans enrolled in programs supported by VWIP resources. A copy of an EDP is maintained in each participant's file. The EDP must document a summary of the assessments conducted to ascertain the abilities, barriers and needs of the participant. At a minimum, the EDP must substantiate the participant's minimum income needs, identify barriers and skill deficiencies, and describe the services needed and the competencies to be achieved by the participant as a result of program participation. The applicant must also include a description of their proposed EDP process in their application.

c. Core Training Activities. A definition of Core Training Activities can be found in the Glossary of Terms. It refers to any training program that leads to the development of job skills for the participant. At least 80% of all participants who are enrolled in VWIP must receive some form of core training. The Program Design narrative must identify the core training components to be employed in the applicant's program, and these components must agree in scope with the definitions found in the Glossary of Terms. Core training components proposed by the applicant that do not fit the glossary terms or definitions must be adequately described and justified in the Program Design narrative. Core training activities described in this section must include, but are not limited to, the following:

i. Classroom training;
ii. On-the-job training;
iii. Remedial education;
iv. Literacy and bilingual training;
v. Institutional skills training;
vi. Occupational skills training;
vii. On-site industry-specific training;
viii. Customized training;
ix. Apprenticeship training; and
x. Upgrading and retraining.

Definitions of these core training activities are found in the Glossary of Terms.

d. Job Placement and Follow-up Services.

The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff for job placement and follow-up services is strongly encouraged.

A definition of job placement and follow-up services can also be found in the Glossary of Terms. The ultimate objective of VWIP services is to place each eligible veteran into meaningful, gainful employment that allows the participant to become economically self-sufficient. The applicants must describe in the Program Design how job placements will occur after core training activities and/or after job development or referral efforts are initiated. Applicants are required to include follow-up in their proposed program to track a participant's progress and status after initial placement. Applicants must describe in the Program Design the follow-up activities that participants will be provided. The description must include the nature of those services. Please note that follow-up is required 90 and 180 days after entering employment.

C. Scope of Program Design

The project design must provide or arrange for the following:

1. Projects must show linkages with other programs and services which provide support to veterans, such as faith based and community based organizations. Coordination with the

Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representative (LVER) is strongly encouraged.

2. Projects must be ''employment-focused.'' The services provided will be directed toward increasing the employability of veterans by providing training that will increase employment opportunities for the participants.

Outreach should, to the degree practical, be provided at Veterans' Job Fairs, Transition Assistance Centers, or Family Service Centers at military installations, and other programs or events frequented by female veterans. Coordination is encouraged with veterans' services programs and organizations such as:

—State Workforce Agencies, the newly instituted workforce development system's One-Stop Centers, or other VWIP Veterans' Employment Programs;
—Department of Veterans' Affairs (DVA) services, including its Education programs; and
—Veterans' service organizations, such as The American Legion, Disabled American Veterans (DAV), Veterans of Foreign Wars (VFW), Vietnam Veterans of America (VVA), and American Veterans (AMVETS).

D. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to local needs, and will carry out the objectives of the program to successfully reintegrate veterans into the workforce.

With the advent of the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than just program processes. Although entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of the program. The following program discussion must be considered in a program model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter veterans. Once the eligible participants have been identified, an assessment must be made of the their abilities, interests and needs. In some cases, these participants may require referrals to services such as drug or alcohol treatment or a temporary shelter before they can be enrolled into core training. When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination must be made as to whether the participant would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, job development, or entry into classroom or on-the-job training. Such services must also be noted in an Employability Development Plan so successful completion of the plan can be monitored by the staff. Entry into full-time employment or a specific job training program must follow, in keeping with the objective of the program, which is to bring the participant closer to self-sufficiency. Supportive Services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff need to be utilized for job development and placement activities for veterans who are ready to enter employment or who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus in assisting those most disadvantaged in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources. If the DVOP and LVER staff are not being utilized, the applicant must submit a written explanation of the reasons why they are not.

The following program discussion emphasizes that follow-up is an integral program component. Follow-up to determine whether the veteran is in the same or similar job at the 90-day and 180-day period after entering employment is required. It is important that the applicant maintain contact with the veterans after placement to assure that employment related problems are addressed. The 90-day and 180-day follow up is fundamental to assessing the results of the program success. Grantees must be careful to budget for this activity so that follow-up will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

Retention of records will be referred to in the Special Grant Provisions provided at the time of award.

VII. Related Program Development Activities

1. Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by the grantees have been an effective means of sharing information and revealing the availability of other services. They are encouraged but are not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

a. Providers of hands-on services to veterans to make veterans more fully aware of the services offered, job-ready and placed in jobs.

b. Federal, State and local services such as the Department of Veterans' Affairs (DVA), State Workforce Agencies and their local Job Service Offices and One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services) to familiarize them with the nature and needs of veterans.

c. Civic and private sector groups, and especially veterans' service organizations, to describe veterans and their needs.

VIII. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although DOL reserves the right to award on the basis of the initial proposal submissions, DOL may establish a competitive range based upon the proposal evaluation for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. DOL reserves the right to ask for clarification or hold discussions, but is not obligated to do so. DOL further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, administrative costs, program costs e.g., cost per enrollment and placement, demonstration models, and geographical service areas. The Grant Officer's determination for award under SGA 02–02 is the final agency action. The

submission of the same proposal from any prior year competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 Points

The applicant must document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers which characterize the target population.

2. Overall Strategy To Increase Employment and Retention: 40 Points

The application must include a description of the proposed approach to providing comprehensive employment services and training, including job development, employer commitments to hire, placement, and post-placement follow-up services. The applicant must address its intent to target occupations in expanding industries, rather than on declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training program such as State Workforce Agencies (DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. Applicants must indicate how the activities will be tailored or responsive to the needs of veterans. A participant flow chart may be used to show the sequence and mix of services. Note: The applicant must complete the chart of proposed program outcomes to include participants served, and job retention. (*See* Appendix D)

3. Quality and Extent of Linkages With Other Providers of Services to the Veterans: 10 Points

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the veterans in the local community and/or on the reservation and outside of the grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. [Describe, to the extent possible, how the project would respond to the needs of the veterans and any linkages to DVA programs or resources to benefit the proposed program.]

4. Demonstrated Capability in Providing Required Program Services: 20 Points

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to those proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant should delineate its staff capability and ability to manage the operational aspects of a grant program, including a recent (within the last 12 months) financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit. The applicant must also address its capacity for timely startup of the program.

5. Quality of Overall Employment and Training Strategy: 15 Points

The application must demonstrate how the applicant proposes to meet the employment and training, and supportive services needs of veterans in the program who will be entering the labor force. This discussion must specify the provisions made to access transportation, child care, temporary, transitional, and permanent housing for participants through community resources, HUD, lease, WIA, or other means. Grant funds cannot be used to purchase housing or vehicles. Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of the placement and enrollment costs.

IX. Post Award Conference

A post-award conference will be held for those awarded PY 2001 VWIP funds from the competition. It is expected to be held in May or June 2002. Up to two grantee representatives must be present; a fiscal and a programmatic representative is recommended. The site of the Post-Award conference will be at a location convenient for the grantee and Grant Officer Technical Representative (GOTR). The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects.

X. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee will report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET), whose address will be provided, no later than 30 days after the ending date of each Federal fiscal quarter (i.e., October 30, January 30, April 30, and July 30) during the grant period.

B. Program Reports

Grantees will submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET which contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts; and
2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

C. Final Report Packages

The grantee will submit, no later than 90 days after the grant expiration date, a final report containing the following:

1. Final Financial Status Report (SF–269A) (copy to be provided following grant awards)
2. Final Technical Performance Report—(Program Goals)
3. Final Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined number of veterans placed in employment during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not so employed; and (f) any recommendations to improve the program.

D. Six (6) Month Close Out

No later than six months after the 90-day closeout period, the grantee will

submit a follow-up report containing the following:

1. Final Financial Status Report (SF–269A)

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) numbers of veterans placed during the entire grant period; (b) the number of veterans still employed during follow-up; (c) are the veterans still employed at the same or similar job, if not what is the reason(s); (d) was the training received applicable to jobs held; (e) wages at placement and during follow-up period; (f) an explanation of why those veterans placed during the grant period, but not employed at the end of the follow-up period, are not so employed; and (g) any recommendations to improving the program.

XI. Administration Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, and any indirect charges claimed, may not exceed 10 percent of the total amount of the grant.

2. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

3. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

4. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Allowable Costs

Determinations of allowable costs will be made in accordance with the following applicable Federal cost principles:

1. State and local government—OMB Circular A–87
2. Educational institutions—OMB Circular A–21
3. Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

Accept as specifically provided, DOL acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must require that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition. All grants will be subject to the following administrative standards and provisions:

1. 29 CFR part 93—Lobbying.
2. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, and with Commercial Organizations, etc.
3. 29 CFR part 96—Federal Standards for Audit of Federally-funded Grants, Contracts and Agreements. This rule implements, for State and local governments and Indian tribes that receive Federal Assistance from the DOL, Office of Management and Budget (OMB) Circular A–128 ''Audits of State and Local Governments'' which was issued pursuant to the Single Audit Act of 1984, 31 U.S.C. Sec. 7501–7507. It also consolidates the audit requirements currently contained throughout the DOL regulations.
4. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
5. 29 CFR part 98—Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)
6. 29 CFR part 99—Audit of States, Local Governments, and Nonprofit Organization.
7. Section 168(b) of WIA—Administration of Programs. Please note that sections 181–195 also applies.
8. 29 CFR parts 30, 31, 32, 33 and 34—Equal Employment Opportunity in Apprenticeship and Training, nondiscrimination in Federally Assisted Programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964, and Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefitting from Federal Financial Assistance (Incorporated by Reference). These rules implement, for recipients of federal assistance, provisions of nondiscrimination on the basis of race, color, national origin, and disabled condition, respectively.
9. Appeals from non-designation will be handled under 20 CFR part 667.

Signed at Washington, DC, this 30th day of January, 2002.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet, SF 424A

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: The Glossary of Terms

BILLING CODE 4510–79–P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application
- ☐ Construction
- ☐ Non-Construction

Preapplication
- ☐ Construction
- ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:

23. Remarks:

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Appendix C

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Appendix D

Quarterly Performance and Enrollment Goals

(Enter all data cumulatively)

Grant Number: **Program Year:**

Performance Goals

	Quarters 1	2	3	4
Assessments				
Participants/Enrollments				
Employment Development Plans				
Job Placement Services				
Follow-up services at 90 days				
Placements/Entered Employments				
Terminations				

Core Training

	Quarters 1	2	3	4
Classroom Training				
On-the-job training				
Remedial education				
Literacy and bilingual training				
Institutional skills training				
Occupational skills training				
On-site industry-specific training				
Customized training				
Apprenticeship training				
Upgrading and retraining				
Supportive Services				
Other (specify)				
Total Individuals				

Ancillary Services

	Quarters 1	2	3	4

Counseling and/or Vocational Guidance				
Job Search Assistance				
Case Management				
Job Club				
Work Experience				
Tools/Fees/etc.				
Other (specify)				

Enrollment Goals by Eligibility Groups (do not double count)

	Quarters			
	1	2	3	4
Campaign/Wartime veteran				
Service-Connected Disabled veteran				
Recently-separated veteran				

Enrollment Plan by Eligibility Subgroups (from above, as applicable, include here)

	Quarters			
	1	2	3	4
Youth veterans (20-24 years of age)				
Economically Disadvantaged veterans				
Welfare and/or Public Assistance recipient veterans				
Female veterans				
Homeless veterans				
African-American veterans				
Hispanic veterans				
Native American veterans				
Other minority veterans				

Benchmarks

	Quarters			
	1	2	3	4
Average Wage at Placement				
Placement Rate				

Appendix E

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

	Administration	Program
Sub-Total	_____	_____
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs ----------	_____	_____

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

Appendix F

GLOSSARY OF TERMS

Adequate Employment - See Unsubsidized Employment.

Administrative Costs - All direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of recipients and sub-recipients of the grant funds.

Adult Basic Education - Education for adults whose inability to speak, read or write the English language or to effectively reason mathematically, constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level, of education of such individuals with a view to making them less likely to become dependent on others, to improve their ability to benefit from occupational training and otherwise increase their opportunities for more productive and profitable employment, and to make them better able to meet their adult responsibilities.

Ancillary Services - Employment and training related activities other than core training which may enhance a participant's employability.

Apprenticeship Training - A formal occupational training program which combines on-the-job training and related instruction and in which workers learn the practical and conceptual skills required for a skilled occupation, craft, or trade. It may be registered or unregistered.

Assurances and Certifications - The act of certifying compliance with applicable federal and state laws and regulations regarding the receipt and expenditures of grant monies.

ASVET - Assistant Secretary for Veterans' Employment and Training (USDOL)

Average Wage at Placement - This is an average of the wages earned by participants upon entering employment.

Barriers to Employment - Characteristics that may hinder an individual's hiring, promotion or participation in the labor

force. Some examples of individuals who may face barriers to employment include: single parents, displaced homemakers, youth, public assistance recipients, older workers, substance abusers, teenage parents, veterans, ethnic minorities, and those with limited English speaking ability or a criminal record or with a lack of education, work experience, credentials, child care arrangements, transportation or alternative working patterns.

Case Management - A client centered approach in the delivery of services, designed to prepare and coordinate comprehensive employment plans for participants, to assure access to the necessary training and supportive services, and to provide support during program participation and after job placement. In accordance with this definition, the case manager acts as a facilitator in assisting the participant toward a successful completion of training.

Classroom Training - Any training of the type normally conducted in an institutional setting, including vocational education, which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, throughout the provision of courses such as remedial education, training in the primary language of persons with limited English language proficiency, or English-as-language training.

Cognizant Federal Agency - The federal agency that is assigned audit or indirect cost rate approval responsibility for a particular recipient organization by the Office of Management and Budget. (OMB Circulars A-87, A-102)

Community-based organization (CBO)- means a private nonprofit organization that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce investment.

Core Training - Core training activities are employment focused interventions which address basic vocational skills deficiencies that prevent the participant from accessing appropriate jobs and/or occupations.

Counseling - Counseling in this sense can be any form of assistance which (1) provides guidance in the development of a participant's vocational goals and the means to achieve those

goals; and/or (2) assist a participant with the solution to a variety of individual problems which may pose a barrier(s) to the participant in achieving vocational goals, e.g., PTSD counseling, substance abuse counseling, job counseling, etc.

Customized Training - A training program designed to meet the special requirements of an employer who has entered into an agreement with a Service Delivery Area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or may be provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a specified number of trainees who satisfactorily complete the training.

Disabled Veteran - A veteran who is entitled to compensation under laws administered by the Veterans Administration; or an individual who was discharged or released from active duty because of service-connected disability.

DVET - Director for Veterans' Employment and Training

DVOP - Disabled Veterans' Outreach Program specialist

Economically Disadvantaged - means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673 (2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), or (ii) 70 percent of the lower living standard income level; (C) is receiving (or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977; (D) qualified as a homeless individual under section 103 of the Stewart B. McKinney Homeless Assistance Act; (E) is a foster child on behalf of whom State or local government payments are made or (F) in cases permitted by regulations of the Secretary, is an individual with a disability whose income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements.

Employment Development Plan (EDP) - An individualized written plan or intervention strategy for serving an individual which, as a result of an assessment of the veteran's economic needs, vocational interests, aptitudes, work history, etc., defines a reasonable vocational or employment goal and the developmental services or steps required to reach the goal and which documents the accomplishments made by the individual.

Employment Service - the state level organization or public labor exchange system affiliated with DOL's United States Employment Service.

Entered Employment Rate - This is a method used to determine the percentage of participants who become employed. The percentage is calculated by dividing the number of total participants who were enrolled in the program by the number of participants who were placed or entered employment through the program.

ETA - The Employment and Training Administration

Enrolled Veteran - Shall be synonymous with the term participant. A veteran who has been determined eligible for services at intake and who is receiving or scheduled to receive core training.

Follow-up - The tracking of what happens to participants when they leave the program for a period of 180 days after initial placement. The reporting requirements are to include the following data/information employment status (number of Entered Employments/Placements at 180 days after program has ended), average hourly wage (earnings change at 180 days after program has ended), and job retention (of those enrolled in training, provide number of those still employed in trained occupation at 180 days after program has ended), these measures can be used to assess long-term program performance and activity strategies for clients with diverse characteristics.

FTE - Full-time Equivalent, a personnel charge to the grant equal to 2,080 hours per annum.

FY - Fiscal Year. For federal government purposes, any twelve month period beginning on October 1 and ending on September 30.

GED - General Equivalency Diploma. A high school equivalency diploma which is obtained by passing the General Educational Diploma Equivalency Test which measures the application of skills and knowledge generally associated with four years of traditional high school instruction.

In-kind services - Property or services which benefit a federally assisted project or program and which are contributed without charge to the grantee.

Indirect Cost - A cost that is incurred for a common or joint purpose benefitting more than one cost objective and that is not readily assignable to the cost objectives specifically benefitted.

Institutional Skills Training - Skills training conducted in an institutional setting and designed to ensure that individuals acquire the skills, knowledge and abilities necessary to perform a job or group of jobs in an occupation for which there is a demand.

Intake - A process for screening individual applicants for eligibility; making an initial determination whether the program can benefit the applicants; providing information about the program, its services and the availability of those services; and selecting individual applicants for participation in the program.

Job Club Activities - A form of job search assistance provided in a group setting. Usually job clubs provide instruction and assistance in completing job applications and developing resumes and focus on maximizing employment opportunities in the labor market and developing job leads. Many job clubs use telephone banks and provide group support to participants before and after they interview for openings.

Job Development - The process of marketing a program participant to employers, including informing employers about what the participant can do and soliciting a job interview for that individual with the employer.

Job Placement Services - Job placement services are geared towards placing participants in jobs and may involve activities such as job search assistance, training, or job development. These services are initiated to enhance and expedite participants' transition from training to employment.

Job Search Assistance (JSA) - An activity which focuses on

building practical skills and knowledge to identify and initiate employer contacts and conduct successful interviews with employers. Various approaches may be used to include participation in a job club, receive instruction in identifying personal strengths and goals, resume and application preparation, learn interview techniques, and receive labor market information. Job search assistance is often a self-service activity in which individuals can obtain information about specific job openings or general job or occupational information.

Labor Exchange - Refers to the services provided to job seekers and employers by the State Employment Service Agencies, WIA Service -Delivery Areas, or other entities. Services to job seekers may include assessment, testing, counseling, provision of labor market information and referral to prospective employers. Employer service may include accepting job orders, screening applicants, referring qualified applicants and providing follow-up.

Labor Force - The sum of all civilians classified as employed and unemployed and members of the Armed Forces stationed in the United States. (Bureau of Labor Statistics Bulletin 2175)

Labor market area - an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.

Literacy and Bilingual Training - See Adult Basic Education.

LVER - Local Veterans' Employment Representative

Minimum Economic Need - The level of wages paid to a program participant that will enable that participant to become economically self-sufficient.

Minority Veterans - For the purposes of this SGA, veterans who are IV-C eligible and are members of the following ethnic categories: African American, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander.

Occupational Skills Training - Includes both (1) vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs, and (2) on-the-job training.

Offender - Any adult or juvenile who has been subject to any

stage of the criminal justice process for whom services under this Act may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

OASVET - Office of the Assistant Secretary for Veterans' Employment and Training (ASVET)

On-the-job training (OJT) - means training by an employer that is provided to a paid participant while engaged in productive work in a job that-- (A) provides knowledge or skills essential to the full and adequate performance of the job; (B) provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and (C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate. Usually in the OJT agreement, this is a promise on the part of the employer to hire the trainee upon successful completion of the training.

On-site Industry-specific Training - This is training which is specifically tailored to the needs of a particular employer and/or industry. Participants may be trained according to specifications developed by an employer for an occupation or group of occupations at a job site. Such training is usually presented to a group of participants in an environment or job site representative of the actual job/occupation, and there is often an obligation on the part of the employer to hire a certain number of participants who successfully complete the training.

Outreach - An active effort by program staff to encourage individuals in the designated service delivery area to avail themselves of program services.

Outside Funds - Resources pledged to the grant program which have a quantified dollar value. Such resources may include training funds from programs such as WIA Title I that are put aside for the exclusive use by participants enrolled in a program. Outside funds do not include in-kind services.

Participant - means an individual who has been determined to be eligible to participate in and who is receiving services (except followup services authorized under this title) under a program authorized by this title. Participation shall be

deemed to commence on the first day, following determination of eligibility, on which the individual began receiving subsidized employment, training, or other services provided under this title. **An individual who receives only outreach and/or intake and assessment services does not meet this definition.**

Placement - The act of securing unsubsidized employment for or by a participant.

Pre-apprenticeship Training - Any training designed to increase or upgrade specific academic, or cognitive, or physical skills required as a prerequisite for entry into a specific trade or occupation.

Pre-enrollment Assessment - The process of determining the employability and training needs of individuals before enrolling them into the program. Individual factors usually addressed during pre-enrollment assessment include: an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, and personal circumstances.

Program Resources - Includes the total of both program or grant and outside funds.

PY - Program Year. The 12-month period beginning July 1, and ending, on June 30, in the fiscal year for which the appropriation is made.

Recently Separated Veteran - refers to any veteran who applies for participation in a funded activity within 48 months after separation from military service.

Remedial Education - Educational instruction, particularly in basic skills, to raise an individual's general competency level in order to succeed in vocational education or skill training programs, or employment.

Service-Connected Disabled - refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (DVA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C., Chapter 19, section 1503(27)(B))

SGA - Solicitation for Grant Application

Subgrant - An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

Subgrantee - The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Suitable Employment - See "Unsubsidized Employment"

Substance Abuser - An individual dependent on alcohol or drugs, especially narcotics, whose dependency constitutes or results in a substantial barrier to employment..

Supportive Services - means services which are necessary to enable an individual eligible for training, but who cannot afford to pay for such services, to participate in a training program funded under the grant. Such supportive services may include transportation, health care, financial assistance, (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services and materials for individuals with disabilities, job coaches, child care and dependent care, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

Unsubsidized Employment - Employment not financed from funds provided under the grant. In the grant program the term "adequate" or "suitable" employment is also used to mean placement in unsubsidized employment which pays an income adequate to accommodate the participant's minimum economic needs.

Upgrading and Retraining - Training given to an individual who needs such training to advance above an entry level or dead-end position. This training shall include assisting veterans in acquiring needed state certification to be employed in the same field as they were trained in the military (i.e., Commercial Truck Driving License (CDL), Emergency Medical Technician (EMT), Airframe & Powerplant (A&P), Teaching Certificate, etc.).

USDOL - United States Department of Labor

USDVA - United States Department of Veterans Affairs (Formerly the Veterans Administration).

Veteran - shall refer to an individual who served in the United States active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Veterans' Workforce Investment Program (VWIP) - Reference made to the "VWIP Program" means all activity funded by VWIP and outside resources.

VWIP Resources - This term is synonymous with VWIP funds/funding.

Vocational Exploration Training - Through assessments such as interest inventories and/or counseling, a process of identifying occupations or occupational areas in which a person may find satisfaction and potential, and for which his or her aptitudes and other qualifications may be appropriate.

Welfare and/or Public Assistance recipient - An individual who, during the course of the program year, receives or is a member of a family who receives cash welfare or public assistance payments under a Federal, State, or local welfare program.

Workforce Investment Act (WIA) - The purpose of this Act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals, including veterans, who face serious barriers to employment and who are in need of such training to obtain prospective employment. The Act requires the ASVET to consult with the Secretary of the DVA to ensure that programs funded under VWIP of this Act meet the employment and training needs of service-connected disabled, Campaign and recently separated veterans and are coordinated, to the maximum extent feasible, with-related programs and activities.

Work Experience - A temporary activity (six months or less) which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors, and which may be combined with classroom or other training. When wages are paid to a participant on work experience and when such wages are wholly paid for under WIA, the participant <u>may not</u> receive this training under a private, for profit employer.

Youth - An individual, between the age of 20 and 24 years of age, who served on active duty in the U.S. Armed Forces.

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Notices

Federal Register
Vol. 67, No. 25
Wednesday, February 6, 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

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR part 215 and 36 CFR part 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after December 1, 2000. The list of newspapers will remain in effect until June 1, 2001, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara Schuster, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, and Phone (801) 625–5301.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR part 215 and 36 CFR part 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *The Idaho Statesman,* Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada: *The Reno Gazette-Journal,* Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune,* Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utah: *Salt Lake Tribune,* Salt Lake City, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:
Salt Lake Tribune, Salt Lake City, Utah

Ashley National Forest

Ashley Forest Supervisors decisions: *Vernal Express,* Vernal, Utah
Vernal District Ranger decisions: *Vernal Express,* Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming: *Casper Star Tribune,* Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express,* Vernal, Utah
Roosevelt and Duchesne District Ranger decisions: *Uintah Basin Standard,* Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions: *The Idaho Statesman,* Boise, Idaho
Mountain Home District Ranger decisions: *The Idaho Statesman,* Boise, Idaho
Idaho City District Ranger decisions: *The Idaho Statesman,* Boise, Idaho
Cascade District Ranger decisions: *The Long Valley Advocate,* Cascade, Idaho
Lowman District Ranger decisions: *The Idaho World,* Garden Valley, Idaho
Emmett District Ranger decisions: *The Messenger-Index,* Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune,* Casper, Wyoming
Jackson District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Buffalo District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Big Piney District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Pinedale District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Greys River District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Kemmerer District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal,* Pocatello, Idaho
Soda Springs District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Montpelier District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Westside District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Caribou-Targhee Forest Supervisor decisions for the Targhee Portion: *The Post Register,* Idaho Falls, Idaho
Dubois District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Island Park District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Ashton District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Palisades District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Teton Basin District Ranger decisions: *The Post Register,* Idaho Falls, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions: *The Daily Spectrum,* St. George, Utah
Pine Valley District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Cedar City District Ranger decisions: *The Daily Spectrum,* St. George, Utah

Powell District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Escalante District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Teasdale District Ranger decisions: *The Daily Spectrum,* St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions: *Richfield Reaper,* Richfield, Utah
Loa District Ranger decisions: *Richfield Reaper,* Richfield, Utah
Richfield District Ranger decisions: *Richfield Reaper,* Richfield, Utah
Beaver District Ranger decisions: *Richfield Reaper,* Beaver, Utah
Fillmore District Ranger decisions: *Richfield Reaper,* Fillmore, Utah.

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press,* Elko, Nevada
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal, Reno, Nevada*
Carson District Ranger decisions: *Mammoth Times,* Mammoth Lakes, California
Bridgeport District Ranger, decisions: *The Review-Herald,* Mammoth Lakes, California
Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal,* Las Vegas, Nevada
Austin District Ranger decisions: *Reno Gazette-Journal,* Reno, Nevada
Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News,* Tonopah, Nevada
Ely District Ranger decisions: *Ely Daily Times,* Ely, Nevada
Mountain City District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Ruby Mountains District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Jarbidge District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Santa Rosa District Ranger decisions: *Humboldt Sun,* Winnemucca, Nevada

Manti-Lasal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate,* Price, Utah
Sanpete District Ranger decisions: *The Pyramid,* Mt. Pleasant, Utah
Ferron District Ranger decisions: *Emery County Progress,* Castle Dale, Utah
Price District Ranger decisions: *Sun Advocate,* Price, Utah
Moab District Ranger decisions: *The Times Independent,* Moab, Utah
Monticello District Ranger decisions: *The San Juan Record,* Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman,* Boise, Idaho
Weiser District Ranger decisions: *Signal American,* Weiser, Idaho
Council District Ranger decisions: *Adams County Record,* Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions: *Star News,* McCall, Idaho
New Meadows, McCall, and Krassel District Ranger Decisions: *McCall-Cascade Times Advocate,* McCall, Idaho
New Meadows, McCall, and Krassel District Ranger Decisions

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Recorder-Herald,* Salmon, Idaho
Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis-Messenger,* Challis, Idaho
North Fork District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Leadore District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Salmon/Cobalt District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Middle Fork District Ranger decisions: *The Challis-Messenger,* Challis, Idaho
Challis District Ranger decisions: *The Challis-Messenger,* Challis, Idaho
Yankee Fork District Ranger decisions: *The Challis-Messenger,* Challis, Idaho
Lost River District Ranger decisions: *The Challis-Messenger,* Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times News,* Twin Falls, Idaho
Burley District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit. *South Idaho Press,* Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions: *The Times News,* Twin Falls, Idaho
Ketchum District Ranger decisions: *Idaho Mountain Express,* Ketchum, Idaho
Sawtooth National Recreation Area: *The Challis-Messenger,* Challis, Idaho
Fairfield District Ranger decisions: *The Times News,* Twin Falls, Idaho

Uinta National Forest

Unita Forest Supervisor decisions: *The Daily Herald,* Provo, Utah
Pleasant Grove District Ranger decisions: *The Daily Herald,* Provo, Utah
Heber District Ranger decisions: *The Daily Herald,* Provo, Utah, and
Spanish Fork District Ranger decisions: *The Daily Herald,* Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Salt Lake District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Kamas District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Evanston District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming
Mountain View District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming
Ogden District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah
Logan District Ranger decisions: *Logan Herald Journal,* Logan, Utah

Dated: January 30, 2002.

Christopher L. Pyron,

Deputy Regional Forester.

[FR Doc. 02–2803 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on February 25, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 25, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. Email: jandersen@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting will focus on a presentation of fire protection and fuel reduction priorities on lands in Trinity County. 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 30, 2002.

S.E. ''LOU'' Woltering,

Forest Supervisor.

[FR Doc. 02–2804 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on March 4, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on March 4, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. Email: jandersen@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting will focus on a summary and discussion of watershed restoration and fire protection priorities in Trinity County. 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 30, 2002.

S.E. ''LOU'' Woltering,

Forest Supervisor.

[FR Doc. 02–2805 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on March 5, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on March 5, 2002 from 6:00 to 8:00 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *Ichapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the committee, and will focus on the overall strategy for selecting Title II projects and involving the public. 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 30, 2002.

S.E. ''LOU'' Woltering,

Forest Supervisor.

[FR Doc. 02–2806 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Withdrawal of the Rocky Mountain Regional Guide and the Transfer of Decisions Therein to a Regional Supplement to the Forest Service Directive System

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The intended effect of this action is to comply with 36 CFR part 219 § 219.35(e) which directs that within 1 year of November 9, 2000, the Regional Forester must withdraw the Regional Guide. When a Regional Guide is withdrawn, the Regional Forester must identify the decisions in the Regional Guide that are to be transferred to a regional supplement of the Forest Service directive system (36 CFR 200.4) or to one or more plans and give notice in the **Federal Register** of these actions.

DATES: This action will be effective February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Chris Liggett, Land Management Planning Staff; Rocky Mountain Region; P.O. Box 25127; Lakewood, CO 80225. Phone: (303) 275–5158.

SUPPLEMENTARY INFORMATION: This action accomplishes withdrawal of the Rocky Mountain Regional Guide. The Standards and Guidelines therein (Chapter 3) will be transferred to a regional supplement to FSM 1920 in the Forest Service Directive System.

Dated: January 22, 2002.

Rick D. Cables,

Regional Forester.

[FR Doc. 02–2802 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Georgia

AGENCY: Natural Resources Conservation Service (NRCS) in Georgia, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Georgia for review and comment.

SUMMARY: It is the intention of NRCS in Georgia to issue new and revised conservation practice standards in Section IV of the FOTG. The revised standards are Tree/Shrub Establishment (612) and Forest Site Preparation (490). The new standard is Tree/Shrub Pruning (660).

DATES: Comments will be received until March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Address all requests and comments to Leonard Jordan, State Conservationist, Natural Resources Conservation Service (NRCS); Stephens Federal Building, MS 200; 355 East Hancock Ave., Athens, Georgia 30601. Copies of these standards will be made available upon written request. You may submit your electronic requests and comments to *Josh.Wheat@ga.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Georgia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Georgia regarding disposition

of these comments and a final determination of changes will be made.

Dated: January 22, 2002.

Richard Oliver,

Assistant State Conservationist, Athens, GA.

[FR Doc. 02–2859 Filed 2–5–02; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

Amended Sunshine Act Notice: Amends previous **Federal Register** notice published on January 31, 2002, volume 67, number 2.

DATE AND TIME: Friday, Februrary 8, 2002, 8:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of January 11, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Alabama, District of Columbia, Maryland, Virginia, and West Virginia
VI. Report from a Number of SAC Chairs About Activities in Their States
VII. Future Agenda Items
10 a.m. Environmental Justice Hearing (Part II)

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–8312.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–2965 Filed 2–4–02; 11:48 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-825]

Oil Country Tubular Goods, Other than Drill Pipe, From Korea: Postponement of Time Limits for Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Time Limits for Preliminary Results of New Shipper Review.

DATES: February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Scott Lindsay, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4236 and (202) 482–0780, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Background:

In response to a request from Shinho Steel Co. Ltd. (Shinho Steel), the Department of Commerce (Department) is conducting this new shipper review of Shinho Steel. (See Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Initiation of New Shipper Antidumping Administrative Review, 66 FR 18438, (April 9, 2001). The period of review is August 1, 2000 through February 28, 2001.

Postponement of New Shipper Review

On January 22, 2002, Shinho Steel, in accordance with 19 CFR 351.214(j)(3), agreed to waive the time limits applicable to its new shipper review so that the Department might conduct its new shipper review concurrently with the administrative review of the antidumping duty order on OCTG from Korea for the period of August 1, 2000 through July 31, 2001. (See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 66 FR 49924 (October 1, 2001). Therefore, pursuant to respondent's request and in accordance with the Departments's regulations, we will issue the preliminary results of this new shipper review concurrently with the preliminary results of the 2000/2001 administrative review of OCTG from Korea, which are currently scheduled for May 3, 2002.

This notice is published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(j)(3).

January 28, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–2871 Filed 2–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–601]

Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the Stainless Steel Cookware Committee (the Committee), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on top-of-the-stove stainless steel cooking ware from Korea. The period of review (POR) is January 1, 2000, through December 31, 2000.

We preliminarily determine that certain manufacturers/exporters sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument(s): (1) a statement of the issue(s) and (2) a brief summary of their argument (not to exceed five pages).

EFFECTIVE DATE: February 6, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham and Thomas F. Futtner, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; (202) 482–6320 and (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

Background

The Department published an antidumping duty order on top-of-the-stove stainless steel cooking ware (cookware) from Korea on January 20, 1987 (52 FR 2139). On January 18, 2001, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on cookware from Korea (66 FR 4796) covering the period January 1, 2000, through December 31, 2000.

On January 31, 2001, in accordance with 19 CFR 351.213(b), the Committee (the petitioner), whose members are Regal Ware, Inc., The West Bend Company, New Era Cookware and Vita-Craft Corporation, requested that we conduct an administrative review of twenty-six specific manufacturers/exporters of cookware from Korea: Daelim Trading Co., Ltd. (Daelim), Dong Won Metal Co., Ltd. (Dong Won), Chefline Corporation, Sam Yeung Ind. Co., Ltd., Namyang Kitchenflower Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Dong Hwa Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han II Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., Pionix Corporation, East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. In accordance with 19 CFR 351.221(b), we published a notice of initiation of the review on February 28, 2001 (66 FR 12758).

On March 2, 2001, we issued Section A antidumping questionnaires to each of the twenty-six manufacturers/exporters listed above. In response to our request for information, Pionix Corporation, Namyang Kitchenflower Co., Ltd., and Dong Hwa Steel Co., Ltd., reported that they had no sales or shipments during the POR. Information on the record indicates that there were no entries of subject merchandise made by these manufacturers/exporters during the POR. Accordingly, we are preliminarily rescinding the review with respect to these manufacturers/exporters.

The following companies failed to respond to the Department's Section A questionnaire: Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., Ssang Yong Ind. Co., Ltd., O. Bok Stainless Steel Co., Ltd., Il Shin Co., Ltd., Hai Dong Stainless Steel Ind. Co., Ltd., Han II Stainless Steel Ind. Co., Ltd., Bae Chin Metal Ind. Co., East One Co., Ltd., Charming Art Co., Ltd., Poong Kang Ind. Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sungjin International Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., Seshin Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. On January 4, 2002, we informed each of these companies that because they failed to respond to the Department's questionnaire, we may use facts available (FA) to determine their dumping margins. In response, the following manufacturers/exporters reported that they had no sales or shipments during the POR: Ssang Yong Ind., Co., Ltd., Poong Kang Ind. Co., Ltd., Sungjin International, Inc., Seshin Co., Ltd., O. Bok Stainless Steel Co., Ltd., Hai Dong Stainless Steel Co., Ltd., and Bae Chin Metal Ind. Co. Information on the record indicates that there were no entries of subject merchandise from these firms during the POR. Accordingly, we are preliminarily rescinding the review with respect to these manufacturers/exporters.

On April 2, 2001, Daelim and Dong Won responded to Section A of the antidumping questionnaire. On May 3, 2001, the Department issued Sections B, C and D of the Department's questionnaire to these two companies. Daelim and Dong Won filed responses to Sections B and C on June 18, 2001. On July 3, 2001, Daelim and Dong Won responded to Section D of the Department's questionnaire.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On September 26, 2001, the Department published a notice of extension of the time limit for the preliminary results in this case to January 30, 2002. See Top-of-the-Stove Stainless Steel Cooking Ware From Korea: Extension of Preliminary Results of Antidumping Duty Administrative Review, 66 FR 49164 (September 26, 2001).

On November 2, 2001, the Department issued Section A through D supplemental questionnaires to Daelim and Dong Won. The responses to these supplemental questionnaires were received on November 30, 2001. On December 19, 2001, the Department issued an additional Section A through D supplemental questionnaire to these companies. The responses were submitted by the companies on January 11, 2002.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise subject to this antidumping order is top-of-the-stove stainless steel cookware from Korea. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. The subject merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The Department has issued several scope clarifications for this order. The Department found that certain stainless steel pasta and steamer inserts (63 FR 41545, August 4, 1998), certain stainless steel eight-cup coffee percolators (58 FR 11209, February 24, 1993), and certain stainless steel stock pots and covers are within the scope of the order (57 FR 57420, December 4, 1992). Moreover, as a result of a changed circumstances review, the Department revoked the order on Korea in part with respect to certain stainless steel camping ware (1) made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consisting of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 3662, January 24, 1997).

FA

Application of FA

Section 776(a)(2) of the Act provides that if any interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in making its determination.

Section 782(e) of the Act provides that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) of the Act if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified;

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties

As stated above, on March 2, 2001, we issued Section A questionnaires to twenty-six manufacturers/exporters of the subject merchandise. The following companies failed to respond to the Department's Section A questionnaire: Chefline Corporation, Sam Yeung Ind. Co., Ltd., Kyung-Dong Industrial Co., Ltd., Il Shin Co., Ltd., Han Il Stainless Steel Ind. Co., Ltd., East One Co., Ltd., Charming Art Co., Ltd., Won Jin Ind. Co., Ltd., Wonkwang Inc., Sae Kwang Aluminum Co., Ltd., Hanil Stainless Steel Ind. Co., Ltd., East West Trading Korea, Ltd., Clad Co., Ltd., and B.Y. Enterprise, Ltd. On January 4, 2002, we informed each of these companies that because they failed to respond to the Department's questionnaire, we may use FA to determine their dumping margins.

Because these 14 companies failed to provide any of the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we must establish the margins for these companies based totally on facts otherwise available.

Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–20 (October 16, 1997). These 14 companies were given two opportunities to respond, and did not. Moreover, these companies failed to offer any explanation for their failure to respond to our questionnaires. As a general matter, it is reasonable for the Department to assume that these companies possessed the records necessary for this review; however, by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. As these 14 companies have failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 31.23 percent, the highest rate determined for any respondent in any segment of this proceeding. See Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Cookware from Korea, 51 FR 42873 (November 26, 1986) (Final LTFV Determination).

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA further provides that the term ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The rate used as AFA in this segment was originally calculated using verified information from the investigative segment of this proceeding. See Final LTFV Determination. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. Furthermore, we have no new information that would lead us to reconsider the reliability of the rate being used in this case.

As to the relevance of the margin used for AFA, the courts have stated that ''[b]y requiring corroboration of adverse inference rates, Congress clearly intended that such rates should be reasonable and have some basis in reality.'' F.Lli De Cecco Di Filippo Fara S. Martino S.p.A., v. U.S., 216 F.3d 1027, 1034 (Fed. Cir. 2000).

The rate selected is the rate currently applicable to certain companies, including 10 of these 14 companies. See Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review, 66 FR 45664 (August 29, 2001) (Final Results). In determining a relevant AFA rate, the Department assumes that if the non-responding parties could have demonstrated that their dumping margins were lower, they would have participated in this review and attempted to do so. See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190–91 (Fed. Cir. 1990). Therefore, given these 14 companies' failure to cooperate to the best of their ability in this review, we have no reason to believe that their dumping margins would be any less than the highest calculated rate in this proceeding. This rate ensures that they do not benefit by failing to cooperate fully. Therefore, we consider the rate of 31.23 percent relevant and appropriate to use as AFA for the non-responding parties.

NV Comparisons

To determine whether sales of cookware from South Korea to the United States were made at less than NV, we compared the export price (EP) to the NV for Daelim and EP and constructed export price (CEP) to the NV for Dong Won, as specified in the EP, CEP and NV sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

EP

Where Daelim and Dong Won sold merchandise directly to unaffiliated purchasers in the United States, we used EP, in accordance with section 772(a) of the Act, as the price to the United States. For both respondents, we calculated EP using the packed prices charged to the first unaffiliated customer in the United States (the starting price).

We made deductions from the starting price amounts for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, brokerage and handling, international freight, and marine insurance, in accordance with

section 772(c)(2)(A) of the Act. We added duty drawback received on imported materials, where applicable, pursuant to section 772(c)(1)(B) of the Act.

CEP

For Dong Won, we calculated CEP, in accordance with subsection 772(b) of the Act, for those sales to unaffiliated purchasers that took place after importation into the United States. We based CEP on the packed FOB prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions for discounts. We also made deductions for movement expenses in accordance with 772(c)(2)(A) of the Act. Movement expenses included foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. Customs duties, and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. Also, we made an adjustment for profit in accordance with section 772(d)(3) of the Act. Further, we added duty drawback received on imported materials, where applicable, pursuant to section 772(c)(1)(B) of the Act.

NV

1. Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Since Daelim's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales. Because Dong Won's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was not viable. Therefore, we have based NV for Dong Won on third country sales in the usual commercial quantities and in the ordinary course of trade. Because Dong Won's aggregate volume of sales of the foreign like product in Canada was more than five percent of its aggregate volume of U.S. sales of the subject merchandise, we used sales to Canada as the third country comparison sales. As in the preceding segment of this proceeding, the Department notes that Canada was Dong Won's largest third country market for cookware in terms of both value and quantity and the cookware that Dong Won exported to Canada was more similar to the subject merchandise exported to the United States than the cookware exported to other comparison markets. See Top-of-the-Stove Stainless Steel Cooking Ware From Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review, 66 FR 11259 (February 23, 2001).

2. Cost of Production (COP) Analysis

The Department disregarded certain sales made by Daelim and Dong Won during the previous administrative review because we found that these sales failed the cost test. See Final Results. Pursuant to section 773(b)(2)(A)(ii) of the Act, this provides reasonable grounds to believe or suspect in this review segment that Daelim and Dong Won made sales in the home or third country markets at prices below the COP. Consequently we initiated a COP inquiry with respect to both Daelim and Dong Wong and conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated, respectively, COP based on the sum of Daelim and Dong Won's cost of materials and fabrication (COM) for the foreign like product, plus amounts for SG&A, including financial expense, and packing costs. For the preliminary results, we relied on Daelim's and Dong Won's submitted information without adjustment.

B. Test of Foreign Market Sales Prices

We compared COP to foreign market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts and rebates, and selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, within the meaning of section 773(b)(2)(B) of the Act. Because we compared prices to POR or fiscal year average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found, looking at Dong Won's third country market sales and Daelim's home market sales, that both made sales at below COP prices within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold in the relevant foreign markets meeting the description in the ''Scope of the Review'' section of this notice, above, for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the foreign markets made in the ordinary course of trade (i.e., sales within the contemporaneous window which passed the cost test), we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Further, as in the preceding segment of this proceeding, merchandise was considered ''similar'' for purposes of comparison only if it is of the same ''product type,'' (i.e., (1) vessels or (2) parts). Among merchandise which was identical on the basis of ''product type,'' we then selected the most ''similar'' model through a hierarchical ranking of the remaining 11 product characteristics

listed in sections B and C of our antidumping questionnaire and application of the DIFMER test. If there were no sales of identical or similar merchandise in the foreign market to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period. For a further discussion of the Department's product comparison methodology, see Final Results and accompanying Decision Memo at Comment 1.

Level of Trade (LOT)

In accordance with section 773(a)(7)(A) of the Act, if the Department compares a U.S. sale at one LOT to NV sales at a different LOT, we will adjust the NV to account for the difference in LOT if the difference affects price comparability as evidenced by a pattern of consistent price differences between sales at the different LOTs in the market in which NV is determined.

Section 351.412(c)(2) of the Department's regulations states that the Secretary will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). To make this determination, the Department reviews such factors as selling functions, classes of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even if substantial, are not alone sufficient to establish a difference in the LOT. Similarly, while customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different LOTs, they are insufficient in themselves to establish that there is a difference in the LOT.

In determining whether separate LOTs actually existed in the foreign and U.S. markets for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services) offered to each customer or customer category, in both markets.

Dong Won reported third country sales through two channels of distribution for its Canadian sales. The first channel of distribution was direct sales with two customer categories (i.e., distributors/wholesalers and retailers). The second channel of distribution was also sales to the two customer categories listed above, but through Korean trading companies. As Dong Won performs essentially the same selling activities at the same degree for third country sales in both of these channels of distribution, we considered this one LOT for purposes of our antidumping analysis.

For the U.S. market, Dong Won reported both EP and CEP sales in the U.S. market. For EP sales, Dong Won reported the same channels of distribution and customer categories as those in the third country market (i.e., direct sales to distributors/wholesalers and retailers as well as direct sales to distributers/wholesalers and retailers through Korean trading companies). As Dong Won performs essentially the same selling activities at the same degree for EP sales in both channels of distribution, we consider this one LOT. When we compared EP sales to third country sales, we determined that the EP sales were made at the same LOT as the third country sales. Accordingly, because we calculated NV at the same LOT as EP, no LOT adjustment is warranted. See 19 CFR 351.412 (b)(1).

Dong Won reported sales through its U.S. affiliate as CEP sales. For CEP sales, Dong Won performed fewer selling functions than in the third country. In addition, the differences in selling functions performed for third country and CEP transactions indicate that third country sales involved a more advanced stage of distribution than CEP sales. Our preliminary analysis demonstrates that the third country LOT is different from, and constitutes a more advanced stage of distribution than the CEP LOT because, after making the CEP deductions under section 772(d) of the Act, the third country LOT includes significantly more selling functions at a higher level of service with greater selling expenses than the CEP LOT. Therefore, the third country LOT is at a different, more advanced marketing stage than the CEP LOT.

Section 773(a)(7)(B) of the Act provides for a CEP offset to NV when NV is established at a LOT which constitutes a more advanced LOT than the LOT of the CEP, but the data available do not provide an appropriate basis upon which to determine a LOT adjustment. As discussed above, in this case we found that there is only one LOT in the market in which NV is determined. Thus, it is not possible to determine a pattern of price differences on the basis of sales of the foreign like product by the producer. Furthermore, we do not have information on the record in this proceeding to determine a pattern of price differences on the basis of sales of different or broader product lines, sales by other companies, or any other reasonable basis. Therefore, we conclude that Dong Won is entitled to a CEP offset to NV. See Memorandum on LOT for Dong Won, dated January 31, 2002.

Daelim reported sales through one LOT, consisting of two channels of distribution for its home market sales. The first channel of distribution was sales through its affiliate in the home market, Living Star. The second channel of distribution was direct sales to home market customers. As Daelim performs the same selling activities at the same degree for home market sales in both channels of distribution, we consider this one LOT. See Memorandum on LOT for Daelim, dated January 31, 2002. Daelim reported only EP sales in the U.S. market. For EP sales, Daelim reported one LOT, consisting of one channel of distribution.

Upon review of the record we found that Daelim performed the same selling functions (i.e., inventory maintenance, technical advice, warranty services, freight & delivery arrangement, and advertising) at the same degree for EP sales as compared to home market sales. As such, we preliminarily find that there are no differences in the number, type, and degree of selling functions Daelim performs in the home market as compared to its EP sales. Therefore, because we are calculating NV at the same LOT as Daelim's EP sales, no LOT adjustment is warranted. See 19 CFR 351.412(b)(1).

Date of Sale

In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporters's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer established the material terms of sale on some other date. For both foreign market and U.S. transactions, Daelim and Dong Won reported the date of the contract (i.e., purchase order) as the date of sale, i.e., the date when the material terms of sale are finalized. The respondents note that the purchase order confirms all major terms of sale--price, quantity, and product specification--as agreed to by the respondents and the customer. Because there is nothing on the record to indicate that there were changes in the material terms of sale between the purchase order (or revised purchase order) and the invoice, the Department preliminarily determines that the purchase order date is the most appropriate date to use for the date of sale.

CV

In accordance with section 773(e) of the Act, we calculated CV based on the respondents' respective COM employed

in producing the subject merchandise, SG&A expenses, the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the COM and G&A expenses as reported in the CV portion of respondents' questionnaire responses. We used the U.S. packing costs as reported in the U.S. sales portion of the respondents' questionnaire responses. For selling expenses, we used the average of the selling expenses reported for home market sales that survived the cost test, weighted by the total quantity of those sales. For profit, we first calculated, based on the home market sales that passed the cost test, the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive profit.

Price-to-Price Comparisons

For those comparison products for which there were sales that passed the cost test, we based the respondent's NV on the price at which the foreign like product is first sold for consumption in Korea (Daelim) or Canada (Dong Won), in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act.

In accordance with section 773(a)(6) of the Act, we made adjustments to the foreign market price, where appropriate, for discounts and movement expenses (inland freight, brokerage and handling, and international freight). To account for differences in circumstances of sale between the foreign market and the United States, where appropriate, we adjusted the foreign market price by deducting foreign market direct selling expenses (including credit) and commissions and by adding U.S. direct selling expenses (including U.S. credit expenses). Where commissions were paid on foreign market sales and no commissions were paid on U.S. sales, we increased NV by the lesser of either: (1) The amount of commission paid on the foreign market sales or (2) the indirect selling expenses incurred on U.S. sales. See 19 CFR 351.410(e).

With respect to both CV and foreign market prices, we made adjustments, where appropriate, for inland freight, inland insurance, and discounts. We also reduced CV and foreign market prices by packing costs incurred in the foreign market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased CV and foreign market prices for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We made further adjustments to foreign market prices, when applicable, to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in circumstances of sale by deducting foreign market direct selling expenses and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act. Finally, in the case of Dong Wong, we made a CEP offset adjustment to account for comparing U.S. and foreign market sales at different LOTs.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margins exist for the period January 1, 2000, through December 31, 2000:

Manufacturer/Exporter	Margin (percent)
Dong Won Metal Co., Ltd	1.90
Dae-Lim Trading Co., Ltd	1.73
Chefline Corporation	31.23
Sam Yeung Ind. Co., Ltd	31.23
Kyung-Dong Industrial Co., Ltd	31.23
Il Shin Co., Ltd	31.23
Han Il Stainless Steel Ind. Co., Ltd	31.23
East One Co., Ltd	31.23
Charming Art Co., Ltd	31.23
Won Jin Ind. Co., Ltd	31.23
Wonkwang Inc	31.23
Sae Kwang Aluminum Co., Ltd	31.23
Hanil Stainless Steel Ind. Co., Ltd	31.23
East West Trading Korea, Ltd	31.23
Clad Co., Ltd	31.23
B.Y. Enterprise, Ltd	31.23

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For Daelim and Dong Won, we have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. For all other respondents, the assessment rate will be based on the margin percentage identified above. We will direct Customs to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is de minimis, i.e., less then 0.5 percent.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of top-of-stove stainless steel cooking ware from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent ad valorem and, therefore, de minimis, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original LTFV investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the LTFV investigation, the cash

deposit rate will be 8.10 percent, the “all-others” rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 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 administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

January 31, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–2870 Filed 2–5–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020102B]

Proposed Information Collection; Comment Request; Scientific Research, Exempted Fishing, and Exempted Activity Submissions

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before April 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William D. Chappell, Fisheries Management Specialist, at 301–713–2341 or William.Chappell@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishery regulations do not generally affect scientific research activities conducted by a scientific research vessel. Persons planning to conduct such research are encouraged to submit a research plan to ensure that the activities are considered research and not fishing. NOAA may also grant exemptions from fishery regulations for educational or other activities (e.g. testing of fishing gear). Applications for these exemptions must be submitted, and reports on activities submitted. Somewhat different requirements apply to the Atlantic Highly Migratory Species fishery, including certain arrival and offloading reports.

II. Method of Collection

Most information is submitted on forms or other written format. Some information may be phoned to NOAA.

III. Data

OMB Number: 0648–0309.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit; individuals or households; not-for-profit institutions; State, Local, or Tribal government.

Estimated Number of Respondents: 359.

Estimated Time Per Response: 1 hour for a scientific research plan, an exempted fishing permit request, or an exempted fishing permit report; 10 minutes for an application for an exempted fishing permit/letter of authorization for commercial fishing for Highly Migratory Species; 30 minutes for an application for an exempted fishing permit/letter of authorization for non-commercial fishing for Highly Migratory Species; 30 minutes for an annual summary of activities under an exempted fishing permit/letter of authorization for sharks; 5 minutes for an arrival report for a vessel with a swordfish exempted fishing permit/letter of authorization; 5 minutes for a report on non-commercial activities under an exempted fishing permit/letter of authorization for Highly Migratory Species; and 5 minutes for an off-loading notification for swordfish for a vessel with an exempted fishing permit/letter of authorization.

Estimated Total Annual Burden Hours: 435.

Estimated Total Annual Cost to Public: $500.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 31, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–2876 Filed 2–5–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board, Standing Committee of Emerging Chemical and Biological Technology Advisory Committee of Experts Closed Panel Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board, Standing Committee on Emerging Chemical and Biological Technology Advisory Committee of Experts has been scheduled as follows:

DATES: 13 & 14 February 2002 (0800am–1700pm).

ADDRESSES: San Diego, California 92118.

FOR FURTHER INFORMATION CONTACT: Mr. Jack A McNulty, Director, DIA Science and Technology Advisory Board, Standing Committee on Emerging Chemical and Biological Technology

Advisory Committee of Experts, Washington, DC 20340–1328, telephone (202) 231–3507.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: January 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2769 Filed 2–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8 a.m. to 5 p.m. on February 28, 2002 and from 8 a.m. to 5 p.m. on March 1, 2002. The meeting will be held at the Catamaran Hotel in San Diego, California. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than February 15, 2002.

Dated: January 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2770 Filed 2–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Overseas Dependents' School National Advisory Panel on the Education of Dependents with Disabilities

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, as amended (5 U.S.C. app. II), the Federal Advisory Committee Act, notice is hereby given that a meeting of the National Advisory Panel (NAP) on the Education of Dependents with Disabilities is scheduled to be held from 8:30 a.m. to 4 p.m. on April 16–18, 2002. The meeting is open to the public and will be held in the Holiday Inn Hotel conference room at 4610 North Fairfax Drive, Arlington, Virginia 22203. The purpose of the meeting is to (1) review the responses to the panel's recommendations from its May 8–10, 2001 meeting; (2) review and comment on data and information provided by DoDEA; and (3) review and comment on reports from subcommittees. Persons desiring to attend the meeting or desiring to make oral presentations or submit written statements for consideration by the panel must contact Ms. Diana Patton at (703) 696–4386 extension 1947.

Dated: January 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2768 Filed 2–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.116A, 84.116B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

Eligible Applicants: Institutions of higher education or combinations of those institutions and other public and private nonprofit institutions and agencies.

Applications Available: February 1, 2002.

Deadline for Transmittal of Preapplications: March 13, 2002.

Deadline for Transmittal of Final Applications: May 24, 2002.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: July 23, 2002.

Available Funds: $9,958,000.

Estimated Range of Awards: $50,000–$275,000 per year.

Estimated Average Size of Awards: $156,000 per year.

Estimated Number of Awards: 60–65.

Note: the Department in not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

Invitational Priorities

While applicants may propose any project within the scope of 20 U.S.C. 1138(a), under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority 1

Projects to improve the quality of K–12 teaching through new models of teacher preparation and through new kinds of partnerships between schools and colleges and universities that enhance students' preparation for, access to, and success in college.

Invitational Priority 2

Projects to promote innovative reforms in the curriculum and instruction at the college preparation, undergraduate, and graduate/professional levels, especially through student-centered or technology-mediated strategies.

Invitational Priority 3

Projects designing more cost-effective ways of improving postsecondary instruction and operations, i.e., to promote more student learning relative to institutional resources expended.

Invitational Priority 4

Projects to support new ways of ensuring equal access to postsecondary education, and to improve rates of retention and program completion, especially for underrepresented students whose retention and completion rates continue to lag behind those of other groups.

Methods for Applying Selection Criteria

For preapplications (preliminary applications) and final applications, the Secretary gives equal weight to each of the selection criteria. Within each of these criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating preapplications and final applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

Preapplications

In evaluating preapplications, the Secretary uses the following selection criteria:

(a) *Need for project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed project for the quality of its evaluation, as determined by the extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Final Applications

In evaluating final applications, the Secretary uses the following selection criteria:

(a) *Need for project.* The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary reviews each proposed project for the quality of its design, as determined by the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address the needs of, the target population or other identified needs.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) *Quality of the project evaluation.* The Secretary reviews each proposed project for the quality of its evaluation, as determined by the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(e) *Quality of the management plan.* The Secretary reviews each proposed project for the quality of its management plan, as determined by the plan's adequacy to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(f) *Quality of project personnel.* The Secretary reviews each proposed project for the quality of project personnel who will carry out the proposed project, as determined by the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of key project personnel.

(g) *Adequacy of resources.* The Secretary reviews each proposed project for the adequacy of its resources, as determined by the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(5) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–567–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*. Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CDFA number 84.116A.

Note: Application text and forms are available on the FIPSE web site (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8544. Telephone: (202) 502–7500. The application text and forms may be obtained from the Internet address: *http://www.ed.gov/FIPSE/*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities also may obtain a copy of the application package in an alternative format. However, the Department is not able to reproduce in alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/legislation/FedRegister/*.

To use PDF you must have Adobe Acrobat Reader, which is available free this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: the official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www/access.gpo.gov/nara/index.html*.

Program authority: 20 U.S.C. 1138–1138d.

Dated: January 31, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–2762 Filed 1–31–02; 4:58 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under Article 10 paragraph 3 of the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy, and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of atomized uranium-molybdenum powder, containing 1,564.76 g uranium (307.87 g uranium-235) from the Korea Atomic Energy Research Institute (KAERI) to the Compagnie pour l'Etude el la Realleation de Combustibles Atomiques (CERCA), Romans, France. The material, which is located at and was prepared by KAERI, will be used at the CERCA facility for the formability test of plate-type nuclear fuel as part of a Reduced Enrichment for Research and Test Reactors (RERTR) program.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the publication of this notice.

Dated: January 3, 2002.

For the Department of Energy.

Jon Phillips,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 02–2825 Filed 2–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–252]

Notice of intent to prepare an Environmental Impact Statement and to conduct public scoping meetings and Notice of Floodplain and Wetlands Involvement; GenPower New York, L.L.C.

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and to conduct public scoping meetings.

SUMMARY: GenPower New York, L.L.C. (GenPower) has applied to DOE for a Presidential permit to construct a ±500,000-volt (±500-kV) direct current (DC) submarine electric transmission cable across the U.S. border with Canada. The cable is proposed to originate in Goldboro, Nova Scotia, Canada, and terminate in New York City, New York. DOE has determined that the issuance of the Presidential permit would constitute a major Federal action that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). For this reason, DOE intends to prepare an EIS to address reasonably foreseeable impacts from the proposed action and alternatives.

The purpose of this Notice of Intent is to inform the public about the proposed action, announce plans for three public scoping meetings, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the EIS. Because the proposed project may involve an action in a floodplain or wetland, the EIS will include a floodplain and wetlands assessment and floodplain statement of findings in accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022).

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until March 25, 2002. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by March 25, 2002, in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public scoping meetings are:

1. February 26, 6 to 9 p.m., Gloucester, Massachusetts
2. February 27, 1 to 4 p.m., Boston, Massachusetts
3. February 28, 1 to 4 p.m., New York City, New York

Requests to speak at a public scoping meeting(s) should be received by Mrs. Ellen Russell at the address indicated below on or before February 25, 2002. Requests to speak may also be made at the time of registration for the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellen Russell, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350; phone 202–586–9624, facsimile: 202–287–5736, or electronic mail at *Ellen.Russell@hq.doe.gov.* In addition, a toll free comment line, 1–800–437–7280, and a project information Web site, *http://projects1.battelle.org/genpowereis,* are available.

The locations of the scoping meetings are:

1. Milton Fuller School, 4 School House Road, Gloucester, Massachusetts.
2. Environmental Protection Agency Building, Training Room 1101, 1 Congress Street, Boston, Massachusetts.
3. Federal Triangle Building, Conference Room A, 26 Federal Plaza, New York City, NY.

FOR FURTHER INFORMATION CONTACT:

For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice. The GenPower application, including associated maps and drawings, can be downloaded in its entirety from the Fossil Energy web site (*www.FE.DOE.GOV;* choose ''Electricity Regulation,'' then ''Pending Procedures'').

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, maintained, operated, or connected at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 CFR 205.320—205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On September 19, 2001, GenPower filed an application with the Office of Fossil Energy (FE) of the DOE for a Presidential permit. For its ''Hudson Energy Project,'' GenPower proposes to install a high-voltage, direct current (HVDC) submarine cable extending from a proposed 820-megawatt combined-cycle, natural gas-fired power plant located in Goldboro, Guysborough County, Nova Scotia, Canada, to New York City, New York, a distance of approximately 800 to 900 miles (1,300 to 1,450 kilometers (km)). GenPower's proposed terminus in New York City is the Consolidated Edison Company's (ConEd) West 49th Street substation. GenPower proposes, based on technical and geological limitations, to bury the cable on the sea bed to a depth of approximately 3.3 feet (1 meter (m)) in Canadian, United States, and possibly international waters at ocean depths to 990 feet (300 m). The cable is proposed to be installed using remotely operated water-jet trenching and/or water-jet plow equipment. Two areas designated as Critical Habitat for the Right Whale may be transited by installer ships. GenPower proposes to finalize installation procedures after consultations with the National Marine Fisheries Service under the Marine Mammal Protection Act.

The GenPower application, including associated maps and drawings, can be downloaded in its entirety from the Fossil Energy Web site (*www.FE.DOE.GOV;* choose ''Electricity Regulation,'' then ''Pending Procedures'').

GenPower does not have firm contracts in place in the United States for the sale of power from the proposed generating facilities.

GenPower's application proposes two sea-bed alternatives in the vicinity of ''Georges Bank,'' one to the east, the other to the west (applicants preferred alternative), beginning at the proposed Goldboro, Nova Scotia, power plant and terminating at ConEd's West 49th Street Substation. Georges Bank is one in a series of immense underwater banks or plateaus stretching from Newfoundland to southern New England on the edge of the North American continental shelf. The northernmost banks are called the Grand Banks and are off the Newfoundland and Labrador coasts. Georges Bank is an oval-shaped geological formation, approximately 150 miles (240 km) long by 75 miles (120 km) wide, and approximately 330 feet (100 m) higher than the sea bed of the Gulf of Maine that lies just north of it. Georges Bank is located at the southwestern end of the chain of banks and it is 75 miles (120 km) off the coast of New England. An important fishing resource, the banks are prime North American breeding and feeding grounds for fish and shellfish.

The alternative cable routes proposed by GenPower are as follows: For both alternatives, submarine cable installation would begin at Goldboro, Nova Scotia, and head offshore, then southwesterly along the Nova Scotia coast, to the Northeast Channel area. From there, the cable route would follow either a southeastern route around Georges Bank (southeast of Nantucket Island), or, for the applicant's preferred alternative, a southwestern route around Georges Bank to the Great South Channel and western terminus of the Ambrose shipping channel into New York Harbor.

When the cable route would enter the territorial waters of New York State it would be outside Lower New York Bay approximately three miles (5 km) south of Rockaway Beach, Queens. The route would continue west, entering Lower New York Bay, then turn northwest, passing through the Narrows into Upper New York Bay. The route would then proceed north, on the east side of the New York/New Jersey state line, to the west of Governors Island. The route would then proceed north, paralleling the west shoreline of Manhattan until the vicinity of the Passenger Ship Terminal piers near West 50th Street, where the cable route would proceed east and enter a directionally drilled conduit to connect with a proposed DC to AC power converter facility, proposed to be located at West 50th and 12th Avenue. The converted power would then leave the converter facility

via a buried AC interconnection that would pass from the converter facility to ConEd's West 49th Street substation (located at West 49th Street between 12th and 11th Avenues), for interconnection with ConEd's existing electrical transmission system.

Federal and Provincial Governments in Canada will also have a permitting role in the construction and operation of GenPower's Hudson Energy Project. DOE believes that this project is likely to require a demonstration that facilities in Canada would be undertaken in an environmentally safe manner. Further, DOE believes that an environmental review, similar to the one being announced by DOE herein, will be required by the Canada Environmental Assessment Act. DOE will consider information developed in that proceeding in the GenPower EIS.

Identification of Environmental Issues

A purpose of this notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list is not intended to be all-inclusive or to imply any predetermination of impacts. Following is a preliminary list of issues that may be analyzed in the EIS:

1. Impacts on fisheries, infrastructure, and employment;
2. Impacts on protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats;
3. Impacts on floodplains and wetlands;
4. Impacts on cultural or historic resources;
5. Impacts on human health and safety;
6. Impacts on air, soil, and water;
7. Visual impacts; and
8. Disproportionately high and adverse impacts on minority and low-income populations.

The EIS will also consider alternatives to the proposed transmission lines, including, to the extent practicable, the No Action Alternative. However, not issuing the Presidential permit would not necessarily imply maintenance of the status quo. GenPower indicated its proposed action is required to meet current and projected demand for electricity in New York City. Other actions (*e.g.,* construction of a new generating station in the vicinity of New York or New England and new transmission lines into New York City) could occur if the proposed transmission line is not built. The No Action Alternative will address the environmental impacts that are reasonably foreseeable to occur if the Presidential permit is not issued.

Scoping Process

Interested parties are invited to participate in the scoping process both to refine the preliminary alternatives and environmental issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental issues that are not feasible or pertinent. The scoping process is intended to involve all interested agencies (Federal, state, county, and local), public interest groups, Native American tribes, businesses, and members of the public. Potential Federal cooperating agencies include the U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service. Both oral and written comments will be considered and given equal weight by DOE.

Public scoping meetings will be held at the locations, dates, and times indicated above under the **DATES** and **ADDRESSES** sections. These scoping meetings will be informal. The DOE presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that DOE understands all issues and comments. Speakers will be allocated approximately 10 minutes for their oral statements. Depending upon the number of persons wishing to speak, DOE may allow longer times for representatives of organizations. Consequently, persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting(s), but advance requests are encouraged. Should any speaker desire to provide for the record further information that cannot be presented within the designated time, such additional information may be submitted in writing by the date listed in the **DATES** section. Meetings will begin at the times specified and will continue until all those present who wish to participate have had an opportunity to do so.

Draft EIS Schedule and Availability

The Draft EIS is scheduled to be issued in the fall, 2002, at which time its availability will be announced in the **Federal Register** and local media and public comments again will be solicited.

People who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when it is issued should notify Mrs. Russell at the address above.

The Draft EIS will be made available for public inspection. A notice of these locations will be provided in the **Federal Register** and local media at a later date.

Issued in Washington, DC on January 31, 2002.

Steven V. Cary,

Acting Assistant Secretary, Office of Environment, Safety, and Health.

[FR Doc. 02–2826 Filed 2–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–446–002]

ANR Pipeline Company; Notice of Compliance Filing

January 31, 2002.

Take notice that on January 28, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with an effective date of December 6, 2001:

Second Revised Volume No. 1

Second Revised Sheet No. 2B

Original Volume No.2

First Revised Sheet No. 249

ANR states that the above-referenced tariff sheets are being filed in compliance with the Commission's Order issued December 6, 2001, in Docket No. CP01–445–000, which vacated the certificate of public convenience and necessity under which Rate Schedule X–32 had been authorized, subject to ANR's compliance with part 154 of the Commission's Regulations within 20 days of the date of the Order. ANR has requested a waiver of the 20 day requirement to allow that the compliance filing be submitted out of time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2774 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2644–000, 001, 002, and 003]

Colton Power, L.P.; Notice of Issuance of Order

January 31, 2002.

Colton Power, L.P. (Colton Power) submitted for filing a tariff that provides for the sales of capacity, energy, and ancillary services at market-based rates. Colton Power also requested waiver of various Commission regulations. In particular, Colton Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Colton Power.

On January 30, 2002, the Commission issued an order (Order) that accepted Colton Power's application, subject to any tariff condition adopted by the Commission in Docket No. ER01–118–000.

The Commission's January 30, 2002 Order granted Colton Power's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Colton Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Colton Power is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Colton Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of the Colton Power's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 25, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–2816 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–40–006]

Florida Gas Transmission Company; Notice of Amendment

January 31, 2002.

Take notice that on January 22, 2002, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP00–40–006, an application pursuant to Section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued to FGT on July 27, 2001, in Docket Nos. CP00–40–000, *et al.,* authorizing the construction and operation of the Phase V Expansion. FGT seeks to amend the certificate in order to relocate the site of the proposed Compressor Station No. 31 (Station 31), and modify related environmental conditions listed in the appendix to the July 27 order, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

As part the Phase V Expansion, FGT was authorized to construct Station 31at a site in Osceola County, Florida. The City of Kissimmee, Osceola County, and local residents objected to the location, and some parties sought rehearing of the July 27 order with respect to the location of Station 31.

FGT states that, in an effort to accommodate the desires of local residents and resolve their disagreement with the Commission's decision with respect to the location of Station 31, FGT has identified an alternate site for Station 31, also located in Osceola County, but which, upon removal of an RV Park in May 2002, will have no residences within a half-mile radius. FGT's amendment application includes letters from The City of Kissimmee and Osceola County expressing their support for the alternate location proposed in the amendment and stating that they will withdraw their requests for rehearing of the Commission's authorization of the initial proposed site of Station 31 after a final Commission order authorizing the new location. Consequently, FGT requests revision of Environmental Condition No. 27 and elimination of Environmental Condition No. 28 which require FGT to work with The City of Kissimmee and Osceola County to develop a landscaping plan and exterior design to mitigate the impact on residents located near the originally proposed site.

FGT states that it will utilize the same horsepower and unit, as previously approved, and that there will be no loss in FGT's ability to serve all firm requirements. FGT requests that its amendment be approved by April 1, 2002, so that the facilities can be placed in-service as quickly as possible.

Any questions concerning this application may be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Suite 3997, 1400 Smith Street, Houston, TX 77002 or call (713) 853–6549.

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 21, 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.

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. 02–2773 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–007]

Kern River Gas Transmission Company; Notice of Negotiated Rate

January 31, 2002.

Take notice that on January 28, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 495, to be effective January 28, 2002.

Kern River states that the purpose of this filing is to submit a tariff sheet reflecting the revised rate formula to be used in the negotiated rate transactions between Kern River and Questar Gas Company and between Kern River and the Town of Eagle Mountain in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2781 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. ER02–199–000, ER02–218–000, ER02–219–000, ER02–220–000, ER02–221–000, ER02–222–000, ER02–223–000, ER02–224–000, ER02–225–000, ER02–226–000, ER02–227–000, ER02–228–000, ER02–229–000, ER02–230–000, ER02–498–000, ER02–788–000, EL02–50–000

Mississippi Power Company, Southern Company Services, Inc., Georgia Power Company, Alabama Power Company, Gulf Power Company, Southern Company Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

January 31, 2002.

Take notice that on January 30, 2002, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL02–50–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL02–50–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2772 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–152–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 31, 2002.

Take notice that on January 25, 2002, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective as follows:

To be effective October 1, 2001:

Fifteenth Revised Sheet No. 8

To be effective November 1, 2001:
Substitute Forty-Third Revised Sheet No. 5
Substitute Forty-Third Revised Sheet No. 6
Substitute Fortieth Revised Sheet No. 7
To be effective January 1, 2002:
Substitute Forty-Fourth Revised Sheet No. 5
Substitute Forty-Fourth Revised Sheet No. 6
Substitute Forty-First Revised Sheet No. 7

MRT states that the purpose of this filing is to incorporate the changes accepted by Order dated January 16, 2002 in MRT's rate case Docket No. RP01–292 to these sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–2782 Filed 2–5–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–374–003]

Northwest Pipeline Corporation; Notice of Negotiated Rates

January 31, 2002.

Take notice that on January 18, 2002, Northwest Pipeline Corporation (Northwest) a Rate Schedule TF–1 negotiated rate and non-conforming service agreement. Northwest also tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of February 18, 2002:

Sixth Revised Sheet No. 1
Eleventh Revised Sheet No. 364
Fourth Revised Sheet No. 366
Sheet Nos. 367 through 369
Original Sheet No. 370
Sheet Nos. 371 through 374

Northwest states that the purpose of this filing is to implement a negotiated rate between itself and Calpine Energy Services, L.P. and to reflect the negotiated rate agreement in its tariff. Northwest states that because this agreement contains a provision that is not included in the form of service agreement in Northwest's tariff, Northwest is submitting a copy of this service agreement and is adding it to the list of non-conforming service agreements in its tariff. Northwest states that it is also removing two terminated service agreements from its list of non-conforming agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–2780 Filed 2–5–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–77–000]

Northwestern Wind Power, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

January 31, 2002.

Take notice that on January 25, 2002, Northwestern Wind Power, LLC, 3313 West Second Street, The Dalles, Oregon 97058, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant proposes to develop and own a wind powered generation facility. Upon completion of Phase Two of the project, the facility will have a maximum capacity of 49.5 megawatts. The facility will be located in Sherman County, Oregon. Phase One of the facility is operational and producing test power. Phase Two of the facility is scheduled to be completed by September 1, 2002.

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 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. All such motions and 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: February 11, 2002.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 02–2776 Filed 2–5–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–8–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

January 31, 2002.

Take notice that on January 25, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing a Refund Report for interruptible transportation revenue credits on its Coyote Springs Extension.

GTN states that it refunded $625.75 to Portland General Electric Company, the sole eligible firm shipper on the Coyote Springs Extension, by credit billing adjustment on January 11, 2002.

GTN further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 7, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2777 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2928–000, 001, and 002]

Progress Ventures, Inc.; Notice of Issuance of Order

January 31, 2002.

Progress Ventures, Inc.[1] (Progress Ventures) submitted for filing a tariff that provides for the sales of capacity, energy, and ancillary services at market-based rates and for the reassignment of transmission capacity. Progress Ventures also requested waiver of various Commission regulations. In particular, Progress Ventures requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Progress Ventures.

On January 25, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Acceptance of Progress Ventures' market-based rate tariff is subject to any tariff condition adopted by the Commission in Docket No. EL01–118–000.

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Progress Ventures should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Progress Ventures is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Progress Ventures, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Progress Ventures' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 25, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at http://www.ferc.fed.us/efi/doorbell.htm.

Magalie R. Salas,

Secretary.

[FR Doc. 02–2817 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Progress Ventures is an indirect, wholly-owned subsidiary of Progress Energy, Inc., a registered holding company under the Public Utility Holding Company Act of 1935. Progress Ventures is an intermediate holding company formed to hold 100% indirect interest in certain exempt wholesale generators.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–45–000]

Texas Eastern Transmission, LP; Notice of Site Visit

January 31, 2002.

On Wednesday, February 20, 2002, the Federal Energy Regulatory Commission (FERC) staff will conduct a site visit of Texas Eastern Transmission, L.P.'s (Texas Eastern) Hanging Rock Lateral Project in Scioto and Lawrence Counties, Ohio. We will visit sites along the 9.6-mile-long pipeline project.

We will meet at the following location at 9 AM on Wednesday February 20, 2002: Texas Eastern's Right-of-Way Office, 433 Center Street, Wheelersburg, Ohio 45694.

For further information call the Office of External Affairs, at (202) 208–0004.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2775 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2984–001, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 30, 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. Cinergy Services, Inc.

[Docket No. ER01–2984–001]

Take notice that on January 25, 2002, Cinergy Services, Inc. tendered for filing an executed Interconnection Agreement entered into by and between Cinergy Services, Inc. (Cinergy) and Duke Energy Vigo, LLC (Duke Energy Vigo), and an executed Facilities Construction Agreement by and between Cinergy and Duke Energy Vigo, both of which are dated January 25, 2002.

The Interconnection Agreement between the parties provides for the interconnection of a generating station with the transmission system of PSI Energy, Inc. (PSI), a Cinergy utility operating company, and further defines the continuing responsibilities and obligations of the parties with respect thereto. The Facilities Construction Agreement between the parties provides for the construction and installation of the interconnection facilities and the additions, modifications and upgrades to the existing transmission facilities of PSI.

Consistent with the Commission's October 26, 2001 Order in this Docket, Cinergy requests an effective date of October 31, 2001 for both the Interconnection Agreement and the Facilities Construction Agreement.

Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission, Duke Energy Vigo and any other party on the Commission's official service list in this Docket.

Comment Date: February 15, 2002.

2. Cinergy Services, Inc.

[Docket No. ER01–3022–001]

Take notice that on January 25, 2002, Cinergy Services, Inc. tendered for filing an unexecuted Interconnection Agreement by and between Cinergy Services, Inc. (Cinergy) and Sugar Creek Energy, LLC (Sugar Creek Energy).

The unexecuted Interconnection Agreement between the parties provides for the interconnection of a generating station with the transmission system of PSI Energy, Inc. (PSI), a Cinergy utility operating company, and further defines the continuing responsibilities and obligations of the parties with respect thereto.

Consistent with the Commission's October 26, 2001 Order in this Docket, Cinergy requests an effective date of September 8, 2001 for the unexecuted Interconnection Agreement.

Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission and Sugar Creek Energy.

Comment Date: February 15, 2002.

3. Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., Twelvepole Creek, LLC

[Docket No. ER02–113–001]

Take notice that on January 24, 2002, Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., and Twelvepole Creek, LLC (collectively the Orion Affiliates) submitted for filing with the Federal Energy Regulatory Commission (Commission) an amendment to their market based rate tariffs in response to the Commission's Letter Order issued December 13, 2001.

Comment Date: February 14, 2002.

4. Duke Energy Murray, LLC

[Docket No. ER02–302–001]

Take notice that on January 25, 2002, Duke Energy Murray, LLC filed a notice of status change with the Federal Energy Regulatory Commission in connection with the pending change in upstream control of Engage Energy America LLC and Frederickson Power L.P. (Frederickson) resulting from a transaction involving Duke Energy Corporation and Westcoast Energy Inc.

Copies of the filing were served upon all parties on the official service list for the above-captioned proceeding.

Comment Date: February 15, 2002.

5. Virginia Electric and Power Company

[Docket No. ER02–840–000]

Take notice that on January 25, 2002, Virginia Electric and Power Company (the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission), a service agreement between the Company and Entergy-Koch Trading, LP, designated as Service Agreement No. 10, 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 Entergy-Koch Trading, LP, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: February 15, 2002.

6. Commonwealth Edison Company

[Docket No. ER02–844–000]

Take notice that on January 25, 2002, Commonwealth Edison Company (ComEd) submitted for filing an executed Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Service Agreement) and the associated executed Dynamic Scheduling Agreement (DSA) with Exelon Generation Company, LLC (Exelon) under ComEd's Open Access Transmission Tariff (OATT). The executed Service Agreement and associated executed DSA replace the unexecuted Service Agreement and unexecuted DSA between ComEd and Exelon which were previously filed with the Commission on December 28, 2001, designated as Docket No. ER02–633–000.

ComEd requests an effective date of January 1, 2002 for the executed Service Agreement and associated executed DSA to coincide with the effective date requested for the unexecuted Service Agreement and associated unexecuted DSA filed with the Commission on December 28, 2001, designated as Docket No. ER02–633–000. Accordingly, ComEd requests waiver of the Commission's notice requirements. A copy of this filing was served on Exelon.

Comment Date: February 15, 2002.

7. Northwestern Wind Power, LLC

[Docket No. ER02–845–000]

Take notice that on January 25, 2002, Northwestern Wind Power, LLC, tendered for filing a petition for acceptance of an initial rate schedule authorizing Northwestern Wind Power, LLC, to make wholesale sales of power at market-based rates.

Comment Date: February 15, 2002.

8. Northern Indiana Public Service Company

[Docket No. ER02–846–000]

Take notice that on January 25, 2002, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and NRG Power Marketing Inc. (NRG).

Under the Transmission Service Agreement, Northern Indiana Public

Service Company will provide Non-Firm Point-to-Point Transmission Service to NRG pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of January 25, 2002.

Comment Date: February 15, 2002.

9. Pacific Gas and Electric Company

[Docket No. ER02–847–000]

Take notice that on January 25, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing 1998, 1999, and 2000 true-ups to rates pursuant to Contract No. 14–06–200–2948A (Contract 2948A), PG&E First Revised Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

Pursuant to Contract 2948A and the PG&E-Western Letter Agreement dated February 7, 1992, electric energy sales are made initially at rates based on estimated costs and are then trued-up at rates based on recorded costs after the necessary data become available. The proposed rate changes establish recorded cost-based rates for true-ups of energy sales from Energy Account No. 2, made during 1998, 1999 and 2000, at rates based on estimated costs.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment Date: February 15, 2002.

10. Commonwealth Edison Company

[Docket No. ER02–848–000]

Take notice that on January 25, 2002, Commonwealth Edison Company (ComEd) submitted for filing an executed Service Agreement for Network Integration Transmission Service (''NSA'') and the associated executed Network Operating Agreement (NOA) between ComEd and Central Illinois Light Company (CILCO) under the terms of ComEd's Open Access Transmission Tariff (OATT). The executed NSA and associated executed NOA replace the unexecuted NSA and unexecuted NOA between ComEd and CILCO that were previously filed with the Commission in Docket No. ER02–463–000 and accepted for filing by the Commission on January 22, 2002.

ComEd requests an effective date of November 4, 2001 for the executed NSA and associated executed NOA to coincide with the effective date granted the unexecuted NSA and NOA that were previously filed with the Commission. Accordingly, ComEd requests waiver of the Commission's notice requirements. A copy of this filing was served on CILCO.

Comment Date: February 15, 2002.

11. American Transmission Systems, Inc.

[Docket No. ER02–849–000]

Take notice that on January 25, 2002, American Transmission Systems, Inc. (ATSI), filed revised specifications to its service agreements with the City of Cleveland, American Municipal Power-Ohio, Inc., and the FirstEnergy merchant group for firm Point-to-Point Transmission Service. The proposed effective date for the agreements is January 1, 2002. This filing is made pursuant to section 205 of the Federal Power Act. Copies of this filing have been served on the counterparties and the public utility commissions of Ohio and Pennsylvania.

Comment Date: February 15, 2002.

12. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–850–000]

Take notice that on January 25, 2002, pursuant to section 205 of the Federal Power Act and section 35.16 of the Commission's regulations, 18 CFR 35.16 (2001), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by the Louisville Gas & Electric Company/Kentucky Utilities Company (LG&E/KU).

Copies of this filing were sent to all applicable customers under the LG&E/KU Open Access Transmission Tariff by placing a copy of the same in the United States mail, first-class postage prepaid.

Comment Date: February 15, 2002.

13. Southern Company Services, Inc.

[Docket No. ER02–851–000]

Take notice that on January 25, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), tendered for filing changes to Southern Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). The proposed changes would increase the monthly charge for transmission service on Southern Companies' bulk transmission facilities (those operated above 44/46 kV) from $1.37/kW-month to $1.63/kW-month.

This amendment to the Tariff is being made so that the Tariff will more accurately recover Southern Companies' actual revenue requirement. Southern Companies are revising the Tariff to adopt a formula rate to derive charges for transmission services on their bulk transmission facilities. In addition, the Tariff is being revised to adopt: a ''stated rate'' approach ($/kW-month) in lieu of the load ratio share approach to derive bulk charges for network integration transmission service; on-peak and off-peak bulk charges for daily point-to-point transmission service (in addition to on-peak and off-peak charges for non-firm point-to-point transmission service); and a cost component to recover the Commission's annual charge. An effective date of April 1, 2002 has been requested for this amendment.

Copies of the filing were served upon Southern Companies' customers under the Tariff and upon the State Public Service Commissions having jurisdiction over Southern Companies.

Comment Date: February 15, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–2814 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2541–000, et al.]

Whiting Clean Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 31, 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. Whiting Clean Energy, Inc.

[Docket No. ER01–2541–001]

Take notice that on January 28, 2002, Whiting Clean Energy, Inc. tendered for filing its transaction report for short-term transactions for the fourth quarter of 2001 pursuant to the Commission's April 12, 2001 Letter Order in the above-referenced docket.

Comment Date: February 19, 2002.

2. San Diego Gas & Electric Company

[Docket No. ER01–3074–003]

Take notice that on January 28, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its Final Costs and Corrected Tariff sheets in the above-captioned docket. SDG&E's final costs update its December 6, 2001 filing of both final and estimated costs. The corrected tariff sheets reflect a change in the utility-specific high voltage Transmission Access Charge assessed by the California Independent System Operator.

SDG&E states that copies of the amended filing have been served on the service list in dockets ER01–3074–000 and ER01–3074–001.

Comment Date: February 19, 2002.

3. Combined Locks Energy Center, LLC

[Docket No. ER02–346–001]

Take notice that on January 24, 2002, Combined Locks Energy Center, LLC (CLEC), in compliance with the January 8, 2002, letter order of Director Michael C. McLaughlin, Division of Tariffs and Rates—Central in the above-captioned proceeding, filed, with rate schedule designations, an executed service agreement with WPS Energy Services, Inc. (WPS–ESI) under CLEC's market-based rate tariff, FERC Electric Tariff, Original Volume No. 1.

Copies of the filing were served upon WPS–ESI and the Public Service Commission of Wisconsin.

Comment Date: February 14, 2002.

4. EPCOR Power Development, Inc.

[Docket No. ER02–852–000]

Take notice that on January 28, 2002, EPCOR Power Development, Inc. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: February 19, 2002.

5. American Electric Power Service Corporation

[Docket No. ER02–853–000]

Take notice that on January 28, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing seven (7) Service Agreements which include Service Agreements for new customers and replacement Service Agreements for existing customers under the AEP Companies' Power Sales Tariffs. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies). AEPSC respectfully requests waiver of notice to permit the attached Service Agreements to be made effective on or prior to January 1, 2002.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: February 19, 2002.

6. Florida Power & Light Company

[Docket Nos. ER02–854–000]

Take notice that on January 28, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an unexecuted Interconnection and Operation Agreement between FPL and Calpine's Blue Heron Energy Center, LLC (Calpine) that sets forth the terms and conditions governing the interconnection between Calpine's generating project and FPL's transmission system. A copy of this filing has been served on Calpine and the Florida Public Service Commission.

Comment Date: February 19, 2002.

7. EPDC, Inc.

[Docket No. ER02–855–000]

Take notice that on January 28, 2002, EPDC, Inc. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: February 19, 20002.

8. The Dayton Power and Light Company

[Docket No. ER02–856–000]

Take notice that on January 28, 2002 The Dayton Power and Light Company (Dayton) submitted a service agreement establishing H.Q. Energy Services (US) Inc. (HQUS) as a customer under the terms of Dayton's FERC Electric Tariff, Original Volume No. 10.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon HQUS and the Public Utilities Commission of Ohio.

Comment Date: February 19, 2002.

9. Fitchburg Gas and Electric Light Company

[Docket No. ER02–857–000]

Take notice that on January 28, 2002 Fitchburg Gas and Electric Light Company (Fitchburg) filed a service agreement with Great Bay Power Corporation for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. Fitchburg requests an effective date of January 15, 2002.

Comment Date: February 19, 2002.

10. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–858–000]

Take notice that on January 28, 2002, Wolverine Power Supply Cooperative, Inc. tendered for filing an executed Service Agreement for Network Integration Transmission Service with Great Lakes Energy and an executed Network Operating Agreement with Great Lakes Energy under its Open Access Transmission Tariff. Wolverine requests an effective date of January 2, 2002.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy and the Michigan Public Service Commission.

Comment Date: February 19, 2002.

11. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–859–000]

Take notice that on January 28, 2002, Wolverine Power Supply Cooperative, Inc. tendered for filing an executed Market-Based Power Sales Agreement with Great Lakes Energy under its

Market-Based Power Sales Tariff. Wolverine requests an effective date of January 2, 2002.

Wolverine states that a copy of this filing has been served upon Great Lakes Energy and the Michigan Public Service Commission.

Comment Date: February 19, 2002.

12. Arizona Public Service Company

[Docket No. ER02–860–000]

Take notice that on January 28, 2002, Arizona Public Service Company (APS or Company) filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of the Service Agreement No. 202 under FERC Electric Tariff, Tenth Revised Volume No. 2 effective date of October 9, 2001, between APS and Ak Chin Electric Utility Authority.

Comment Date: February 19, 2002.

13. Arizona Public Service Company

[Docket No. ER02–861–000]

Take notice that on January 28, 2002, Arizona Public Service Company (APS) tendered for filing a revised Service Agreement to provide Firm Point-to-Point Transmission Service to Ak Chin Electric Utility Authority (AkChin) under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on Ak Chin and the Arizona Corporation Commission.

Comment Date: February 19, 2002.

14. Entergy Power Ventures, L.P.

[Docket No. ER02–862–000]

Take notice that on January 28, 2002, Entergy Power Ventures, L.P. tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act. Copies of this filing have been served on the Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Texas Public Utility Commission, and the Council of the City of New Orleans.

Comment Date: February 19, 2002.

15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–863–000]

Take notice that on January 28, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.16 of the Commission's regulations, 18 CFR 35.16, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by the Alliant Energy Corporate Services, Inc. (Alliant).

Copies of this filing were sent to all applicable customers under the Alliant Open Access Transmission Tariff.

Comment Date: February 19, 2002.

16. Arizona Public Service Company

[Docket No. ER02–864–000]

Take notice that on January 28, 2002, Arizona Public Service Company (APS) tendered for filing a revisions to its Open Access Transmission Tariff (OATT) in order to conform with Rule 614, clean up typographical errors, and clarify some language.

APS requests an effective date of April 1, 2002.

A copy of this filing has been served on the Arizona Corporation Commission. Copies of the filing can be viewed on APS' OASIS Web site, www.azpsoasis.com.

Comment Date: February 19, 2002.

17. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–865–000]

Take notice that on January 29, 2002, Wolverine Power Supply Cooperative, Inc. tendered for filing an Executed Wholesale Power Sales Enabling Agreement Between Wolverine Power Supply Cooperative, Inc., and Wolverine Power Marketing Cooperative, Inc., including an incorporated and executed Term Sheet. Wolverine requests an effective date of January 1, 2002.

Wolverine states that a copy of this filing has been served upon Wolverine Power Marketing Cooperative, Inc. and the Michigan Public Service Commission.

Comment Date: February 19, 2002.

18. Michigan Electric Transmission Company

[Docket No. ER02–866–000]

Take notice that on January 28, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with Consumers Energy Company (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreements being filed are Nos. 136 and 137 under that tariff.

Michigan Transco is requesting an effective date of January 1, 2002 for the Agreements.

Copies of the filed agreements were served upon the Michigan Public Service Commission, ITC and the customer.

Comment Date: February 19, 2002.

19. Michigan Electric Transmission Company

[Docket No. ER02–867–000]

Take notice that on January 28, 2002 Michigan Electric Transmission Company (METC) tendered for filing a Letter Agreement with Consumers Energy Company (Generator), dated December 31, 2001, (Agreement). The agreement is meant to enable METC to begin engineering and other preliminary work associated with upgrading METC's transmission system to accommodate an increase in capacity at an existing generating plant operated by Generator.

METC requested that the Agreement be allowed to become effective December 31, 2001.

Copies of the filing were served upon Generator and the Michigan Public Service Commission.

Comment Date: February 19, 2002.

20. Michigan Electric Transmission Company

[Docket No. ER02–868–000]

Take notice that on January 28, 2002, Michigan Electric Transmission Company (METC) tendered for filing executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with Michigan Cooperative Coordinated Pool (Customer) whose members are The Michigan Public Power Agency and Wolverine Power Supply Cooperative, Inc. pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreement being filed is No. 135 under that tariff.

METC is requesting an effective date of January 1, 2002 for the Agreement.

Copies of the filed agreements were served upon the Michigan Public Service Commission, ITC and the Customer.

Comment Date: February 19, 2002.

21. Great Bay Power Corporation

[Docket No. ER02–869–000]

Take notice that on January 29, 2002, Great Bay Power Corporation (Great Bay) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement between Indeck Pepperell Power Associates and Great Bay for service under Great Bay's revised Market-Based Rate Power Sales Tariff Volume No. 2 (Tariff). This Tariff was accepted for filing by the Commission on May 31, 2000, in Docket No. ER00–2211–000.

The service agreement is proposed to be effective February 1, 2002.

Comment Date: February 19, 2002.

22. Southwestern Electric Power Company

[Docket No. ER02–870–000]

Take notice that on January 29, 2002, Southwestern Electric Power Company (SWEPCO) filed two executed agreements between SWEPCO and Northeast Texas Electric Cooperative, Inc. (NTEC): a long-term Power Purchase and Sale Agreement with a Confirmation Letter Agreement (in redacted and non-redacted form) as a service agreement under SWEPCO's Market-Based Rate Tariff and a Scheduling Agent Agreement.

SWEPCO seeks an effective date of January 1, 2002 for the two agreements and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on NTEC and on the Public Utility Commission of Texas.

Comment Date: February 19, 2002.

23. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–871–000]

Take notice that on January 29, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing information regarding the recent developments in the Midwest ISO's phased initiation of jurisdictional service to commence as of February 1, 2002 and redlined and clean versions of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1, regarding Schedules 7, 8 and 9, Attachments J and K and Schedule 10–B.

The Midwest ISO has electronically served copies of its filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter.

Comment Date: February 19, 2002.

24. AES Ironwood, L.L.C.

[Docket No. ER02–872–000]

Take notice that on January 29, 2002, AES Ironwood, L.L.C (AES Ironwood) filed a long-term power sales agreement between AES Ironwood and Williams Energy Marketing & Trading Company (the Agreement). Confidential treatment of the Agreement, pursuant to 18 CFR 385.112 (2000), has been requested.

Comment Date: February 19, 2002.

25. MDU Resources Group, Inc.

[Docket No. ES02–20–000]

Take notice that on January 18, 2002, MDU Resources Group, Inc. (MDU Resources) submitted an application pursuant to section 204 of the Federal Power Act to issue up to 100,000 shares of common stock, par value $1.00 per share, to be issued from time to time in connection with the MDU Resources Group, Inc. Group Genius Innovation Plan.

MDU Resources also requests a waiver of the competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: February 21, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–2815 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

January 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of License.

b. Project No. 2543–053.

c. Date Filed: December 28, 2001.

d. Applicant: The Montana Power Company.

e. Name of Project: Milltown.

f. Location: On the Clark Fork River in Missoula County, Montana. The project does not utilize federal or tribal lands.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Michael P. Manion, The Montana Power Company, 40 East Broadway, Butte, Montana 59701, (406) 497–2456.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Deadline for filing motions to intervene, protests, comments: (March 7, 2002).

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–2543–053) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. Description of Amendment: The licensee requests that its license be amended to extend the expiration date of the license two years, from December 31, 2006 to December 31, 2008. On December 28, 2001, the licensee filed a notice of intent to relicense the

Milltown Project, with the understanding that its notice would become moot if its request to extend the term of the license is granted.

1. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2778 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Ready for Environmental Analysis, Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions, and Intent To Prepare One Multi-Project NEPA Document

January 31, 2002.

Take notice that the following applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Subsequent Licenses.

b. *Project Nos.:* P–6058–005, and P–6059–006.

c. *Date Filed:* January 2, 2001.

d. *Applicant:* Hydro Development Group, Inc.

e. *Name of Projects:* Hailesboro #4 Project, and Fowler #7 Project.

f. *Location:* On the Oswegatchie River in St. Lawrence County, near the town of Gouverneur, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)-825(r).

h. *Applicant Contact:* Kevin M. Webb, Hydro Development Group, Inc., 200 Bulfinch Drive, Andover, MA 01810, (978) 681–1900 ext. 1214.

i. *FERC Contact:* Monte TerHaar, (202) 219–2768 or E-mail address at monte.terhaar@FERC.fed.us.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. Status of environmental analysis: These applications have been accepted for filing and are now ready for environmental analysis. At this time we do not anticipate the need for preparing a draft EA. We intend to prepare one multi-project environmental document. The EA will include our recommendations for operating procedures and environmental enhancement measures that should be part of any new license issued by the Commission. Recipients will have 45 days to provide the Commission with any comments on that document. All comments on the EA, filed with the Commission, will be considered in an Order taking final action on the license applications. However, should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

l. Description of Projects: Hailesboro #4 Project: The existing, operating Hailesboro #4 Project consists of: (1) A concrete gravity-type dam comprising: (i) the 92-foot-long, 14-foot-high Dam #1 surmounted by a pneumatic gate; and (ii) the 58-foot-long, 5-foot-high Dam #2 surmounted by flashboards; (2) a reservoir with a 2.0-acre surface area and a gross storage volume of 20 acre-feet at normal water surface elevation 461 feet National Geodetic Vertical Datum (NGVD); (3) a gated intake structure with trashracks; (4) a 170-foot-long concrete-lined forebay canal; (5) a powerhouse containing a 640-kilowatt (kW) generating unit and an 850-kW generating unit for a total installed capacity of 1,490 kW; (6) a 2.4/23-kilovolt (kV) substation; (7) a 50-foot-long, 23-kV transmission line; (8) a tailrace; and (9) appurtenant facilities. The applicant estimates that the total average annual generation would be 11.0 megawatt-hours (MWh).

Fowler #7 Project: The existing, operating Fowler #7 Project consists of: (1) A concrete gravity-type dam surmounted by flashboards comprising: (i) the 75-foot-long, 25-foot-high Dam #1; (ii) the 192-foot-long, 20-foot-high Dam #2; and (iii) the 154-foot-long, 15-foot-high Dam #3; (2) a reservoir with a 3.0-acre surface area and a gross storage volume of 30-acre-feet at normal water surface elevation 542 feet NGVD; (3) an intake structure with trashracks; (4) a powerhouse containing three, 300-kW generating units for a total installed capacity of 900-kW; (5) a 1,000-kVA 2.3/23-kV transformer; (6) a 4,000-foot-long,

23-kV overhead transmission line; (7) a tailrace; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be 6.0 MWh.

m. Locations of the Applications: Copies of the applications are available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–2326. The applications 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). Copies are also available for inspection and reproduction at the Hydro Development Group, Inc., 200 Bulfinch Drive, Andover, MA 01810, (978) 681–1900 ext. 1214.

n. The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–2779 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–9–000]

Reporting of Natural Gas Sales to the California Market

January 30, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of decision not to seek an extension of reporting period.

SUMMARY: On July 25, 2001, the Federal Energy Regulatory Commission (Commission) issued an order imposing certain reporting requirements on natural gas sellers and transporters serving the California market for the period ending January 31, 2002 (see 66 FR 40245, August 2, 2001). The Commission, by this notice, will not seek an extension of the reporting period provided for in the July 25, 2001 order.

DATES: The reporting period will terminate with the report covering activities ending January 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2078.

SUPPLEMENTARY INFORMATION: On July 25, 2001, the Commission issued an order (July 25 order) imposing a reporting requirement on natural gas sellers and transporters serving the California market for the six-month period August 2001, through January 2002.[1] The order stated that the Commission believed the reporting period should cover the same period as the Commission's mitigation plan regarding wholesale electricity prices in California and the West, and therefore the Commission intended to seek an extension of the reporting requirement, and approval by Office of Management and Budget (OMB), through September 30, 2002, to coincide with the termination date of the mitigation order.[2] However, in light of changed circumstances since the July 25th order, the Commission has decided that it will not seek an extension of the reporting requirement. This action is in the public interest because the price disparity that was the reason for imposing the reporting requirement no longer exists, and the continued submissions may not lead to a further understanding of the California gas market.

The July 25 order stated that the information was needed by the Commission to help it understand why the disparity between the price of natural gas in California and the prices in the remainder of the country had occurred, and was continuing, by gaining a better understanding of how the California market operates. The July 25 order explained that due to the emergency nature of the California price disparity, the Commission sought emergency processing by OMB for the collection of information under 5 CFR § 1320.13 (2001). Under that procedure the OMB approval is limited to 180 days. Accordingly, the order provided for the information to be submitted monthly for the six-month period covering August 1, 2001, through January 31, 2002, with the reports due 30 days after the end of each month. The first report was due October 1, 2001, and the last will be due March 1, 2002.[3]

The purpose of the reporting requirement was to investigate why there was a substantial disparity between spot natural gas prices in California and the rest of the nation by gaining a better understanding of how the California market operates. A preliminary analysis of the data furnished to date indicates that the data for the six month period ending January 31, 2002, will provide information about the California market, as well as some guidance on how to improve data collection and processing should another emergency reoccur. However, the crisis which led the Commission to impose the reporting requirement no longer exists. In May 2001, when the Commission first proposed to impose a reporting requirement, 95 FERC ¶ 61,262, the spot price of natural gas in the California market, as that order noted, ranged between $11.79[4] and $18.80, while the price range in all other markets was between $4 and $7. However, natural gas prices are now, and have been for a number of months, far lower than they were last spring in

[1] 96 FERC ¶ 61,119, *reh'g denied, 97 FERC* ¶ 61,029 (2001).

[2] See San Diego Gas & Electric Company, *et al.,* 95 FERC ¶ 61,418 (2001).

[3] On September 17, 2001, OMB granted the Commission's request and approved the information collection through January 31, 2002, and assigned it OMB No. 1902–0187.

[4] All prices are per MMBtu.

California, as well as in the rest of the country. Currently, as reported in Platts Gas Daily, the spot price of natural gas at the California border is less than $3.00, which is generally in line with the spot price elsewhere in the country and, in fact, lower than the price at some city gates in the East. Similarly, the monthly California Regional Average contract index price reported in Platts Gas Daily Price Guide was $2.44,[5] while the National Average price was $2.34.[6]

While the July 25 order stated the Commission intended to seek approval from OMB to extend the reporting requirement, market conditions, as shown above, have subsequently changed dramatically. As a result, the reason for imposing a special reporting requirement for sales of natural gas to the California market—that the California market is suffering unique difficulties—has largely disappeared. Furthermore, since the price of natural gas in California for the past few months has remained fairly stable and has not shown any significant disparity from the price of gas in the rest of the country, the continued collection and analysis of data relating to the California market is unlikely to add incrementally to what is being learned from the initial six months of data. Thus, at this time there is no reason to extend a special reporting requirement with respect to gas sales in only California, when there is no similar reporting requirement in other parts of the country.

The Commission is currently undertaking a comprehensive review of the information it should collect in order to monitor energy markets throughout the country. Since the crisis in California has now ceased, the Commission concludes that any further reporting requirement covering the California gas market is best developed as part of this comprehensive review of reporting requirements of all energy markets.

On December 11, 2001, Indicated Shippers,[7] who are certain major producers and marketers subject to the California reporting requirement, filed a petition requesting that the Commission not extend the reporting requirement beyond the current expiration date.[8] The basis of the petition was similar to the discussion above that the current market conditions in the California gas market do not justify extending the reporting requirement for gas sales in that market.[9] The California Electricity Oversight Board filed a protest to the petition asserting that current market conditions were irrelevant because ''there is no principled reason to assume that current market stability inherently eliminates future abuse of California's natural gas market.''[10]

The Commission has concluded that the reason for imposing a special reporting requirement for sales of gas in the California market no longer exists. While there is no guarantee that the disparity in the prices could not again occur, at this time there is no basis to assume that it will. We are well into the winter season, and the California gas market has not exhibited any conditions that now warrant imposing the reporting requirement there, as compared to any other market. Thus, the concern by the California Electricity Oversight Board that the price disparity could reoccur, is not a sufficient reason to extend the reporting requirement. However, should the price disparity reoccur, the Commission will be in a better position to determine what action it should take as a result of the submissions to date.

The Commission concludes that extending a reporting requirement that is limited to the California market would not further the Commission's goal of achieving more transparency of the national energy market. The Commission's decision not to extend the reporting requirement at this time does not represent any lessening of the Commission's intent to closely monitor that market, but reflects the Commission's conclusion that since the crisis that led to the imposition of the reporting requirement has ceased, the resources that would have to be devoted to the extension, would be better utilized in other areas, particularly the more comprehensive ongoing review of data collection by the Commission, discussed above.

Accordingly, the Commission will not seek an extension of the existing reporting period.

By direction of the Commission. Chairman Wood and Commissioner Brownell concurred with a separate statement attached.

Magalie R. Salas,

Secretary.

Federal Energy Regulatory Commission

[Docket No. RM01–9–000]

Reporting of Natural Gas Sales to the California Market

Issued January 30, 2002.

WOOD, Chairman, and BROWNELL, Commissioner, *concurring:*

We write separately to add that the data collected thus far has provided the Commission with valuable information on how the California natural gas market operates, such as, the proportion of sales in California under long and short-term contracts, the extent to which the prices in gas sales contracts are fixed, the extent of utilization of interstate transportation capacity to California, the nature of the purchasers under the sales contracts (e.g., marketers, LDCs, or end users), and also the approximate proportion of sales in the California market that are subject to the Commission's jurisdiction. This information will provide a reference point that will enable the Commission to effectively craft a more focused reporting requirement should it appear that a price disparity may again resurface in the California market and such a reporting requirement is needed. More importantly, it provides us useful information for our current effort to comprehensively revise all of our reporting requirements to reflect the present state of the energy markets.

Pat Wood, III,
Chairman.

Nora Mead Brownell,
Commissioner.

[FR Doc. 02–2818 Filed 2–5–02; 8:45 am]

BILLING CODE 6717–01–P

[5] Platt's Gas Daily Price Guide defines the contract index price as the weighted average cost of gas based on volume and prices for baseload deals done within the last five working days of the month.

[6] In September the California Regional Average was $2.58, while the National Average was $2.31. In November, the California Regional Average was $2.93, and the National Average was $3.08.

[7] Indicated Shippers consists of Aera Energy LLC, Amoco Production Company, BP Energy, Burlington Resources Oil & Gas Company, Conoco Inc., Coral Energy Resources LP, Occidental Energy Marketing Inc., and Texaco Natural Gas Inc.

[8] Indicated Shippers also asserted that compliance required each company to expend approximately 15 hours per month, and this burden should not be imposed when the reason for the reporting requirement no longer existed.

[9] Dynegy Marketing and Trade filed comments in support of the petition.

[10] Protest at 3.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7138–2]

Equipment Containing Ozone Depleting Substances at Industrial Bakeries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Bakery Partnership Program and response to comments.

SUMMARY: The Environmental Protection Agency announces a unique voluntary Partnership Program for the baking industry. Commercial bakeries use large quantities of chlorofluorocarbons and other chemicals that contribute to depletion of the ozone layer in industrial process refrigeration appliances. Failure to comply with the stringent leak detection and repair requirements under 40 CFR part 82 of the regulations implementing Title VI of

the Clean Air Act can result in the release of tens of thousands of pounds of ozone-depleting chemicals to the atmosphere, and expose companies to enforcement liability.

Accordingly, EPA is offering incentives for those commercial bakeries that agree to reduce or eliminate leaks of ozone-depleting substances (ODS) used in refrigeration equipment. Companies that elect to participate agree to audit certain appliances, comply with leak detection and repair requirements, and phaseout Class I industrial process refrigeration appliances and thus qualify for reduced penalties and a waiver of civil liability for past violations. Penalties are reduced even further (in some cases eliminated) for companies that replace existing refrigeration units with systems that use non-ozone depleting chemicals.

The terms of the agreement allow companies a high degree of choice in designing the most cost-effective compliance strategy and considering whether to switch to non-ODS systems. EPA encourages companies to take advantage of this voluntary partnership, which offers an economical way to protect the atmosphere and assure compliance with the Clean Air Act.

This announcement indicates how EPA expects to exercise its enforcement discretion in settling potential past violations of 40 CFR part 82 with companies that elect to participate, and which agree to meet certain conditions. It is designed to help companies assess their liabilities and determine whether it is reasonable to audit and correct violations in return for reduced penalties and a waiver of past civil liability. The use of the terms ''must'' and ''shall'' establish presumptions as to the terms and conditions and EPA's response. As always, EPA reserves the right to exercise its discretion differently if presented with unusual or compelling circumstances. This notice establishes no new rights or obligations on behalf of EPA or any other party, except to the extent specific terms are agreed to in administrative orders on consent.

On December 10, 2001, the Environmental Protection Agency [EPA] published a proposed voluntary program for the baking industry and sought comments. The comment period has closed and comments have been received. The proposed Bakery Partnership Program has been revised in several ways based on the helpful comments. Some comments have been editorial in nature, providing clarifying language which have been adopted. Others have been more substantive, most of which have been incorporated into this final announcement.

The most important change is that EPA agrees with the comment that the starting date for the program should be moved forward from March 15, 2002 to April 26, 2002. In addition, EPA agrees with the comment that an alternative dispute resolution mechanism should be available if the informal attempts to resolve disagreements are not successful, and believes that this mechanism is the most appropriate means to resolve those few factual disputes that may arise. EPA also agrees that Class I units should have the option of shutting down these units rather than converting them.

Participation in the partnership program is purely voluntary, and this is not a rule, but it does combine the advantages of predictability and reduced penalties with incentives to move away from the use of ozone depleting substances (ODS). Participating companies will be asked to agree to phaseout use of the more hazardous Class I ODS by July 15, 2003, reflecting the fact that use of these substances is being rapidly phased out under existing rules. Bakeries that have installed non-ODS systems by April 26, 2002, can avoid all penalties under this agreement. Bakeries that install non-ODS systems after that date but no later than July 15, 2004 (unless an extension is granted) are limited to penalties of $10,000 per appliance. All other appliances that do not install non-ODS systems must pay a per pound penalty for any leaks that cross a high threshold, but again, this per pound penalty can be avoided by conversion to non-ODS systems. Companies already under national investigation for violations are not eligible to participate in this program.

DATES: No more comments are being solicited. Key dates in the program are listed below.

ADDRESSES: Comments and other notices that were or may be received may be reviewed by the public at Bakery Partnership Program, the Docket Clerk, Enforcement and Compliance Docket and Information Center (Mail Code 2201A), Docket Number EC–2001–007, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Other notices under this Bakery Partnership Program may be sent electronically to: *docket.oeca@epa.gov.* Attach electronic notices as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number, EC–2001–007 on your document. Notices may also be faxed to (202) 501–1011. Notices may be mailed or delivered in person to Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, Ariel Rios Building, Room 4033, 1200 Pennsylvania Ave, NW, Washington, DC 20460. Persons interested in reviewing this docket may do so by calling (202) 564–2614 or (202) 564–2119, with the understanding that confidential business information will not be released to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Garlow, Air Enforcement Division (2242A), US EPA, 1200 Pennsylvania Ave NW., Washington, DC 20460, telephone 202–564–1088.

SUPPLEMENTARY INFORMATION:

Many industries, including most industrial bakeries, use ozone depleting substances [ODS], such as CFCs and hydrochlorofluorocarbons [HCFCs], to cool their products. Like other industrial sources, most industrial bakeries have industrial process refrigeration appliances that are subject to 40 CFR part 82, subpart F. The equipment that produces the product contains CFCs or other ozone depleting substances in jackets around the product. The equipment may sometimes leak these coolants in sizeable quantities into the air, but not into the product. If certain leak rates are exceeded, the company may be required to retrofit or retire the equipment.

EPA has concluded two large industrial process refrigeration enforcement cases, one of which involved a company with bakeries in several states. In both cases, the companies voluntarily chose to replace their industrial process refrigeration appliances with equipment designed to prevent pollution. The ozone depleting coolant was replaced by a cooling system that uses a secondary loop containing a cooling solution, glycol, that is not an ozone depleting substance. Although the primary loop of the refrigeration system may still contain some ozone depleting substances, the quantity is greatly reduced, and the ODS refrigerant is located where vibration and the potential for leaks is greatly reduced. The EPA wants to encourage all companies with industrial process refrigeration appliances that may be leaking to consider a similar pollution prevention approach to ensuring their compliance with the refrigerant recycling and emissions reduction regulations found at 40 CFR part 82, subpart F.

EPA is inviting the baking industry to participate in a voluntary program to address these potential violations. The

program offers an expedited way for companies to correct past violations and prevent future ones, in return for a release from past liabilities and reduced penalties. The largest trade association representing bakeries has accepted this invitation on behalf of its members. The total number of industrial bakeries is not exactly known yet, but it is believed that there may be over 1000 bakeries in the United States. Each bakery will likely have one or more industrial process refrigeration appliances that are subject to the regulations, such as mixers or chillers, at each bakery. Many of these industrial process refrigeration appliances have already been converted to non-ODS, pollution prevention equipment.

In the interests of promoting fast, efficient and widespread emission reductions, and better compliance with the regulatory structure, EPA intends to offer and enter into agreements with baking companies providing that they:

- Audit their facilities;
- Identify problem areas;
- Pay a greatly reduced penalty, and propose solutions that will protect the environment; and,
- Ensure greater compliance with the refrigerant recycling and emissions reduction regulations found at 40 CFR part 82, subpart F.

EPA's proposal offers clear and consistent terms to reduce uncertainty and eliminate the need for extended, individualized negotiations. Presented here are the basic elements, illustrations and a chronology of key steps that EPA and participants will be expected to complete. The basic elements of the program are as follows:

- *Notice to EPA.* Bakeries not already the subject of a national enforcement investigation or action, and which had or have industrial process refrigeration appliances containing 50 pounds or more of ODS refrigerants, are eligible to participate. Companies intending to participate should notify EPA by April 26, 2002, and as soon thereafter as possible, but no later than April 30, 2002, submit a signed Bakery Partnership Agreement to EPA. If some of the industrial process refrigeration appliances have been converted to non-ODS systems prior to April 26, 2002, a count of these appliances should also be provided. If, during the audit, a more accurate tally is obtained, an updated notice may be submitted at that time. Annex A contains a sample notice of intent to participate, which can be updated with the number of appliances to be audited by April 30, 2002. It can be sent by electronic mail or postal mail, but electronic mail or e-mail is preferred.
- *Annualized leak rate.* For the purposes of this Partnership Agreement, the annualized leak rate shall be calculated for every instance in which refrigerant was added to the appliance. The leak rate shall be calculated by the formula agreed upon by EPA in its publication, Compliance Guidance for Industrial Process Refrigeration Leak Repair Regulations under Section 608 of the Clean Air Act.
- *Audit.* Participating companies must audit up to June 15, 2003, i.e., assess the compliance status of all their industrial process refrigeration appliances and facilities. They must then report to EPA a summary of their findings, by July 15, 2003. If a company complies with the entire program, EPA intends to grant a release from civil liability for the matters identified and corrected, so long as reduced penalties are paid as described below. However, if violative conduct is not identified and corrected, EPA is not granting any release from civil liability for such problems. Good faith participants in this Partnership Program will receive a release for the period of time prior to September 30, 2000, even though this period may not have been audited. For example, if a facility has installed non-ODS technology on any of their appliances prior to the April 26, 2002 start date for this Partnership Program, such an appliance need not be audited, and a complete release from civil liabilities and penalties will be granted for such appliances. By non-ODS systems, EPA means systems that contain no ODS at all [*e.g.* HFC systems or ammonia systems], or no ODS in the secondary loop, but may contain an ODS in the primary loop. Typically, the ODS in the primary loop [compressor] is a much smaller volume, and is not subjected to the vibration in the process areas that may cause greater leaks. If the primary loop contains less than 50 pounds of ODS, as is frequently the case, then the appliance is exempt from the leak repair regulations. It is still subject, however, to other requirements such as the ''no venting'' requirement of 40 CFR 82.154(a).
- *Class I appliances.* All Class I appliances must be audited and converted either to a non-ODS system, or to a system using an ODS with an ozone depleting potential [ODP] of less than 0.1, or shut down (permanently taken out of service). Class I appliances are those containing Class I controlled substances, listed in appendix A to subpart A of 40 CFR part 82, and include CFC refrigerants (*e.g.,* R–12). Leaks from these Class I appliances are more damaging to the Earth's ozone layer than an equivalent amount of leakage from Class II appliances. The phaseout of the production of CFCs was completed as of December 31, 1995. Since the availability of CFCs will continue to decrease over time, EPA believes that this is a good time to switch to a less ozone-depleting technology. EPA estimates that the vast majority of appliances in this industry have already switched from using Class I ODS to either Class II or non-ODS systems. Participating companies must identify their Class I appliances and submit a plan for shutdown or change/conversion to either the Class II ODS with an ODP of 0.1 or less, such as R–22, or to a non-ODS system. The audits must be completed and plans must be submitted to EPA by July 15, 2002. An Administrative Order on Consent [AOC] will incorporate a company pledge to complete the audits of Class II appliances and to submit plans, if needed, for those appliances by July 15, 2003 and pay penalties as specified in the agreement. EPA expects the plans for Class I appliances to be fully implemented by July 15, 2003, but may grant additional time in exceptional circumstances pursuant to 40 CFR 82.156(i)(7).
- *Class II appliances.* All Class II appliances must be audited by June 15, 2003. Class II appliances are those containing Class II controlled substances, listed in appendix B to subpart A of 40 CFR part 82 (including all HCFC refrigerants, such as R–22). If any of these appliances are being changed/converted to non-ODS systems, then plans to accomplish this must be submitted by July 15, 2003 as agreed to in the July 2002 AOC.
- *CAFO.* EPA will issue to participating companies, pursuant to the authority of Section 113(d) of the Clean Air Act, Compliance Agreement Final Orders [CAFOs] that reflect the audit findings, implementation plans and schedule of corrections, any reduced penalties that must be paid, and a release from civil liability conditioned on completion of the implementation plans and corrections. EPA will issue CAFOs at the completion of all audits in July of 2003. If a company has only Class I appliances, EPA will issue the CAFO in July of 2002. Companies must also commit to compliance with all regulations.
- *Plan Implementation.* By July 15, 2003 for Class I appliances and by July 15, 2004 for Class II appliances, all plans for equipment changes/conversions should be completely implemented, unless extensions are granted pursuant to 40 CFR 82.156(i)(7).
- *Program Completion.* By July 15, 2004 or such later date when all

conversions are completed, the participating company will notify EPA and EPA will respond with a confirmation letter acknowledging the completion of the Bakery Partnership Program.

Penalties

• *Per appliance penalty.* A penalty of $10,000 shall be paid for each ODS containing appliance, regardless of whether violations are identified or not, except that no penalties are due for any appliance converted to a non-ODS system before April 26, 2002. No bakery facility must pay more than $50,000 in these penalties. This penalty will be paid with other penalties no later than 30 days after receipt of the CAFO.

• *Per pound penalties.* Additional ''per pound'' penalties for all appliance leaks discovered during the audit, occurring after a 35% annualized leak rate, must be calculated on a 12-month basis, beginning when the auditing period starts, *i.e.,* September 30, 2000. At the end of the 12-month period following a 35% annualized leak rate, per pound penalty calculations cease, unless a subsequent 35% annualized leak rate is discovered, in which case another 12 month period of calculation begins. Per pound penalty calculations end June 15, 2003.

• *No per pound penalties for replacement with non-ODS system.* Switching to a non-ODS system is encouraged. If a participating company agrees to replace an ODS system with a non-ODS system in an appliance, no ''per pound'' penalties need be paid for that appliance. If a company is facing high per pound penalties for a particular appliance but has decided that it does not make technical or economic sense for the company to convert that particular appliance to a non-ODS system, it may instead substitute another appliance[s] and still avoid the per pound penalties for the first appliance. The first appliance, however, must still be brought into full compliance. This ''bubbled compliance'' concept would allow a company to substitute the first appliance with another appliance or appliances that have 120% of the full charge of the appliance that will not be changed/converted to a non-ODS system. For example, if a 1000 pound appliance has very high per pound penalties that the company wishes to avoid, it may avoid those penalties either by converting this appliance to a non-ODS system, or by converting one or more other ODS containing appliances [that were not already required to convert to non-ODS systems] that have a total charge of at least 1200 pounds. This could be one other appliance with a full charge of 1200 pounds, or two appliances of 600 pounds each, or some other combination of appliances that total at least 1200 pounds of refrigerant. If the two 600 pound appliances in this example had per pound penalties of their own, those penalties would still be due, unless some other appliance or appliances in turn were converted to non-ODS systems in their stead, at the 1.2 to 1 ratio, as described above.

• *Start-up period.* No leaks will be counted as part of the per pound calculation for the period 60 days after a new installation or after an appliance is changed/converted to a non-ODS or lower than 0.1 ODP system, considered as a ''start up'' period.

• *Per pound amounts.* Per pound penalties will be calculated per appliance as follows: $20 per pound up to 500 pounds, $30 per pound for 501–1000 pounds and $40 per pound for the pounds over 1000, during each 12 month period after a 35% annualized leak rate is identified.

In summary, to participate in the Partnership Program, all sources must achieve and maintain full compliance with the refrigerant recycling and emissions reduction regulations found at 40 CFR part 82, subpart F. In addition, appliances using Class I substances must be audited and changed/converted. Appliances using Class II substances must be audited. Owners of Class I and II appliances may elect to convert to non-ODS systems to avoid paying fees for higher leaks. Each company will sign an Administrative Order on Consent [AOC] on or before July 15, 2002 and sign a Consent Agreement Final Order [CAFO] on or before July 15, 2003, which will specify a conditional waiver of liability. These are the main points of interest in this Partnership Agreement. There are some other minor details that are mentioned in the Partnership Agreement and the other Annexes, which should be self-explanatory. Other approaches to achieving the objectives of this program were considered by EPA and the industry representatives, but this approach was chosen as being the best from the point of view of administrative ease of implementation and environmental improvement.

Here Is an Example of What a Participating Company May Encounter During Participation in This Partnership Agreement

If a company is eligible and wants to participate, it should send a notice to EPA by April 26, 2002, identifying the company and its facilities. If this company has five bakeries and five appliances in each bakery, for a total of 25 appliances, seven of which have been converted to a non-ODS system prior to April 26, 2002, then there will be a $10,000 penalty per appliance for the 18 ODS containing appliances. This company will, however, get a release from civil liability for all 25 appliances for problems identified and corrected. The company is best advised to pay particular attention to their Class I appliances, if any, as audits must be conducted and a decision on these appliances must be made by July 15, 2002. If there are four Class I appliances, these should be audited first to determine what per pound ''penalties'' may be due for these appliances. If the per pound penalties determined from this audit indicate that a large per pound penalty may be due for several of these appliances, then this may be persuasive in deciding to convert these appliances to a non-ODS system in order to avoid the per pound penalties. If, instead, the company chooses to convert some or all of the Class I appliances to a Class II ODS refrigerant with an ODP of less than 0.1, rather than a non-ODS system, then the per pound penalties will still be due and payable by 30 days after receipt of the CAFO, which should be shortly after July 2003. Auditing and calculation of per pound penalties should continue through June 15, 2003 to ensure continued compliance and lowered emissions.

By July 15, 2002, the company must prepare a plan and submit this plan to EPA, indicating which of the appliances are the Class I appliances, and what changes or conversions the company pledges to make to them, with a schedule for the work anticipated. The company should submit, along with the plans, the auditing summaries for the Class I appliances [see the sample below]. EPA will incorporate the plans for these four Class I appliances, along with the company's pledge to continue auditing the other appliances and to prepare and submit plans for them within a year in an Administrative Order on Consent [AOC], which should be signed by the company and then by EPA. EPA will return a copy of the signed AOC to the company.

For the other Class II appliances, a similar audit of compliance should begin, covering the period from September 30, 2000 until June 15, 2003. Per pound penalties, if any, should be calculated for these appliances. As with the Class I appliances, if the company wishes to avoid paying these per pound penalties, it may do so by agreeing to convert the Class II systems to non-ODS systems. The company should make that decision and submit plans, if any, for

such conversions to EPA by July 15, 2003. These plans will be incorporated in the CAFO. EPA expects that these plans will be implemented by July 15, 2004, with the possibility of extensions if additional time is needed.

When calculating per pound penalties, this company should look at each appliance and calculate its per pound penalties, if any. If, for example, the first Class I appliance had a 50% annualized leak rate in October 2000 and thereafter in the next 12 months had small and large leaks totaling 1500 pounds, then the per pound penalty for these 1500 pounds would be calculated as follows: $20 per pound for the first 500 pounds or $10,000; $30 per pound for pounds 501–1000 or $15,000; and $40 per pound for pounds 1001–1500 or $20,000. Thus, the total for this 12-month block period would be $45,000 [$10,000 + $15,000 + $20,000]. If a large leak rate was discovered in December 2000, that does not start another 12-month block period up to December 2001, as this is a leak inside the October 2000–2001 12-month period. If after October 2001 this same appliance had another annualized leak greater than 35%, for example, a 90% annualized leak rate, then leaks after that point would be calculated as above and added to the $45,000 total. This process should continue through June 15, 2003 and a total per pound penalty should be calculated for this appliance, and for all other appliances. The company then has the option of paying this per pound penalty or avoiding it by submitting a plan for converting to a non-ODS system. EPA hopes that this financial incentive will cause more companies to choose conversion to non-ODS systems while still giving the company the flexibility to decide which option is best for it.

On July 15, 2003, the company should submit audit summaries and plans for any equipment changes/conversions that it intends to make to the Class II appliances. It should also be prepared to pay any penalties that may be due shortly after the CAFO, signed by both parties, is received by the company. EPA will also prepare a CAFO with the release from civil liability for all matters that the company has identified as being a potential problem and corrected. This listing of problems discovered by the audit can be included in the plan for equipment changes/conversions or can be listed separately. It can include matters such as technician certification, better recordkeeping systems, equipment certifications, etc. Problem areas, or violations, not so identified and corrected will not receive a release from liability, so it is very important to identify all these problem areas and correct all these problems. EPA may inspect and request information to ensure that the audits are being conducted fully and properly.

By July 15, 2004, the company will have completed the equipment changes/conversions, unless more time is needed, and corrected other problems identified in the audit. The company will send a letter certifying that all these matters have been attended to, and EPA will reply accepting this certification and thanking the company for participating. This is the end of the program for this company.

Key Dates

September 30, 2000

Begins period of compliance audit and monthly measurement of annual leak rates from industrial process refrigeration appliances for all partnership participants.

''Look-back'' period gives credit to companies that have taken steps to improve leak management.

April 26, 2002

Notice of intent to participate in Partnership Program is due. Name and address of facilities. All penalties waived for appliances that have been converted to non-ODSs by April 26, 2002.

Program open to all companies not subject of national enforcement investigation.

April 30, 2002

Companies must identify charging capacity and location of all appliances using over 50 lbs of Class I or Class II ODS, and those which have converted to use of non-ODS refrigerant in primary loop by April 26, 2002.

Companies commit, by signing the Bakery Partnership Agreement, to complete audit and submit implementation plans by July 15, 2002, to convert Class I appliances to at least Class II, and to pay stipulated penalties or switch to non-ODS refrigeration appliances by July 15, 2003 (unless extension granted).

July 15, 2002

EPA issues administrative order/information request on consent [AOC] to participating companies reflecting company's commitment to complete audit by June 15, 2003 and submit implementation plans for Class II appliances by July 15, 2003.

Companies that have switched all appliances to non-ODS by April 26, 2002 may receive compliance agreement/final order (CAFO) discharging all liabilities for past violations without payment of penalty.

June 15, 2003

Audits are completed.

July 15, 2003

Bakeries submit audit results and final implementation plans.

Bakeries pay stipulated penalties for the 12 months following any single month in which annualized leak rate exceeds 35%, but:

—Bakeries can avoid stipulated penalties if implementation plan commits to replace leaking appliance with non-ODS system no later than July 15, 2004 (unless program grants extension).

—Bakeries can ''bubble'' by substituting ODS conversion at another appliance (must have charge 120% greater than leaking appliance).

All Class I ODS appliances must convert to at least Class II ODS appliances by July 15, 2003, unless program grants extension.

EPA issues compliance agreement/final order [CAFO] reflecting conversion to Class II or non-ODS systems, and payment of stipulated penalties.

July 15, 2004

Bakeries must complete conversion to non-ODS systems reflected in implementation plans, unless program has granted an extension.

Key Definitions

Annualized leak rate—(pounds of refrigerant added/pounds of full charge) × (365 days/# days since refrigerant last added) x 100%.

Appliance—industrial process refrigeration device containing 50 pounds or more of ODS refrigerants.

Class I—an ODS listed in appendix A to 40 CFR part 82, subpart A.

Class II—an ODS listed in appendix B to 40 CFR part 82, subpart A.

ODS—ozone depleting substance.

Facility—a discrete parcel of real property or such a parcel improved by Participating Company's building, structure, factory, plant, premises, or other thing, related to Participating Company's wholesale baking/bakery business, and containing at least one appliance as defined in this agreement.

Non-ODS system—systems that contain no ODS at all [e.g. HFC systems or ammonia systems] or no ODS in the secondary loop, but may contain an ODS in the primary loop.

Additional Sources of General Information

To find out more about compliance with Title VI of the Clean Air Act,

access the EPA's web site at *www.epa.gov/ozone*. The EPA and the Chemical Manufacturer's Association (CMA) have developed a guidance document entitled Compliance Guidance For Industrial Process Refrigeration Leak Repair Regulations Under Section 608 of the Clean Air Act [see *http://www.epa.gov/ozone/title6/608/compguid/compguid.html*] that provides greater detail than the discussion on the EPA web site. The guidance document is intended for those persons who are responsible for complying with the requirements. The guidance should not be used to replace the actual regulations published in the **Federal Register** on August 8, 1995 (60 FR 40420) [see *http://www.epa.gov/spdpublc/title6/608/leakfrm.txt*] ; however, it can act as a supplement to explain the requirements. Reliance on this guidance alone will likely not result in compliance. Another useful web site is one pertaining to general leak repair: *http://www.epa.gov/ozone/title6/608/leak.html*. EPA has also made available a sample inspector's checklist to the trade association, which is available online at *http://www.epa.gov/ozone/title6/608/compguid/compguid.html* or *http://www.epa.gov/oeca/ore/aed/bakery/index.html* or by contacting the Ozone Hotline at 800–296–1996.

Conclusion

EPA believes that the above-described program is the best, most cost-effective way to achieve immediate environmental improvement and achieve significant progress in resolving the myriad compliance concerns that may be present in this industry. Its terms, conditions and protections will be available only to those companies that are eligible, elect to participate, and abide by the conditions of the program.

Dated: January 30, 2002.

Eric Schaeffer,

Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance.

Attachments

Partnership Agreement with Annexes: Sample Identification of Facilities due April 26, 2002; Sample AOC; Sample CAFO.

Ozone-Depleting Substance Emission Reduction Bakery Partnership Agreement

The United States Environmental Protection Agency (''EPA'') and _____ (''Participating Company''), the parties to this agreement, desire to enter into and be bound by the terms of this Ozone-Depleting Substance (ODS) Emission Reduction Bakery Partnership Agreement (''Agreement'').

Introduction

The Agreement specifies an audit, self-disclosure and corrective action program, which shall result in a release from liability for the conditions that are identified and corrected. This Agreement incorporates the features of the Bakery Partnership Program as detailed in the **Federal Register** notice on this topic, published February 6, 2002.

Applicability

1. This Partnership Agreement shall apply to and be binding upon both EPA and Participating Company, including but not limited to its officers, directors, agents, servants, employees, successors, and assigns. Participating Company shall give notice of this Agreement to any successor in interest prior to the transfer of any ownership interest in any machinery subject to Title VI, Clean Air Act (42 U.S.C. 7671 et. seq.) (the ''Act'') and its incorporating regulations, 40 CFR Part 82 (''Regulations''). EPA, in cooperation with baking industry trade officials and trade journals, notified the baking industry of this program.

2. In order for a Participating Company to be eligible to participate in this Agreement, the Participating Company must be a wholesale bakery not currently under corporate-wide investigation by EPA for a violation of Title VI of the Clean Air Act.

Definitions

3. ''Participating Company'' means any eligible company and its wholly- or partially-owned subsidiaries, including all their bakeries, that agree to abide by the conditions of this Agreement.

4. ''Corporate-wide investigation'' means an investigation that requires information disclosure from either (1) five or more facilities owned by a company that seeks to be a Participating Company or (2) all facilities that are subject to Title VI and owned by a company that seeks to be a Participating Company.

5. ''Non-ODS system'' means pollution prevention technology recommended to and agreed upon by EPA that supplants standard ODS technology, including but not limited to glycol, chilled water, or other non-ODS coolant in a secondary loop system or totally non-ODS systems, such as HFCs or ammonia.

6. ''Facility'' means a discrete parcel of real property or such a parcel improved by Participating Company's building, structure, factory, plant, premises, or other thing, related to Participating Company's baking/bakery business, containing at least one appliance.

7. ''Retrofit'' means to install new or modified parts in an appliance that were not provided as a part of the originally manufactured equipment. The retrofitted appliance must use a refrigerant with an ozone depleting potential that is lower than that which was used before the retrofit.

8. ''Retire'' means to withdraw an appliance from service and replace it with an appliance containing a refrigerant with an ozone depleting potential that is lower than that which was used in the retired appliance.

9. ''Appliance'' means an industrial process refrigeration appliance containing 50 pounds of more of ODS refrigerant that is housed within the facility.

10. ''ODS'' means Ozone Depleting Substance used as a refrigerant.

Initial Notice and Submission of Partnership Agreement

11. Participating Company represents that:

a. It notified EPA of Participating Company's intent to participate in the Ozone Depleting Substance Emission Reduction Bakery Partnership Program by 5:00 PM Eastern Time, April 26, 2002, by identifying the facilities owned by the Participating Company.

b. It submitted this executed Partnership Agreement by April 30, 2002. Annex A, submitted with this Agreement, or updated shortly thereafter, is a true, accurate, and complete identification of:

i. Name of the Participating Company; and

ii. Name, street address, ZIP code, and city of each facility at which the Participating Company believes any subject appliance is presently located; and

iii. State in which the facility is located; and

iv. EPA region in which the facility is located; and

v. The number or best estimate of the number of appliances with more than 50 pounds of refrigerant when fully charged, as determined by calculation, weight, manufacturer supplied information, or an established range as described in 40 CFR 82.152; and

vi. The number or best estimate of the number of non-ODS industrial process refrigeration appliances.

c. Participating Company certifies that it is eligible to be a participating company, that is, it meets the qualifications specified in paragraphs 2 and 3.

d. Participating Company agrees to audit all its facilities as specified below and disclose the summary results of such audits to EPA and correct any and all violations in accordance with this Agreement.

e. Participating Company agrees to toll the applicable statute of limitations during the life of the Agreement as it may apply to the violations that may have occurred within the time period five years prior to the signing of this Agreement.

f. In the event that ownership of a facility subject to this Agreement is (or was) transferred during the period covered by the Agreement, the Agreement shall apply to the former owner for the period during which the facility was owned by the former owner, provided all applicable terms and conditions are otherwise satisfied. The Agreement shall also apply prospectively, according to its terms, to the party to whom the facility is transferred.

Audit Conduct, Report and Plans

12. Participating Company agrees to assist EPA with EPA's review of company's audit results. Such assistance may take the form of responding to telephone calls for clarification and other reasonable informal inquiries, without the need for formal information demands.

13. Participating Company agrees to identify all facilities with applicable industrial process refrigeration appliances.

14. Participating Company agrees to undertake a reasonable investigation, and to

the extent it can reasonably assemble such information, report to EPA for each applicable appliance, dates of service, beginning September 30, 2000 and continuing until June 15, 2003; pounds of refrigerant added; days since the last addition of refrigerant; percent annualized leak rate; and any associated comments by using a spreadsheet such as the one contained in Annex C. To the extent that a change in system components, such as a new compressor, may have altered the full charge, or where other special conditions arise, these conditions should be noted in the comments section.

15. Participating Company agrees to complete audits of all industrial process refrigeration appliances at each facility, except for those appliances converted to a non-ODS system prior to April 26, 2002, and notify EPA with a summary of the audit results as specified in the preceding paragraph and corrective actions planned, as necessary, by July 15, 2002 for Class I appliances and by July 15, 2003 for Class II appliances. Participating Company may, at its sole discretion, include commercial and comfort cooling appliances subject to 40 CFR 82.156(i) in the audit for compliance and receive a release from liability for problems identified and corrected.

16. Participating Company agrees to calculate the total per appliance and per pound penalties, if any, due and owing by July 15, 2003 in accordance with the method outlined in the **Federal Register** final announcement of the Bakery Partnership Program, and to submit this calculation to EPA.

17. Participating Company agrees to provide, in writing, by July 15, 2003, the steps that Participating Company will take to achieve continuous compliance with the requirements of 40 CFR Part 82. Such measures may include, but are not limited to, such things as training, record keeping, replacement, repair, installation of non-ODS systems. See Annex E for additional, required Compliance Plan elements. Participating Company agrees to implement this Plan.

Audit Compliance Program

18. For all Class I appliances Participating Company will complete an audit and submit plans for the retrofit of these appliances with an ODS having an ozone depleting potential of 0.1 or less or retirement/replacement with a non-ODS system. Plans for these Class I appliances must be submitted by July 15, 2002, with a schedule for the completion of these activities within one year, unless additional time is allowed pursuant to 40 CFR 82.156(i)(7). These plans will be incorporated in an Administrative Order on Consent [AOC]. See Annex B.

19. For Class II appliances, Participating Company will sign an Administrative Order on Consent agreeing to develop, within the next twelve months, plans, where needed, for the replacement of these Class II appliances with non-ODS systems.

20. If any appliance within a facility owned by Participating Company contains a refrigerant that is not an EPA-approved refrigerant for that particular end-use (such as R–409A use in an industrial process refrigeration appliance) or is not in compliance with use restrictions of an approved refrigerant, Participating Company must take immediate steps to properly recover said refrigerant from the appliance (in accordance with the Regulations) and replace it with an approved refrigerant, in accordance with any use restrictions. Recovered refrigerant must be sent to an EPA-certified refrigerant reclaimer for ultimate reclamation or disposal.

Certification of Complete Compliance

21. Participating Company shall sign and submit to EPA a Certification of Complete Compliance (Annex D) when all plans, retrofits and other steps necessary to ensure continuous compliance have been finalized.

Employee Participation

22. Participating Company shall provide a procedure for its employees to report violations or potential problems to the auditing team. Participating Company agrees to ensure that employees who disclose violations or potential violations to the auditing team under the Act and the Regulations are not subject to adverse job actions (including without limitation disciplinary action, denial of promotion, bonuses or pay) on the basis of such employee disclosing such violations or potential violations in accordance with company policies.

Participating Company Records Retention

23. Participating Company agrees to keep and retain on site or readily available any and all records from April 26, 1999 until two years after the conclusion of all obligations under this Agreement. Records for appliances that have been converted to non-ODS systems need not be retained for more than three years prior to the completion of the conversion to the non-ODS system. Such records shall be kept by both Participating Company and its employees, agents and any contractors working for Participating Company. All records are required to be retained for this period of time to facilitate review by EPA, should EPA choose to conduct such a review. Participating Company agrees to notify all employees, agents and contractors that any such record is not to be destroyed.

Penalties

24. A ''per applicance'' penalty of $10,000, with a cap of $50,000 per facility, shall be due and owing for each industrial process refrigeration appliance that does not qualify as a non-ODS system by April 26, 2002. A ''per pound'' penalty, as specified in the above-referenced Federal Register notice, shall be calculated for each appliance, unless equipment conversions to non-ODS systems eliminate this penalty.

25. The total penalty shall be paid within 30 days of receipt of the signed CAFO which should be shortly after July 2003.

Forbearance

26. EPA agrees to forbear on Part 82 civil enforcement activity against Participating Company during the course of this Agreement, provided that Participating Company is in compliance with this Agreement. EPA may, however, inspect and request information to ensure that the audits are being conducted fully and properly. EPA does not forbear or relinquish any right to access and inspection under this agreement.

27. Participating Company understands that any violations discovered by EPA subsequent to the completion of the audit or compliance efforts and/or the expiration of this Agreement are subject to standard regulatory enforcement. That is, nothing in this Agreement, other than the release from civil liability for problems/violations disclosed and corrected, is to the derogation of EPA's full enforcement and compliance authority at the conclusion of the Partnership.

28. If EPA believes that the Participating Company has miscategorized or mischaracterized any problem/violation under this Agreement, the Dispute Resolution section of this Agreement shall be utilized.

Release From Liability/CAFO

29. Participating Company understands and acknowledges that participation in the Program will not absolve Participating Company or its employees from any criminal liability. In considering whether to refer a matter for criminal prosecution, EPA will be guided by its Self-Audit Policy. In general, it is EPA's policy to refer matters for criminal prosecution only in cases involving a high degree of harm and/or misconduct.

30. EPA agrees to execute an administrative Consent Agreement Final Order conditionally releasing Participating Company from civil liability for any and all violations or potential violations that have been self-disclosed and corrected, on condition that Participating Company pays penalties that may be due and completes the plans with compliance schedules that have been submitted and agreed upon by the Participating Company and the EPA. A complete release from civil liability will be granted for any appliance that is converted to a non-ODS system. Good faith participants in this Partnership Program will receive a civil release for the period of time prior to September 30, 2000, even though this period may not be audited.

31. EPA and Participating Company will execute an Administrative Compliance Order on Consent and CAFO confirming the plans and penalties agreed upon by the parties.

Publicity

32. Participating Company may publicize that it is partnering with the EPA in an effort to reduce ODS emissions.

33. Upon request by the Participating Company, EPA will recognize and acknowledge Participating Company's participation and assistance under the Program.

Access and Inspection

34. Without prior notice, any authorized representative of EPA (including a designated contractor), upon presentation of credentials at any of Participating Company's facilities, may enter such location(s) at reasonable times to determine compliance with this Agreement. Access under this clause is subject to the normal health and safety and

confidentiality requirements in effect at such facilities.

Dispute Resolution

35. Should the need arise, Participating Company agrees to first engage in informal dispute resolution with EPA's Air Enforcement Division/Regional staff concerning any determination made by EPA in its review of the program. Such informal dispute resolution will consist of negotiations between Participating Company and the designated attorney(s) and/or Division Director of the Air Enforcement Division at the address in paragraph 42. To exercise informal dispute resolution, Participating Company shall send a written notice to EPA outlining the nature of the dispute or disagreement and request informal negotiations to resolve the dispute. EPA will respond to such requests within 15 days. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when EPA responds, unless the parties agree otherwise in writing. Both parties will attempt to achieve a solution acceptable to all.

36. Should the Participating Company be dissatisfied with the results of the informal dispute resolution, the Participating Company may request that the dispute be negotiated with the assistance of a non-binding mediator, by notifying in writing the Director of the Air Enforcement Division and other members of the informal negotiations team. EPA will respond to such requests within 15 days. The costs of such mediation will be shared equally by the Participating Company and EPA. EPA may reject the request for mediation if costs are deemed unreasonable. A convenor will assist in the selection of a mutually acceptable neutral mediator. Mediation shall not extend beyond thirty (30) days from the date when the mediator first meets with the parties, unless the parties agree otherwise in writing.

37. It is anticipated that any disputes will be resolved by the process of negotiation outlined above. Participating Company agrees that resolution within EPA is the sole and final dispute resolution mechanism.

Effective Date

38. This Agreement shall become effective upon the date signed by the parties to this agreement (below).

Miscellaneous

39. Nothing in this Agreement will relieve the Participating Company of its obligation to comply with any other Clean Air Act provision, other environmental law, or applicable environmental regulations, either state or Federal.

40. Participating Company agrees to accept service from EPA by mail with respect to all matters relating to this Agreement at the address listed below (if different from the one listed in Annex A).

_____

_____

_____

_____

41. EPA agrees to accept service from Participating Company by mail with respect to all matters relating to this Agreement at the address listed below.

Electronically preferred: *docket.oeca@epa.gov* or Title VI Coordinator, Attention: Charlie Garlow, US EPA Air Enforcement Division, 1200 Pennsylvania Ave NW., Mail Code 2242A, Washington, DC 20460 202–564–1088.

Integration

42. This Agreement, and the Annexes and **Federal Register** notice incorporated by reference in this Agreement, represents the final form of the contract between EPA and Participating Company. No oral modifications to the Agreement will be binding upon either party.

Signatures

43. EPA and the Participating Company represent that they have examined this Agreement and the attached and incorporated Annexes and **Federal Register** notice and agree to the terms by signing and dating below.

44. Each person signing this Agreement represents that he or she is authorized to legally bind the party on whose behalf he or she is signing.

45. Agreed To:

By: _____

[Participating Company]

Date: _____

By: _____

US Environmental Protection Agency

Date: _____

Annex A Sample Identification of All Facilities Owned by Participating Company

Note: EPA's Regions are shown on a map at http://www.epa.gov/epahome/aboutepa.htm.

Participating company/facility name	Location, mailing address, city, zip	State	Region	No. of ODS-containing and non-ODS appliances, if known
Marvy Bread/Plant 4	123 Main St, Lodi 94588	CA	9	15 ODS, 5 non-ODS.

Annex B Sample Administrative Order on Consent

United States Environmental Protection Agency

In the Matter of: [Participating Company] Respondent. Bakery Partnership Program, Agreement Number_____, Findings and Order

Pursuant to Sections 113(a)(3) and 114 of the Clean Air Act (''CAA''), consistent with the Bakery Partnership Program identified above and entered into between the United States Environmental Protection Agency (''EPA'') and Respondent, and based upon available information, EPA hereby makes and issues the following Findings and Order, with the expressed consent of Respondent:

Findings

1. Respondent is a Participating Company under the above-identified Bakery Partnership Program.

2. EPA promulgated regulations for the control of Ozone Depleting Substances, appearing in 40 CFR Part 82, Subpart F.

3. Respondent owns or operates certain affected equipment under Part 82 that contains or contained Ozone Depleting Substances, at facilities identified in Attachment A attached hereto.

Order

4. Respondent shall retrofit or replace the referenced equipment as specified in Attachment A by the date(s) there indicated. Where additional time may be required to complete these actions, application to EPA shall be timely made pursuant to 40 CFR 82.156(i)(7).

5. Within 12 months of this Order, Respondent shall prepare and submit to EPA plans for the conversion of Class II appliances to non-ODS systems, for the appliances identified in Attachment B, attached hereto.

6. Consistent with the Bakery Partnership Agreement entered into between EPA and [the Participating Company], per appliance and per pound penalties shall be calculated and submitted to EPA by July 15, 2003.

7. Pursuant to Section 113(a) of the CAA, failure to comply with this Order may lead to a civil action to obtain compliance or an action for penalties.

Issued this _____ day of _____, 2003

_____

U.S. Environmental Protection Agency

8. [Participating Company] consents to the issuance of this Order and further agrees not to contest EPA's authority to issue this Order.

Signed this _____ day of _____, 2003

_____

For [Participating Company]

Annex C Leak Rate Calculation Sheet for each Appliance Sample

Beanie Bread/Plant 4. The Appliance Serial Number 456789 containing 350 pounds full charge of R–22.

The leak rate is calculated by dividing the number of pounds added by the full charge [here 350 pounds]. Then multiply that number by 365 days. Then divide that number by days since the last add. Multiply that number by 100 to express it as a percentage, if over 35%.

Date	Lbs added	Days since last add	Percent of leak rate	Comments
10/28/00	112	base		
2/20/01	60	115	54	
2/27/01	14	7		
5/31/01	30	93	33	
6/18/01	166	18	961	
12/3/01	100	168	62	
				Total pounds added since high leak rate = 310 pounds × $20 per pound = $6200, the ''per pound'' penalty.

Annex D Certification of Completion and Compliance

I certify, based on personal inspection, that correction of the violations/problems identified as a part of the Bakery Partnership Agreement with the United States Environmental Protection Agency, dated_____is complete.

I certify that _____, Participating Company, has corrected all violations, and training, recordkeeping, equipment replacement, and all other necessary and prudent measures have been taken to ensure complete compliance with Title VI, Clean Air Act (42 U.S.C. 7671 *et seq.*).

I certify that the following summary of the actions taken are true and complete:

_____

_____

_____

I certify that I am an officer of _____, Participating Company, and am duly authorized to sign and complete this Certification of Compliance on behalf of Participating Company.

_____

Name (print)

_____

Signature

_____

Date

Annex E Compliance Plan Required Elements—For Appliances Containing Greater Than 50 Pounds of a Class I or Class II Substance

A. Each Participating Company will have at least one employee in each facility responsible for ensuring compliance with the refrigerant Compliance Plan.

B. Only technicians certified in accordance with 40 CFR Part 82 will perform refrigerant-related service on refrigerant containing appliances.

C. Technicians will have available for use and use, as required, recycle/recovery equipment certified pursuant to 40 CFR 82.156.

D. Repairs to refrigerant-leaking appliances will be conducted within the time frames outline in 40 CFR 82.156.

E. Initial verification tests on industrial process equipment will be conducted following any refrigerant-related repairs.

F. Follow-up verification tests on industrial process equipment will be conducted within thirty days of any refrigerant-related repairs.

G. Leak rates will be calculated (a) when refrigerant is added to appliances containing greater than 50 pounds of a Class I or Class II substance and (b) when the follow-up verification test reveals an unsuccessful repair.

H. Procedures documenting what additional action will be taken as a result of a failed repair will be written.

I. Each Participating Company will maintain the following records in a single location at each facility:

1. An inventory of appliances containing greater than 50 pounds of a Class I or Class II substance and their refrigerant capacities.

2. A unique identification for each appliance containing greater than 50 pounds of a Class I or Class II substance.

3. Date the refrigerant-related service is performed on each appliance containing greater than 50 pounds of a Class I or Class II substance.

4. Type of refrigerant-related service performed on each appliance containing greater than 50 pounds of a Class I or Class II substance.

5. Amount and type of refrigerant added to each appliance containing greater than 50 pounds of a Class I or Class II substance.

6. Name of the technician performing work on each appliance containing greater than 50 pounds of a Class I or Class II substance.

7. A copy of the technician certification card for all technicians performing work.

8. Refrigerant purchase records.

9. A copy of the recycle/recovery equipment owner's certification.

J. Each participant will provide refresher training on the refrigerant compliance program annually for facility personnel responsible for oversight of maintenance and service of refrigerant-containing appliances.

Sample CAFO

United States Environmental Protection Agency, Washington, DC

In the Matter of: [Participating Company] Respondent. Docket No. CAA–HQ–2003–XXX, Consent Agreement and Final Order

I. Preliminary Statement

1. The United States Environmental Protection Agency (''EPA'') and [Participating Company] have entered into a voluntary Bakery Partnership Agreement, pursuant to which an audit of compliance status and self-correction program has been undertaken. It was further agreed by the parties that certain civil penalties would be paid pursuant to the administrative authority of Section 113(d) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(d).

2. This Consent Agreement and Final Order [CAFO] is issued pursuant to the authority of 40 CFR 22.13(b), 22.18(b)(2) and (3), which pertain to the quick resolution and settlement of matters without the filing of a complaint.

3. This Consent Agreement and Final Order resolves the liability for violations that may have been discovered pursuant to an audit of the Respondent's facilities regarding compliance with Title VI of the Clean Air Act, Stratospheric Ozone Protection, and more particularly 40 CFR Part 82, Subpart F, relating to recycling and emissions reductions from appliances containing ozone depleting substances.

II. Consent Agreement

4. As a result of the voluntary audit conducted pursuant to the Bakery Partnership Agreement, EPA and Respondent have agreed to resolve this matter by executing this Consent Agreement.

5. For the purpose of this proceeding, Respondent does not contest the jurisdiction of this tribunal, consents to the assessment of a civil penalty as specified below, and consents to implement the corrective action Plans and Other Conditions, attached hereto.

6. The execution of this Consent Agreement is not an admission of liability by Respondent, and Respondent neither admits nor denies any specific factual allegations contained herein. EPA alleges that one or more of the conditions contained in the attached Summary of Audit Findings constitutes a violation of 40 CFR part 82.

7. As a complete settlement for all conditions specified in the attached Summary of Audit Findings, Respondent hereby agrees to pay to the United States a civil penalty as specified in the attached Penalty Calculation. EPA agrees to conditionally release Respondent from civil liability for the conditions, and only those conditions, identified in the attached Summary of Audit Findings, except for those appliances that are identified as having been or being converted to non-ozone depleting substances, for which a complete release of civil liability is granted. This release is conditioned upon the satisfactory completion of the Plans and Other Conditions attached hereto, and the timely payment of the civil penalty. Good faith participants in this Partnership Program will receive a release for the period of time prior to September 30, 2000, even though this period may not be audited. The parties agree that the attached Summary of Audit Findings, Penalty Calculation and Plans and Other Conditions are incorporated herein by reference and made a part of this CAFO.

8. Respondent waives its right to request an adjudicatory hearing on any issue addressed in this Consent Agreement.

9. Respondent and EPA represent that they are duly authorized to execute this Consent Agreement and that the parties signing this Agreement on their behalf are duly authorized to bind Respondent and EPA to the terms of this Consent Agreement.

10. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

11. Respondent and EPA stipulate to issuance of the proposed Final Order below.

[Participating Company], Respondent

By _____

(Print name) _____

Title: _____

Dated: _____

U.S. Environmental Protection Agency, Complainant

By _____

Dated: _____

Headquarters EPA

III. Final Order

It is hereby ordered and *adjudged* as follows:

12. Respondent shall comply with all terms of the Consent Agreement.

13. For the reasons set forth above, Respondent is hereby assessed a penalty in the amount of $_____.

14. Respondent shall pay the assessed penalty no later than thirty (30) calendar days from the date a conformed copy of this Consent Agreement and Final Order (''CAFO'') is received by Respondent.

15. All payments under this CAFO shall be made by certified check or money order, payable to the United States Treasurer, mailed to: U.S. Environmental Protection Agency, (Washington D.C. Hearing Clerk), P.O. Box 360277, Pittsburgh, Pennsylvania 15251–6277.

A transmittal letter, indicating Respondent's name, complete address, and this case docket number must accompany the payment. Respondent shall file a copy of the check and of the transmittal letter with the Headquarters Hearing Clerk.

16. Failure to pay the penalty assessed under this CAFO may subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), to collect any unpaid portion of the assessed penalty, together with interest, handling charges, enforcement expenses, including attorneys fees, and nonpayment penalties. In any such collection action, the validity, amount, and appropriateness of this order or the penalty assessed hereunder are not subject to review.

17. Pursuant to 42 U.S.C. 7413(d)(5) and 31 U.S.C. 3717, Respondent shall pay the following amounts:

a. *Interest.* Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. 6621(a)(2) from the date a conformed copy of this CAFO is received by Respondent; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the date a copy of this CAFO is received by Respondent.

b. *Attorney Fees, Collection Costs, Nonpayment Penalty.* Pursuant to 42 U.S.C. 7413(d)(5), should Respondent fail to pay on a timely basis the amount of the assessed penalty, Respondent shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

18. This document constitutes an ''enforcement response'' as that term is used in the CAA Penalty Policy for the purposes of determining Respondent's ''full compliance history'' as provided in Section 113(e) of the CAA, 42 U.S.C. 7413(e).

19. Each party shall bear its own costs, fees, and disbursements in this action.

20. The provisions of this CAFO shall be binding on Respondent, its officers, directors, employees, agents, servants, authorized representatives, successors and assigns.

It is so ordered.

Dated this _____ day of _____, 1999.

_____

Environmental Appeals Judge
Environmental Appeals Board
U.S. Environmental Protection Agency

Certificate of Service

I certify that the forgoing Consent Agreement and Final Order was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Eurika Durr, EAB Hearing Clerk, U.S. Environmental Protection Agency, Mail Code 1103B, 607 14th Street NW Suite 500, Washington, D.C. 20005.

Copy by certified mail, return receipt requested:

_____, Registered Agent for
[Participating Company]
[Participating Company's address]

Dated: _____

_____

U.S. EPA

Sample Summary of Findings

Annex C Leak Rate Calculation Sheet for each Appliance Sample

Marvy Bread/Plant 4. The Appliance Serial Number 456789 containing 350 pounds full charge of R–22.

The leak rate is calculated by dividing the number of pounds added by the full charge [here 350 pounds]. Then multiply that number by 365 days. Then divide that number by days since the last add. Multiply that number by 100 to express it as a percentage, if over 35%.

Date	Lbs added	Days since last add	Percent of leak rate	Comments
10/28/00	112	base		
2/20/01	60	115	54	
2/27/01	14	7		
5/31/01	30	93	33	
6/18/01	166	18	961	
12/3/01	100	168	62	
				Total pounds added since high leak rate = 310 pounds × $20 per pound = $6200, the ''per pound'' penalty.

Technician Certifications for two technicians, Joe Jones and Sam Spade, at Plant 4 were missing. Those certifications are now on file.

Service records before September 30, 2000 were missing.

Sample Penalty Calculation

Marvy Bread Plant 4 The Appliance Serial Number 456789 containing 350 pounds full charge of R–22.

Per pound penalty: $6,200—waived as this machine is being converted to non-ODS.

Per appliance penalty: 10,000.

Total Penalty: $10,000.

Sample Plans and Other Conditions

Beanie Bread agrees to convert the Bun Mixer at Plant 4, Serial Number 45678, to a non-ODS system.

Completion date: July 30, 2004.

Beanie Bread agrees to develop a computer based recordkeeping program to ensure that complete and accurate records are retained as required.

Completion date: September 30, 2003.

[FR Doc. 02–2837 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7138–3]

Meeting on Development of a Metals Assessment Framework

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA assesses the hazard and risk of metals and metal compounds in implementing its various legislative mandates. Public comments on recent Agency actions and examination of lead's bioaccumulation potential by an ad hoc technical panel of the Agency's Risk Assessment Forum have demonstrated the need for the development of comprehensive, cross-agency guidance for assessing the hazards and risks of metal and metal compounds that could be the basis for future Agency actions. The goal of this cross-agency guidance will be to articulate a consistent approach for assessing the hazards and risks of metals and metal compounds, based on application of all available data to a uniform and expanded characterization framework. This guidance will be applied to assessments of human health and ecological risk, ranging from site-specific situations to national assessments carried out for the purposes of priority setting, information collection, and/or air and water quality standards setting. This could involve reviewing a broad range of physico-chemical properties and may suggest more of a case-by-case (*i.e.,* metal by metal) approach to evaluating metals and metal compounds.

Under the auspices of the Agency's Science Policy Council, the Agency is embarking on the development of this assessment framework for metals. The first step in the process is formulation of an Action Plan that will identify key scientific issues specific to metals and metal compounds that need to be addressed by the framework, potential approaches to consider for inclusion in the framework including models and methods, an outline of the framework, and the necessary steps to complete the framework.

EPA is announcing a public meeting to provide an opportunity for interested parties to provide the Agency with information relevant to development of the framework. Eastern Research Group, Inc., (ERG) an EPA contractor, is organizing and convening the meeting. EPA is particularly interested in the public's perspectives on the following:

a. What organizing principles should the framework follow?

b. What scientific issues should the framework address?

c. What methods and models should be considered for inclusion in the framework?

d. What specific steps should be taken to further involve the public and the scientific community in the development of the framework?

The purpose of this meeting is for EPA to collect comments from the public. Therefore, although EPA staff will be present to accept the comments, EPA will not evaluate or respond to comments at the meeting. In addition, although EPA will review the comments submitted as it proceeds, it will not formally respond to each individual comment. EPA is not reconsidering any past Agency actions, and therefore EPA is not soliciting comments on past Agency actions. Because EPA is not soliciting comments on past Agency actions, comments regarding past Agency actions will not be considered.

EPA plans to provide the Action Plan to the Science Advisory Board in a consultation. Following the consultation, EPA will proceed with development of the framework which will be subsequently reviewed by the Science Advisory Board.

DATES: The public meeting will be held Wednesday, February 20, 2002 from 9 a.m. to 4 p.m. EPA urges participants to register with ERG by February 14, 2002 to attend.

ADDRESSES: The public meeting will be held at the Holiday Inn Washington Capitol Hotel, 550 C Street SW., Washington DC 20024. To attend, register by February 14, 2002 by calling ERG at 781–674–7374 or sending a facsimile to 781–674–2906. You may also register by sending e-mail to *meetings@erg.com.* If registering by e-mail, please provide complete contact information and identify the meeting by name and date. Space is limited, and reservations will be accepted on a first-come, first-served basis. Please let ERG know if you wish to make comments.

Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW, 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. The EPA mail room does not accept courier deliveries. Electronic comments may be e-mailed to: nceadc.comment@epa.gov.

FOR FURTHER INFORMATION CONTACT: For meeting information, registration, and logistics, contact ERG, 110 Hartwell Avenue, Lexington, Massachusetts 02421; telephone: 781–674–7374; facsimile: 781–674–2906.

For information on development of the framework, contact John Whalan; USEPA (Code 7601D), 1200 Pennsylvania Avenue NW., Washington DC 20460, telephone: 202–564–8461; facsimile: 202–564–8452; or e-mail: *whalan.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Presentations

Members of the public who are interested in making a short presentation on a particular issue at the meeting are requested to indicate this interest at the time of registration. EPA would appreciate provision of a short summary of the presentation, which should be no more than one page. Please provide this summary in written and electronic format upon arrival at the meeting. Presentations should be no more than 15 minutes in duration. Because EPA is seeking a variety of opinions, the facilitator will ensure that there is a balance of viewpoints.

Comments

Comments should be in writing. Please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Please note that all comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

Dated: February 1, 2002.

William H. Farland,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 02–2836 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00758; FRL–6822–5]

Tribal Pesticide Program Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC), will hold a 2–day

meeting, beginning on March 7, 2002, and ending on March 8, 2002. This notice announces the location and times for the meetings and sets forth the tentative agenda topics.

DATES: The meeting will be held on March 7, 2002, from 9 a.m. to 5 p.m., and March 8, 2002, from 9 a.m. to 5 p. m. On March 7 and 8 at 1:15 to 2:15 p.m; the Tribal caucus is closed to EPA and the general public.

ADDRESSES: This meeting will be held at the Embassy Suites Hotel-Crystal City, 1300 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: mcduffie.georgia@epa.gov.

Lillian Wilmore, Tribal Pesticide Program Council Facilitator, P.O. Box 470829; Brookline Village, MA 02447–0829; telephone number: (617) 232–5742; fax number: (617) 277–1656; e-mail address: naecology@aol.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to Tribes with pesticide programs or pesticide interests. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–00758. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00758 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00758. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. TPPC State of the Council Report.
2. Presentation and questions and answers by EPA's Office of Pesticide Programs, Field and External Affairs Division.
3. Reports from Working Groups and TPPC participation in other meetings:

Subsistence, Tribal Strategy, Pesticide Program Dialogue Committee Spray Drift, Environmental Justice (Fish Consumption), FOSTTA and POPs Issue, Water Quality and Pesticides Management, Worker Protection, and basic elements of Tribal Pesticide Program - Pesticide Assessment.

4. Tribal caucus.

5. EPA Office of Enforcement and Compliance Assurance (OECA) related issues:

i. New guidance for cooperative agreements and funding.

ii. Data collections issues - Form 5700–33H.

6. Section 18 and other Tribal authority issues - including a training session on section 18s.

7. Institute for Tribal Environmental Professionals (ITEP) - Report on Tribal training.

8. Federal inspector credentials criteria.

9. Tribal caucus.

10. Report from: American Indian Environmental Office (AIEO), Report from Tribal Operations Committee (TOC), Report from Tribal Science Council (TSC), and Report from National Tribal Environmental Council (NTEC).

List of Subjects

Environmental protection, Pesticides.

Dated: January 24, 2002.

Jay S. Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 02–2835 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181084; FRL–6821–8]

Tetraconazole; Receipt of Application for Emergency Exemption,Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Minnesota and North Dakota Departments of Agriculture to use the pesticide tetraconazole (CAS No. 112281–77–3) to treat up to 1,660,000 acres of sugar beets to control *Cercospora* leaf spot. The Applicants propose the use of a new chemical which has not been registered by the EPA. Therefore, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments, identified by docket control number OPP–181084, must be received on or before February 21, 2002..

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181084 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; fax number: (703) 308–5433; e-mail address: conrath.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of potentiallyaffected entities
State government	9241	State agencies that petition EPAfor section 18 pesticide exemption

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of thisdocument, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–181084. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181084 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records

Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181084. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Minnesota and North Dakota Departments of Agriculture have requested the Administrator to issue specific exemptions for the use of tetraconazole on sugar beets to control *Cercospora* leaf spot. Information in accordance with 40 CFR part 166 was submitted as part of these requests.

As part of these requests, the Applicants assert that emergency conditions exist because the registered alternative fungicides (benomyl and thiophanate methyl, TPTH, EBDC fungicides mancozeb, maneb, and copper hydroxide) no longer provide the level of control of *Cercospora* leafspot that they historically did, or which would avoid decreased productivity and yields. Without this use, the Applicants assert that significant economic losses will occur for the sugar beet industry in these states.

The Applicants propose to make no more than three applications of tetraconazole, formulated as a liquid with 1 pound active ingredient (a.i.) per gallon at a rate of 1.625 ounces a.i. per acre, on up to 1,660,000 acres of sugar beets in North Dakota and Minnesota. Use at this rate on the maximum number of acres could result in application of a total of 168,594 pounds a.i., or 168,594 gallons of formulation. The proposed use season is June 15 through September 30, 2002.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA. The notice provides an opportunity for public comment on the applications.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Minnesota and North Dakota Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 18, 2002.

Rachel C. Holloman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–2514 Filed 2–5–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2529]

Petition for Reconsideration of Action in Rulemaking Proceeding

February 1, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 21, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotments (MM Docket No. 99–196).

Number of petitions f

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2528]

Petition for Reconsideration of Action in Rulemaking Proceeding

February 1, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 21, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Telecommunications Industry's Environmental Civil Violattions in U.S. Territorial Waters (South Florida and the Virgin Islands and along the Coastal Wetlands of Maine—FCC Accountability and Responsibility for Rulemaking regarding the NEPA, NHPA (RM–9913).

Number of Petitions Filed: 1.

William F. Caton,

Acting Secretary.

[FR Doc. 02–2867 Filed 2–5–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNCIATIONS COMMISSION

[CS Docket No. 01–129, FCC 01–389]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document is in compliance with the Communications Act of 1934, as amended, which requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. On December 27, 2001, the Commission adopted its eighth annual report (''*2001 Report*''). The *2001 Report* contains data and information that summarize the status of competition in markets for the delivery of video programming and updates the Commission's prior reports.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman or Anne Levine, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *2001 Report* in CS Docket No. 01–129, FCC 01–389, adopted December 27, 2001, and released January 14, 2002. The complete text of the *2001 Report* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2890, or e-mail at *qualex@aol.com.* In addition, the complete text of the *2001 Report* is available on the Internet at *http://www.fcc.gov/csb.*

Synopsis of the 2000 Report

1. The Commission's *2001 Report* to Congress provides information about the cable television industry and other multichannel video programming distributors (''MVPDs''), including direct broadcast satellite (''DBS'') service, home satellite dishes (''HSDs''), wireless cable systems using frequencies in the multichannel multipoint distribution service (''MMDS'') and instructional television fixed service (''ITFS''), private cable or satellite master antenna television (''SMATV'') systems, as well as broadcast television service. The Commission also considers several other existing and potential distribution technologies for video programming, including the Internet, home video sales and rentals, local exchange telephone carriers (''LECs''), and electric and gas utilities. In addition, for the first time, this year, the Commission addresses broadband service providers (''BSP''), a new category of entrant into the video marketplace.

2. The Commission also examines the market structure and competition. We evaluate horizontal concentration in the multichannel video marketplace and vertical integration between cable television systems and programming services. In addition, the *2001 Report* addresses competitors serving multiple dwelling unit (''MDU'') buildings, programming issues, technical issues, and examines communities where consumers have a choice between an incumbent cable operator and another MVPD and reports on the incumbent cable operator's response to such competition in several cases. The *2001 Report* is based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a *Notice of Inquiry* (66 FR 35431) in this docket.

3. In the *2001 Report*, the Commission finds that competitive alternatives and consumer choices continue to develop. Cable television still is the dominant technology for the delivery of video programming to consumers in the MVPD marketplace, although its market share continues to decline. As of June 2001, 78 percent of all MVPD subscribers received their video programming from a local franchised cable operator, compared to 80 percent a year earlier. There has been an increase in the total number of subscribers to non-cable MVPDs over the last year, which is primarily attributable to the growth of DBS service. However, generally, the number of subscribers to, and market shares of, MVPDs using other distribution technologies (i.e., MMDS, SMATV, and OVS) have remained stable, although the number of HSD subscribers continues to decline. Significant competition from local telephone companies has not generally developed even though the Telecommunications Act of 1996 (''1996 Act'') removed some barriers to LEC entry into the video marketplace.

4. *Key Findings:*

• *Industry Growth:* A total of 88.3 million households subscribed to multichannel video programming services as of June 2001, up 4.6 percent over the 84.4 million households subscribing to MVPDs in June 2000. This subscriber growth accompanied a 2.7 percentage point increase in multichannel video programming distributors' penetration of television households to 86.4 percent as of June 2001. The number of cable subscribers continued to grow, reaching 69 million as of June 2001, up about 1.9 percent over the 67.7 million cable subscribers in June 2000. The total number of non-cable MVPD households grew from 16.7 million as of June 2000 to 19.3 million homes as of June 2001, an increase of more than 15 percent. The growth of non-cable MVPD subscribers continues to be primarily attributable to the growth of DBS. Between June 2000 and June 2001, the number of DBS subscribers grew from almost 13 million households to about 16 million households, which is nearly two times the cable subscriber growth rate. DBS subscribers now represent 18.2 percent of all MVPD subscribers, up from 15.4 percent a year earlier.

• *Convergence of Cable and Other Services:* The 1996 Act removed barriers to LEC entry into the video marketplace

in order to facilitate competition between incumbent cable operators and telephone companies. It was expected that local exchange telephone carriers would begin to compete in video delivery markets, and cable operators would begin to provide local telephone exchange service. The Commission previously reported that there had been an increase in the amount of video programming provided to consumers by telephone companies, although the expected technological convergence that would permit use of telephone facilities for video service had not yet occurred. This year, we find that incumbent local exchange carriers (''ILECs'') have largely exited the video business, instead mainly reselling DBS service. A few smaller LECs offer, or are preparing to offer, MVPD service over existing telephone lines. Alternatively, a few cable operators offer telephone service, but their strategies for deployment remain varied, with some companies deploying circuit-switched cable telephone service and others waiting until Internet Protocol (''IP'') technology becomes available and continuing to test such service. The most significant convergence of service offerings continues to be the pairing of Internet service with other services. There is evidence that a wide variety of companies throughout the communications industries are attempting to become providers of multiple services, including data access.

• *Promotion of Entry and Competition:* Noncable MVPDs continue to report that regulatory and other barriers to entry limit their ability to compete with incumbent cable operators and to thereby provide consumers with additional choices. Non-cable MVPDs also continue to experience some difficulties in obtaining programming from both vertically integrated cable programmers and unaffiliated programmers who continue to make exclusive agreements with cable operators. In MDUs, potential entry may be discouraged or limited because an incumbent video programming distributor has a long-term and/or exclusive contract. Other issues also remain with respect to how, and under what circumstances, existing inside wiring in MDUs may be made available to alternative video service providers.

• *Horizontal Concentration:* Consolidations within the cable industry continue as cable operators acquire and trade systems. The ten largest operators now serve close to 87 percent of all U.S. cable subscribers. In terms of one traditional economic measure, the Herfindahl-Hirschman Index or HHI, national concentration among the top MVPDs has decreased since last year, and remains below the levels reported in earlier years. DBS operators DirecTV and EchoStar rank among the ten largest MVPDs in terms of nationwide subscribership along with eight cable multiple system operators (''MSOs''). As a result of acquisitions and trades, cable MSOs have continued to increase the extent to which their systems form regional clusters. Currently, 55 million of the nation's cable subscribers are served by systems that are included in regional clusters. By clustering their systems, cable operators may be able to achieve efficiencies that facilitate the provision of cable and other services, such as telephony.

• *Vertical Integration:* The number of satellite-delivered programming networks has increased by 13 from 281 in 2000 to 294 in 2001. Vertical integration of national programming services between cable operators and programmers, measured in terms of the total number of services in operation, remained at 35 percent after several years of decline. The *2001 Report* also identifies 80 regional networks, 29 of which are sports channels, many owned at least in part by MSOs, and 29 regional and local news networks that compete with local broadcast stations and national cable networks.

• *Technological Issues:* Cable operators and other MVPDs continue to develop and deploy advanced technologies, especially digital compression techniques, to increase the capacity and enhance the capabilities of their transmission platforms. These technologies allow MVPDs to deliver additional video options and other services (e.g., data access, telephony, and interactive services) to their subscribers. As reported last year, MVPDs are beginning to develop and deploy interactive television (''ITV'') services. In particular, this year, cable operators and other MVPDs have devoted most of their attention to the development of video-on-demand services. In the last year, there have been a number of developments regarding navigation devices and cable modems used to access a wide range of services offered by MVPDs. CableLabs is continuing its efforts to develop next generation navigation devices with its initiative for the OpenCable Application Platform (''OCAP'') or ''middleware'' specification. The Consumer Electronics Association maintains that until this software standard is complete, manufacturers will not be able to build advanced set-top boxes for a retail market. In another effort intended to facilitate retail availability of set-top boxes, cable operators announced an initiative to encourage their set-top box suppliers to make their digital set-top boxes with embedded security available at retail

Ordering Clauses

5. This *2001 Report* is issued pursuant to authority contained in sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g).

6. The Office of Legislative and Intergovernmental Affairs shall send copies of the *2001 Report* to the appropriate committees and subcommittees of the United States House of Representatives and United States Senate.

7. The proceeding in CS Docket No. 01–129 IS TERMINATED.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–2869 Filed 2–5–02; 8:45 am]

BILLING CODE 6712–01–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 March 1, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. CNB Bancorp, Inc., Windsor, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank (in organization), Windsor, Virginia.

Board of Governors of the Federal Reserve System, January 31, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–2799 Filed 2–5–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.
Time: 2 p.m.
Date: February 11, 2002.
Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC.
Status: Closed.
Matter To Be Considered: Litigation.

For further information, contact Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: January 31, 2002.

Elizabeth S. Woodruff

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 02–2809 Filed 2–5–02; 8:45 am]

BILLING CODE 6760–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EST),

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 22, 2002, Board member meeting.
2. Labor Department audit briefing.
3. Thrift Savings Plan activity report by the Executive Director.
4. Investment policy review.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 4, 2002.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–2966 Filed 2–4–02; 11:54 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 4, 2002, from 10 a.m. to 5 p.m., and on March 5, 2002, from 8 a.m. to 3 p.m.

Location: Gaithersburg Marriott Washingtonian Center, Salons A, B, C, and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact: Lesley L. Ewing, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 161, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 4, 2002, the committee will discuss, make recommendations, and vote on a supplement to a premarket approval application (PMA) for a left ventricular assist device to be used as destination therapy in patients with end stage congestive heart failure. On March 5, 2002, the committee will discuss, make recommendations, and vote on a PMA for an implantable pacemaker/defibrillator used for treatment of both congestive heart failure and life threatening dysrhythmias. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material for the March 4 session will be posted on March 1, 2002; material for the March 5 session will be posted on March 4, 2002.

Procedure: On March 4, 2002, from 10 a.m. to 4 p.m., and on March 5, 2002, from 8 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 21, 2002. On both days, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of each topic and for approximately 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 21, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Closed Committee Deliberations: On March 4, 2002, from 4 p.m. to 5 p.m., the meeting will be closed to permit FDA staff to present to the committee trade secret and/or confidential commercial information regarding pending and future device submissions. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 30, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–2883 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 25, 2002, from 8:30 a.m. to 5:30 p.m., and February 26, 2002, from 8 a.m. to 5 p.m.:

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Nancy Chamberlin, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail: CHAMBERLINN@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 25, 2002, the subcommittee will: (1) Identify and define technology and regulatory uncertainties/hurdles, possible solutions, and strategies for the successful implementation of process analytical technologies (PATs) in pharmaceutical development and manufacturing; (2) discuss general principles for regulatory application of PATs including principles of method validation, specifications, use and validation of chemometric tools, and feasibility of parametric release concept; and (3) discuss the need for a general FDA guidance to facilitate the implementation of PATs.

On February 26, 2002, the subcommittee will discuss strategies to explore issues in the following four focus areas: (1) Product and process development, (2) process and analytical validation, (3) chemometrics, and (4) process analytical technologies, applications and benefits.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions maybe made to the contact person by February 15, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on February 25, 2002, and between approximately 1:30 p.m. and 2 p.m. on February 26, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 15, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nancy Chamberlin at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 31, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–2882 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0027]

Swine Mycoplasmal Pneumonia Technical Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop: Swine Mycoplasmal Pneumonia Technical Workshop. The topic to be discussed is how to evaluate drug effectiveness against swine mycoplasmal respiratory disease.

Date and Time: The public workshop will be held on March 6 and 7, 2002, 8:30 a.m. to 4:30 p.m. Submit written or electronic comments by May 6, 2002.

Addresses: The public workshop will be held at the DoubleTree Hotel Kansas City, 1301 Wyandotte St., Kansas City, MO 64105, 816–474–6664. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

For General Information Contact: Gillian A. Comyn, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7568, FAX 301–594–2298.

For Information About Registration Contact: Irma Carpenter, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7580, FAX 301–594–2298.

Registration: Registration is required. There is no registration fee for the meeting. Space is limited. Registration will be on a first come, first served basis. Information about the workshop is available on the Internet at the Center for Veterinary Medicine (CVM) Web site at http://www.fda.gov/cvm. Electronic registration for the workshop is available at http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm. Alternatively, please send registration information (including name, title, firm name, address, telephone, and fax number) to Irma Carpenter (address above). If you need special accommodations due to a disability, please contact the DoubleTree Hotel Kansas City at least 7 days in advance at 816–474–6664, and Irma Carpenter at 301–827–7580.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is seeking scientific input from a broad public forum to help the agency determine an acceptable method, in light of the current state of scientific knowledge, for evaluating drug effectiveness against swine mycoplasmal respiratory disease. *Mycoplasma hyopneumoniae* is a major pathogen in ''porcine respiratory disease complex'' (PRDC). PRDC is a significant problem in the swine industry in the

United States and abroad. This workshop will provide a necessary forum for leveraging scientific resources, including top experts in swine mycoplasmal pneumonia. The workshop is part of CVM's leveraging initiative aimed at increasing interaction with industry, academia, practitioners, and other government agencies.

II. Agenda

The preliminary agenda is as follows:
Session 1: The disease—history, clinical presentation, epidemiology, and economics;
Session 2: Cutting edge—new findings on the organism;
Session 3: Perspectives from industry, producers, veterinarians, and government regulators;
Session 4: Breakout exercise;
Panel discussion;
Adjourn.

Proposed core items for discussion include:

1. Define swine mycoplasmal pneumonia.
   - *M. hyopneumoniae* as a pathogen in PRDC, enzootic pneumonia.
   - The disease(s) in clinical and field settings.
   - Epidemiology: Disease determinants, risk factors, and confounders.
   - Methods for diagnosing pneumonia associated with *M. hyopneumoniae*.
   - The disease contribution of *M. hyopneumoniae* in PRDC.
2. Methods of detection of *M. hyopneumoniae* in body tissues and fluids.
   - Proper sampling for different methods.
   - Comparison of detection methods for sensitivity, specificity, and positive and negative predictive test values.
3. What is the best study design for demonstrating effectiveness of treatments against pneumonia associated with *M. hyopneumoniae* infection?
   - What is a ''cure'' in swine mycoplasmal pneumonia, and what are the best clinical and laboratory indicators?
   - Study designs.
   - Perspectives on designing studies to demonstrate effectiveness of therapeutic modalities against pneumonia in swine associated with *M. hyopneumoniae* infection.
   - Substantial evidence.

III. Submission of Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this workshop until May 6, 2002. Comments are to be identified with the docket number found in the brackets in the heading of this document.

Dated: January 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2752 Filed 2–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0032]

Guidance for Industry; Implementation of Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, Pub. L. No. 107–76, § 755 (2001) Regarding Common or Usual Names for Catfish; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry; Implementation of Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, Pub. L. No. 1076–76, § 755 (2001) regarding Common or Usual Names for Catfish.'' Section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002, provides that FDA may not spend any of its 2002 appropriation to allow admission of fish or fish products labeled in whole or in part with the term ''catfish'' unless the fish are from the *Ictaluridae* family. This guidance discusses how FDA plans to exercise enforcement discretion with regard to certain fish whose common or usual name contains the term ''catfish.''

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Seafood (HFS–400), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-adhesive address label to assist that office in processing your request, or include a fax number to which the guidance may be sent. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this guidance document.

FOR FURTHER INFORMATION CONTACT: Mary I. Snyder, Center for Food Safety and Applied Nutrition (HFS–415), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2303, FAX 301–436–2599.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of guidance for industry implementing section 755 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2002 (Public Law 107–76, § 755 (2001), which provides that FDA may not spend any of its 2002 appropriation to allow admission of fish or fish products labeled in whole or in part with the term ''catfish'' unless the fish are from the *Ictaluridae* family. This guidance discusses how FDA plans to exercise enforcement discretion with regard to certain fish whose common or usual name contains the term ''catfish''.

This guidance is a level 1 guidance issued consistent with FDA's regulation on good guidance practices (GGPs) (§ 10.115 (21 CFR 10.115)) relating to the development, issuance, and use of guidance documents. Consistent with GGPs, the agency is soliciting public comment, but is implementing the guidance document immediately in accordance with § 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate. FDA's 2002 appropriation law was enacted on November 28, 2001, and section 755 is now in effect and must be implemented immediately. There is a need for guidance to help effect such implementation. Thus, FDA is making the guidance effective immediately.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written or electronic comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http:/

/www.cfsan.fda.gov/dms/guidance/html or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: January 18, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2753 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0005]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on ''Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30); Request for Comments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#143) entitled ''Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30). This draft guidance has been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft guidance addresses the process for developing a controlled list of terms in order to assure that terms are used consistently in adverse event reports, and to allow comparison between products and across product classes. This draft guidance is limited to developing a controlled list of terms describing veterinary medicinal products (VMPs), animals, clinical signs, and associated body systems and organs for reporting an adverse event associated with the use of a VMP.

DATES: Submit written or electronic comments on the draft guidance by March 8, 2002, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6642, e-mail: *wkeller@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for VMPs. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Controlled List of Terms

The VICH Steering Committee held a meeting on June 28, 2001, and agreed that the draft guidance document entitled ''Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30) should be made available for public comment.

A controlled list of terminology is essential to ensure consistent evaluation of adverse event reports and electronic submission of these reports on a national and international basis. This draft guidance provides recommendations for adopting and managing a controlled list of terminology used to describe veterinary medicinal products, animals, clinical signs, and associated body systems and organs in adverse event reports. Components of the recommendations are directed at regulatory authorities and should be implemented by these agencies as well as by regulated industry.

The VICH closely followed the progress of its human counterpart, ICH (International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use), in implementing a standardized controlled terminology and believes that with appropriate modification the same approach will be viable for the VICH. Thus, the approach outlined in the guidance document is based on identification of similar technical terminology needs and an approach for meeting those needs used by ICH to develop MedDRA (Medical Dictionary for Drug Regulatory Activities), the international terminology for reports to regulatory authorities describing human adverse events.

These recommendations include that government and industry partner together in development,

implementation, and ongoing maintenance necessary to keep an adverse event terminology updated and distributed to users. It recommends adopting VEDDRA (Veterinary Medicinal Dictionary for Drug Regulatory Authorities) as the controlled list of terminology for adverse event reports. Specific recommendations include an independent joint industry and government oversight board as well as a funding model that will allow use by all regulatory agencies and even the smallest companies in industry. The two background paragraphs provide insight into the deliberations, recommendations, and comments from the Expert Working Group charged by VICH to the VICH Steering Committee on this issue.

FDA and the VICH will consider comments about the draft guidance document. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and publish it as a final guidance.

III. Significance of Guidance

This draft document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as ''must,'' ''shall,'' and ''will'' in the original VICH documents have been substituted with ''should.'' Similarly, words such as ''require'' or ''requirement'' have been replaced by ''recommendation'' or ''recommended'' as appropriate to the context.

The draft guidance represents the agency's current thinking on developing a controlled list of terms for reporting an adverse event associated with the use of an approved new animal drug. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written or electronic comments regarding this draft guidance document. Written or electronic comments should be submitted to the Dockets Management Branch (address above). Submit written or electronic comments by March 8, 2002, to ensure adequate consideration in preparation of the final guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this Internet site, select ''02D–0005 Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms (VICH GL30)'' and follow the directions.

Copies of the draft guidance entitled ''Pharmacovigilance of Veterinary Medicinal Products: Controlled List of Terms'' (VICH GL30) may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*. The draft guidance is also available at *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–2881 Filed 2–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME) (OMB No. 0915–0247): Revision

The CHGME Payment Program was enacted by Public Law 106–129 to provide Federal support for graduate medical education (GME) to ''freestanding'' children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

Technical assistance workshops and consultation with applicant hospitals resulted in an opportunity for hospital representatives to raise issues and provide suggestions resulting in proposed revisions in the CHGME application forms and instructions.

Eligible children's teaching hospitals submit relevant data such as weighted and unweighted full-time equivalent (FTE) resident counts, inpatient discharges and case mix index information by which direct and indirect payments are made to the participating hospitals. Data are submitted by children's hospitals in an annual CHGME application in order to receive funding. Through a reconciliation process, participating hospitals are required to correct and furnish final FTE resident count numbers reflecting changes in counts reported in the annual application form. The reconciliation process begins with fiscal year (FY)2002 and occurs before the end of the fiscal year.

The estimated burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
HRSA 99–1	60	1	24	1,440
HRSA 99–1 (Reconciliation)	60	1	8	480

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
HRSA 99–2	60	1	14	840
HRSA 99–4	60	1	14	840
Total	60			3,600

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, 725 17th St., NW, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 30, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–2754 Filed 2–5–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a Teleconference Call meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in February 2002.

The agenda of the open meeting will include an update of CSAP's budget, updates on strategic planning and restructuring, and administrative matters and announcement.

If anyone needs special accommodations and for persons with disabilities, please notify the contact listed below.

A summary of this meeting and roster of committee members may be obtained from Carol Watkins, Committee Management Specialist, Rockwall II Building, Suite 900, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–0365.

Substantive program information may be obtained from the contact listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Date: February 15, 2002, 12 noon–2 p.m.

Place: Center for Substance Abuse Prevention, 5515 Security Lane, 9th Floor, Conference Room I, Rockville, Maryland 20852.

Contact: Carol Watkins, 5515 Security Lane, Rockwall II Building, Suite 900, Rockville, Maryland 20852, Telephone: (301) 443–0365.

Dated: January 30, 2002.

Toian Vaughn,

Executive Secretary, Committee Management Officer, Substance Abuse and Mental, Health Services Administration.

[FR Doc. 02–2755 Filed 2–5–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of Historical Trust Accounting; Historical Accounting of Individual Indian Money Accounts: Collection of Documents Related to Oil and Gas Production on Allotted Lands

AGENCY: Office of Historical Trust Accounting, Interior.

ACTION: Notice regarding records relating to indian allotted land and individual indian money accounts.

SUMMARY: Notice is hereby given that the Department of the Interior is requesting that anyone who possesses records related to the Individual Indian Money (IIM) trust funds to notify the Department, and to preserve and maintain such records indefinitely until further notice. If preferred, such records custodians should contact the Office of Historical Trust Accounting, 1951 Constitution Avenue, NW., MS 16 SIB, Washington, DC, 20240, so that arrangements can be made for the Department to take custody of such records. The purpose of this request is to ensure that such records are not destroyed so that they may be used to support an accounting of IIM trust funds. Generally, this request applies to entities that have or had business with the Department or individual Indians involving the payment of money for use of or access to Indian allotted lands, and would include entities in the oil and gas industry, the timber industry, farming and grazing operations, financial institutions, public utilities (*e.g.,* gas, electric and telephone companies), Indian Tribes, other federal agencies, state and local government archives, and non-governmental depositories such as historical societies, and possibly others. Relevant records would include any records which pertain to revenue generated on Indian allotted land from 1887 to the present, revenue generated due to Tribal judgment or per capita payments, and any other records which pertain to IIM trust institutions, public utilities (*e.g.,* gas, electric and telephone companies), Indian Tribes, other federal agencies, state and local government archives, and non-governmental depositories such as historical societies, and possibly others. This request is pursuant to the Department's duty to account for trust funds held in IIM accounts.

FOR FURTHER INFORMATION CONTACT: Stephen Swanson, Project Coordinator, Office of Historical Trust Accounting, 1951 Constitution Avenue, NW., MS 16 SIB, Washington, DC 20240, telephone 202/208–3405, or by facsimile at 202/219–1139.

SUPPLEMENTARY INFORMATION: On December 21, 1999, the United States District Court for the District of Columbia declared that the Department must provide individual Indian Money (IIM) account holders ''an accurate accounting of all money in the IIM trust held in trust for the benefit of [IIM account holders] without regard to when the funds were deposited.'' *Cobell v. Norton,* 92 F.Supp.2d, 1, 58 (D.D.C. 1999). This accounting will include, at an appropriate level of detail, an assessment of the accuracy of the balances in IIM accounts, reports to individual beneficiaries of the money and real property held in trust for their benefit, and reports to individual beneficiaries that contain sufficient information to allow beneficiaries to determine whether the trust has been faithfully performed. In furtherance of accomplishing the overall duty to account, the District Court held that the Department was in breach of a specific duty to have ''written policies and procedures for collecting from outside sources missing information necessary to render an accounting of the IIM trust[.]'' *Id.* On appeal, the Court of Appeals for the District of Columbia Circuit stated that written policies and procedures for the collection of such records are ''necessary for the government to discharge its fiduciary

obligation'' to account for IIM trust funds. *Cobell v. Norton,* 240 F.3d 1081, 1105–06 (D.C. Cir, 2001).

The Department is in the process of developing written policies and procedures for the collection of such records. However, the Department recognizes that it is important to reach out to non-Interior sources of these records to encourage them to preserve and maintain them so that they are available to support the accounting of IIM funds. The Department will provide further guidance based upon the information obtained from record custodians.

Dated: February 1, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–2931 Filed 2–1–02; 5:04 pm]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act Grants Programs Authorized by the North American Wetlands Conservation Act (NAWCA)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The collection of information described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address provided below.

DATES: Consideration will be given to all comments received on or before April 8, 2002. OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

ADDRESSES: Comments and suggestions on the requirement should be sent to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222—ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION:

The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). On May 26, 1999, the U.S. Fish and Wildlife Service (Service) was given regular approval by OMB for collection of information in order to continue the grants programs currently conducted under the North American Wetlands Conservation Act (Pub. L. 101–233, as amended; December 13, 1989). The assigned OMB information collection control number is 1018–0100, and approval expires on May 31, 2002. The Service is requesting a three year term of approval for this information collection activity. 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.

Comments are invited on : (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the 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.

Title: Information Collection In Support of Grant Programs Authorized by the North American Wetlands Conservation Act of 1989 (NAWCA).

Approval Number: 1018–0100.

Service Form Number(s): N/A.

Description and Use: The North American Waterfowl Management Plan (NAWMP), first signed in 1986, is a tripartite agreement among Canada, Mexico and the United States to enhance, restore and otherwise protect continental wetlands to benefit waterfowl and other wetland associated wildlife through partnerships between and among the private and public sectors. Because the 1986 NAWMP did not carry with it a mechanism to provide for broadly-based and sustained financial support for wetland conservation activities, Congress passed and the President signed into law the NAWCA to fill that funding need. The purpose of NAWCA, as amended, is to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat through partnerships. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated habitat.

As well as providing for a continuing and stable funding base, NAWCA establishes an administrative body, made up of a State representative from each of the four Flyways, three representatives from wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Service. This administrative body is chartered, under the Federal Advisory Committee Act, by the U.S. Department of the Interior as the North American Wetlands Conservation Council (Council). As such, the purpose of the Council is to recommend wetlands conservation project proposals to the Migratory Bird Conservation Commission (MBCC) for funding.

Subsection (c) of Section 5 (Council Procedures) provides that the ''* * * Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section * * *,'' which are consideration of projects and recommendations to the MBCC, respectively. The means by which the Council decides which project proposals are important to recommend to the MBCC is through grants programs that are coordinated through the Council Coordinator's office (NAWWO) within the Service.

Competing for grant funds involves applications from partnerships that describe in substantial detail project locations and other characteristics, to meet the standards established by the Council and the requirements of NAWCA. The Council Coordinator's office publishes and distributes Standard and Small Grants instructional booklets that assist the applicants in formulating project proposals for Council consideration. The instructional booklets and other instruments, e.g., **Federal Register** notices on request for proposals, are the basis for this information collection request for OMB clearance. Information collected under this program is used to respond to such needs as: audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application For Federal Assistance), grant agreements, budget reports and

justifications, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by NAWCA, etc.

In summary, information collection under these programs is required to obtain a benefit, i.e., a cash reimbursable grant that is given competitively to some applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Occasional. The Small Grants program has one project proposal submissions window per year and the Standard Grants program has two per year.

Description of Respondents: Households and/or individuals; business and/or other for-profit; not-for-profit institutions; farms; Federal Government; and State, local and/or Tribal governments.

Estimated Completion Time: The reporting burden, or time involved in writing project proposals, is estimated to be 80 hours for a Small Grants submission and 400 hours for a Standard Grants submission.

Number of Respondents: It is estimated that 150 proposals will be submitted each year, 70 for the Small Grants program and 80 for the Standard Grants program.

Annual Burden Hours: 37,600.

Dated: January 29, 2002.

Rebecca Mullin,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–2832 Filed 2–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by March 8, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to ''*victoria__davis@fws.gov*''. Please submit comments over the Internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the Service that we have received your Internet message, contact us directly at either telephone number listed above (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to the Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Jerry L. Farris, Arkansas State University, State University, Arkansas TE051013–0.

The applicant requests authorization to take (remove, tag, collect shells, remove glochidia, exam, measure, transport, hold in raceways and/or recirculating trough units)the Ouachita-rock pocketbook, (*Arkansia wheeleri*) for the following purposes: To characterize the population size, sex ratio, age structure, and associated fish and mussel species; to determine gravidity and glochidial release periods for currently reported populations; and to determine suitable host fish that occur within the Little River and the Kiamichi River. The activities will occur in the Little Red River, Sevier and Little River counties, Arkansas and the Kiamichi River in Le Flore and Pushmataha Counties, Oklahoma.

Applicant: National Park Service, Big Cypress National Preserve, Superintendent John J. Donahue, Ochopee, Florida, TE051015–0.

The applicant requests authorization to take (capture, tranquilize, hold temporarily, transport, radio collar, provide medical treatment for injury or illness, release, and euthanize) the Florida panther (*Puma concolor coryi*) for the following purposes: To maintain a healthy panther population, to assess the habitat potential to support panthers, to monitor the effects of the genetic restoration project, and to make sound management decisions regarding the increasing recreational demands on the resources as well as the proposed restoration projects affecting the Big Cypress National Preserve. The proposed activities will take place on the Big Cypress National Preserve, Collier, Dade, and Monroe Counties, Florida.

Applicant: Peter Frederick, University of Florida, Gainesville, Florida, TE051429–0.

The applicant requests authorization to take (monitor, capture, collect blood, radio and satellite tag, and perform necropsies when necessary) 120 young wood storks (*Mycteria americana*). The purposes of the study are to measure the survival rates of young storks for up to 3 years of age, develop a demographic model, describe movement patterns and habitats used by storks, and develop an interactive educational Web site for K–12 use. The capture and handling of young birds will occur in Dade, Broward, Collier, Monroe, Lee and Palm Beach counties, Florida.

Applicant: Florida Fish and Wildlife Conservation Commission, Frank Montalbano, Tallahassee, Florida, TE051553–0.

The applicant requests authorization to take (capture, tranquilize, hold temporarily, transport, radio collar, provide medical treatment for injury or

illness, release, and euthanize) the Florida panther (*Puma concolor coryi*) for the following purposes: To maintain a healthy panther population, to assess the habitat potential to support panthers, to monitor the effects of the genetic restoration project, and to make sound management decisions. The activities will take place throughout the state of Florida.

Applicant: USDA Forest Service, Bankhead Ranger District, Tom Counts, Double Springs, Alabama, TE052205–0.

The applicant requests authorization to take (survey, capture, identify, and release) gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) to determine if maternity colonies are present in caves and to determine more accurate dates of entry and exit at hibernacula. The proposed activities will take place on the Bankhead Ranger District in Winston, Lawrence, and Franklin Counties, Alabama.

Applicant: Dowling Environmental Services, Inc., Hugh Dowling, Mobile, Alabama, TE052208–0.

The applicant requests authorization to take (capture and release) the Alabama beach mouse (*Peromyscus polionotus ammobates*) to conduct surveys to determine the presence of beach mice for the future development of a Habitat Conservation Plan. The activities will take place in Baldwin County, Alabama.

Dated: January 24, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–2808 Filed 2–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment and Habitat Conservation Plan for an Incidental Take Permit for the Six Points Road Interchange and Related Development in Marion and Hendricks Counties, Indiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of comment period extension.

SUMMARY: This notice advises the public and other agencies that the comment period for the draft Environmental Assessment (EA), Habitat Conservation Plan (HCP) and Incidental Take Permit (ITP) application is extended due to the department-wide prohibition on the use of electronic mail and the Internet. The original notice of availability was published in the **Federal Register** on November 20, 2001, (Vol. 66, No. 224, 58159–58160). Early in December 2001, the U.S. District Court issued a temporary restraining order on all Department of Interior employees use of the Internet. The original notice listed an e-mail address where comments could be sent. However, the public access to this e-mail address and Internet site has been invalid since December 2001. The Service is concerned that any comments sent via e-mail would not be available for our review. This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). Send comments on the draft HCP and EA to the Regional HCP Coordinator, at the address below.

DATES: Written comments must be received on or before March 8, 2002.

ADDRESSES: Persons wishing to review the documents may obtain copies by writing, telephoning, or faxing: Regional HCP Coordinator, U.S. Fish and Wildlife Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, Telephone: (612) 713–5343, Fax: (612) 713–5292.

Public Involvement: Documents will be available for public inspection during normal business hours (8:00–4:30), at the U.S. Fish and Wildlife Service Regional Office in Fort Snelling, Minnesota, and at the Bloomington Field Office in Bloomington, Indiana. The draft HCP and EA are available for public review and comment for a period of 30 additional days.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional HCP Coordinator, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota, Telephone: (612) 713–5343.

Dated: January 24, 2002.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–2807 Filed 2–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: new collection, Tribal Hiring Renewal Grant Program Application.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10. If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Tribal Hiring Renewal Grant Program Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Federally Recognized Tribal Government. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine whether Federally Recognized Tribal Governments are eligible for two-year grants to renew previously funded COPS hiring grants. The program is specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement capabilities by renewing grant officer positions for an additional two-years of funding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

There will be an estimated 15 responses. *The estimated amount of time required for the average respondent to respond is:* 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 37.5 hours annually.

If additional information is required contact: Brenda Dyer, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2787 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Civil Division; Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Revision of a currently approved collection; Claims Under the Radiation Exposure Compensation Act.

The Department of Justice (DOJ), Civil Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dianne Spellberg, Senior Counsel, Torts Branch, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the 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 the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Claims Under the Radiation Exposure Compensation Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* N/A. Torts Branch, Civil Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals who resided near the Nevada Test Site; former uranium miners and millers; individuals employed in the transport of uranium ore; and, individuals who participated onsite in an atmospheric nuclear test. *Other:* None. *Abstract:* This form collects information to determine whether an individual is entitled to compensation under the Radiation Exposure Compensation Act, 42 U.S.C.A. § 2210 note (West Supp. 2001).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3000 responses are estimated annually with an average of 2.5 hours per response.

(6) *An estimation of the total public burden (in hours) associated with the collection:* 7500 hours annually.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 31, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–2783 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS); Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of Collection under review: New Collection; Tribal Resources Grant Program Hiring Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* COPS Tribal Resources Grant Program Hiring Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal governments: *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is: 1.0 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2785 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS): Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: New Collection; Tribal Resources Grant Program Equipment and Training Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Tribal Resources Grant Program Equipment and Training Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal Governments. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses, one for each respondent. The estimated amount of time required for the average respondent to respond is: 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, D.C. 20530.

Dated: January 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2786 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: new collection;

Mental Health and Community Safety Initiative Grant Application Kit.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 18, 2002. This process is conducted in accordance with 5 CFR 1320.10. If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Mental Health and Community Safety Initiative Grant Application Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal Governments. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine whether Federally Recognized Tribal Governments are eligible for three-year grants specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement infrastructures and community policing efforts in these communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15 responses. *The estimated amount of time required for the average respondent to respond is:* 4.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 67.5 hours annually.

If additional information is required contact: Brenda Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2788 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: new collection; Mental Health and Community Safety Initiative Hiring Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Mental Health and Community Safety Initiative Hiring Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal governments. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: There will be an estimated 10 responses, one for each respondent. *The estimated amount of time required for the average respondent to respond is:* 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2789 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: new collection; COPS in Schools/Safe Schools Healthy Students Annual Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until April 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* COPS in Schools/Safe Schools Healthy Students Annual Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Awardees of the COPS in Schools/Safe Schools Healthy Students Grant Programs. *Other:* None. *Abstract:* COPS in Schools/Safe Schools Healthy Students Annual Report is a survey instrument that the COPS Office uses to monitor the community policing activities of the COPS in Schools hiring grant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of agencies that are eligible to receive and complete the COPS in Schools/Safe Schools Healthy Students Annual Report is 2,800. The estimated amount of time required for the average respondent to complete and return the form is 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The hours associated with this information collection is 1,400 hours.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW, Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: January 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–2790 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 28, 2001, a proposed consent decree in *United States* v. *State of California,* Civil No. 01–11161 CAS (RZx), was lodged with the United States District Court for the Central District of California.

This consent decree represents a settlement of claims brought against the State of California (''State'') relating to the Casmalia Resources Hazardous Waste Disposal Site (''Site'') located near Casmalia, California. The United States alleges in its complaint that the State disposed hazardous substances at the Site and seeks the recovery of response costs incurred and to be incurred related to the Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*

The consent decree requires the State to pay $15 million, in addition to agreeing not to seek reimbursement of $1.4 million in response costs incurred by the California Department of Toxic Substances Control. The total value of the State's settlement is $16.4 million.

The Department of Justice will receive, for a period of sixty (60) days from the date of this publication, comments relating to the consent decree. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and

Sent: (1) C/o Bradley R. O'Brien; U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 301 Howard Street, Suite 1050, San Francisco, California, 94105 and/or (2) by facsimile to Bradley R. O'Brien at (415) 744–6476; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *State of California,* Civil No. 01–11161 CAS (RZx), DOJ Ref. 90–7–1–611/1.

The proposed Consent Decree may be examined at the Region 9 office of the Environmental Protection Agency, U.S. Environmental Protection Agency, 95 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $9.00, to: Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *State of California,* Civil No. 01–11161 CAS (RZx), DOJ Ref. 90–7–1–611/1.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–2856 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 C.F.R. § 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Heinz Gros and Roy Gros (d/b/a H&R Plating, a/k/a Gateway Plating Co.,* No. 4:02CV00125CDP (E.D. Mo.), was lodged with the United States District Court for the Eastern District of Missouri on January 23, 2002, pertaining to the payment of a civil penalty and injunctive relief, in connection with the Defendants' violations of the Clean Air Act (CAA), 42 U.S.C. § 7412 *et seq.*

Under the proposed consent decree, Defendants will pay a civil penalty of $15,000 and will perform injunctive relief. The Consent Decree includes a release of claims alleged in the complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Heinz Gros and Roy Gros,* No. 4:02CV00125CDP (E.D. Mo.), and DOJ Reference No. 90–5–2–1–2203.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Eastern District of Missouri, 111 South 10th Street, St. Louis, MO 63102 (314) 539–2200; and (2) the United States Environmental Protection Agency (Region 7), 901 North Fifth Street, Kansas City, KS 66101 (contact Henry Rompage in the Office of Regional Counsel). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097 phone confirmation number (202) 514–1547. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $4.25 for 17 pages (at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

Robert E. Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–2852 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act

Under 28 CFR § 50.7, notice is hereby given that on January 16, 2002, a proposed Consent Decree in was lodged with the United States District Court for the Western District of Kentucky in *United States* v. *LWD, Inc.,* Civ. No. 5:99 CV–151–R (W.D. Ky.)

The United States' Complaint filed in this action seeks assessment of civil penalties and injunctive relief against LWD for its failure to comply with a Unilateral Administrative Order issued by EPA pursuant to Section 3013(a) of the Resource Conservation and Recover Act (''RCRA''), 42 U.S.C. § 6934(a). EPA's Order required LWD to conduct a trial burn at its hazardous waste incinerator at its facility in Calvert City, Kentucky.

Under the proposed Consent Decree, LWD will pay a lump sum civil penalty of $275,000, and conduct the trial burn at its hazardous waste incinerator, according to a plan to be developed under the Decree. Within 45 days after entry of the Decree, LWD must submit its proposed trial burn plan for EPA approval, and then conduct the trial burn within six months after EPA approves the plan.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) By regular, first-class mail through the U.S. Postal Service, c/o Frank Ney, U.S. Environmental Protection Agency, Region 4, EAD, 61 Forsyth Street, SE., Atlanta, Georgia 30303; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each comment and communication relating to the proposed Consent Decree should refer on its face to *U.S.* v. *LWD, Inc.,* Civil No. 5:99 CV 151–R, and also to D.J. Ref. 90–7–3–05156/1.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Kentucky, 510 West Broadway, 10th Floor, Louisville, Kentucky, and at the Region 4 Office of the Environmental Protection Agency, U.S. Environmental Protection Agency, 61 Forsyth Street, SE., Atlanta, Georgia. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is not charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $7.50, to:

Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *U.S.* v. *LWD, Inc.,* Civil No. 5:99 CV151–R, D.J. Ref. 90–11–7–05156/1.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 02–2851 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 42 U.S.C. § 9622(i), notice is hereby given that on January 22, 2002, a proposed Consent Decree in *United States* v. *Mountain Metal Co., et al.,* Civil Action No. CV–98–C–2562–S was lodged with the United States District Court for the Northern District of Alabama.

In this action, the United States sought reimbursement of costs incurred in responding to the release and threatened release of hazardous substances at the ILCO battery cracking site in Leeds, Alabama. In this Consent Decree, G. J. Batteries, Inc., and Jowers Battery, Inc., are settling their liability to the United States by paying a total of $40,000 plus interest. This settlement is based on the defendants' showing of an inability to pay their allocable share. Prior to this Consent Decree, the United States obtained partial reimbursement of its costs through judicial settlement with 58 parties and administrative settlements with 286 parties.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail proceeding center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Cheryl L. Smout, 17 N. Greenbrier Street, Arlington, Virginia, 22203; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Mountain Metal Co., et al.,* D.J. Ref. 90–11–2–108/2.

The Consent Decrees may be examined at the Office of the United States Attorney, 200 Robert S. Vance Fed. Bldg., 1800 5th Avenue N., Room 200, Birmingham, Alabama, and at U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia. A copy of the Consent Decrees may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cents per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'' in the amount of $10.75, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Mountain Metal Co., et al.,* D.J. Ref. 90–11–2–108/2.

Ellen Mahan,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 02–2857 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act

Notice is hereby given, in accordance with 28 CFR § 50.7, that on January 24, 2002, the United States lodged a proposed Consent Decree with the United States District Court for the Western District of Wisconsin, in *United States* v. *Murphy Oil USA, Inc.,* Case No. 00–C–409–C (W.D. Wis.), under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. The proposed consent Decree resolves specific allegations and claims of the United States and the State of Wisconsin against Murphy Oil USA, Inc. (''Murphy Oil''), and specific violations found by the United States District Court for the Western District of Wisconsin, arising out of the company's operation of a petroleum refinery located at 2400 Stinson Avenue, Superior, Wisconsin. Under the settlement, Murphy will (1) Pay a civil penalty of $5.5 million, $750,000 of which the United States will share with the State, (2) implement two Supplemental Environmental Projects (''SEPs'') which will reduce sulfur dioxide (''SO_2'') emissions from certain units at the Refinery that were outside the lawsuit, at a cost of $7.5 million over five years, and (3) install a new pollution control device and perform other injunctive measures to remedy past violations and prevent future violations.

To address violations of the CAA's Prevention of Significant Deterioration (''PSD'') requirements and New Source Performance Standards at the Refinery's Sulfur Recovery Unit (''SRU''), Murphy will install a tail gas treatment unit which will substantially reduce SO_2 emissions from the SRU and comply with stringent emission limitations that both EPA and the Wisconsin Department of Natural Resources (''WDNR'') believe are very close to Best Available Control Technology (''BACT''). The Decree further requires Murphy to apply to WDNR for a PSD permit, which will include a formal determination of BACT, and provides that, if BACT includes a more stringent SO_2 emission limitation than that already in the Consent Decree, the Decree will be modified to incorporate the final BACT limitation. In addition, to address violations of the CAA's Leak Detection and Repair requirements, Murphy will implement for five years a Refinery-wide program the goal of which is to minimize volatile organic compound emissions from Refinery components. Finally, to address the CWA's Spill Prevention Control and Countermeasures requirements, Murphy will undertake measures to bring certain tanks into compliance, including measuring certain containment areas and increasing their capacity, if necessary.

To partially mitigate the penalty, Murphy will implement two SEPs: (1) A project to reduce Murphy's use of high sulfur fuel oil in process heaters and boilers to meet an SO_2 emission limitation of 33.3 tons per month, averaged over a rolling 12-month period; and (2) a project in which Murphy will use a SO_X transfer catalyst at its FCCU to reduce SO_2 emissions from the FCCU to no greater than 34.7 tons per month, averaged over a rolling 12-month period. These two SEPs will reduce SO_2 emissions from the Refinery by at least 580 tons per year beyond legal requirements.

The Department of Justice will accept written comments relating to the proposed Consent Decree for 30 days after publication of this Notice. Comments should be addressed to the Assistant Attorney General,

Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Murphy Oil USA, Inc.,* DOJ # 90–7–1–06523. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, Madison, Wisconsin, and at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed consent decree may also be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547.

In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $18.75 for the decree, payable to the United States Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 02–2855 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on December 31, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, eMotion, Inc., Los Angeles, CA; and Incite Multimedia, Inc., Geneva, SWITZERLAND have been added as parties to this venture. The following members have changed their names: Discreet Logic to Discreet, Montreal, Quebec, CANADA; 4MC to Liberty Livewire, Burbank, CA; Pinnacle to Pinnacle Systems, Mountain View, CA and Informix Software, Inc. to Ascential Software, Oakland, CA. Also, Encoda Systems (formerly Enterprise Systems Group), Boulder, CO; Front Porch Digital, Cherry Hill, NJ; and Matrox, Quebec, CANADA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on September 17, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 15, 2001 (66 FR 52452).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–2853 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Clean Metal Nucleated Casting (CMNC) of Superalloys

Notice is hereby given that, on January 4, 2002, pursuant to Section 6(a) of the National Cooperative Research and production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Clean Metal Nucleated Casting (CMNC) of Superalloys has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Allvac, Monroe, NC and GE Corporate Research and Development Niskayuana, NY. The nature and objectives of the venture are to develop and demonstrate clean metal nucleated casting of superalloys. The activities of this project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–2854 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; Application for Employment/Federal Bureau of Investigation.

The Department of Justice (DOJ), Federal Bureau of Investigation, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged for 60 days until [The **Federal Register** will insert the date 60 days from the date of this notice is published in the **Federal Register**]. this process is conducted in accordance with 5 CFR 1320.10.

If you have comments or suggestions, especially on the estimated public burden or associated response time, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Paul F. Garner, Chief of the Bureau Applicant Employment Unit, Federal Bureau of Investigation, Washington, D.C. 20535; 202–324–6770.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment/Federal Bureau of Investigation.

(3) The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection. *Form Number:* FD–140. *Applicable Component:* Federal Bureau of Investigation, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. *Primary:* Individuals or households. *Other:* None. *Abstract:* The FD–140, Application for Employment, is utilized to collect pertinent background information on all applicants for FBI positions. The FD–140 is issued in lieu of Standard Form 86, Questionnaire for National Security Positions, to address suitability and security concerns beyond the scope of the SF–86. Furthermore, the FD–406, Authority to Release Information, is also incorporated into the FD–140 in order for the FBI to obtain necessary records.

(5) An estimate of the total number of respondents and the estimated amount of time for an average person to respond or reply: 50,000 respondents with an average response rate of 10 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 500,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, N.W., Washington, DC 20530.

Dated: January 31, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–2784 Filed 2–5–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

National Summit on Retirement Savings

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: This document provides notice of the agenda for the National Summit on Retirement Savings, as called for by the Savings Are Vital to Everyone's Retirement (SAVER) Act, which amends Title I of the Employee Retirement Income Security Act of 1974.

DATES: The National Summit on Retirement Savings will be held on Wednesday, February 27, 2002 beginning at 6 pm EST and ending on Friday, March 1, 2002 at 12:45 pm EST.

ADDRESSES: The Summit will be held at the Capital Hilton, 16th and K Streets, NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Julie Roberts, Office of the Assistant Secretary, Pension and Welfare Benefits Administration, US Department of Labor, Room S–2524, 200 Constitution Ave., NW., Washington, DC 20210, (202) 693–8300, or Mary Jost, Senior Director of Education, International Foundation of Employee Benefit Plans, 18700 West Bluemond Road, P.O. Box 69, Brookfield, WI 53008–0069, (262) 786–6700. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On November 20, 1997, the President signed Public Law 105–92 (1997), the ''Savings Are Vital to Everyone's Retirement Act of 1997'' (SAVER). The SAVER legislation is aimed at advancing the public's knowledge and understanding of the importance of retirement savings by: (1) Providing a bipartisan National Summit on Retirement Savings co-hosted by the President and the Congressional Leadership in the House and Senate; and (2) establishing an ongoing educational program coordinated by the Department of Labor. The Summit will be held February 27 through March 1, 2002 in Washington, DC. The purpose of the Summit is to: (1) Increase public awareness of the value of personal savings for retirement, (2) advance the public's knowledge and understanding of retirement savings and its importance to the well being of all Americans, (3) facilitate the development of a broad-based, public retirement savings education program, (4) identify the barriers faced by workers who want to save for retirement, (5) identify the barriers which employers, especially small employers, face in assisting their workers in accumulating retirement savings, (6) examine the impact and effectiveness of individual employers who promote personal savings and retirement savings plan participation among their workers, (7) examine the impact and effectiveness of government programs at the Federal, State, and local levels to educate the public about retirement savings principles, (8) develop recommendations for governmental and private sector action to promote pensions and individual retirement savings, and (9) develop recommendations for the coordination of Federal, State, and local retirement savings education initiative. The Agenda for the National Summit on Retirement Savings follows.

This agenda is subject to change.

Draft Agenda

National Summit on Retirement Savings February 27–March 1, 2002

Saving For a Lifetime: Advancing Generational Prosperity

PRE-SUMMIT—Wednesday, February 27, 2002

3:00pm to 7:00pm Summit Registration Pick-up
5:45pm to 6:00pm Bus Departs Hotel for Reception, United States Botanic Garden
6:00pm to 7:30pm Delegate Reception

DAY 1—Thursday, February 28, 2002

8:00am to 10:00am Summit Registration Pick-up
8:00am to 9:00am Continental Breakfast
9:00am to 9:10am Presentation of Color Guard and National Anthem, Kathleen Stapleton of OSHA
9:10am to 9:30am Opening Remarks, Secretary Elaine L. Chao
9:30am to 9:35am Introduction of President Bush, Secretary Elaine L. Chao
9:35m to 9:50am Keynote Address, President George W. Bush (invited)
9:50am to 10:15am Retirement Security, Secretary Elaine L. Chao
10:15am to 10:45am Current State of Retirement Savings, Cynthia Drinkwater, Senior Director of Research, International Foundation of Employee Benefit Plans
10:45am to 10:55am Generational Theme, Assistant Secretary Ann Combs, Pension and Welfare Benefits Administration
10:55am to 11:00am Generational Video
11:00am to 11:15am Break
11:15am to 12:15pm Four Concurrent Breakout Sessions, Delegates will

work in one of four teams, each charged with creating a retirement savings campaign for their assigned generation and lifestage. Facilitators and Generational Experts
Group A: The Millennial Generation in Youth (under 20)
Group B: Generation X in Rising Adulthood (20–39)
Group C: The Baby Boom Generation in Midlife (40–59)
Group D: The Silent Generation in Elderhood (60 and above)
12:30pm to 2:00pm Lunch, Importance of Retirement Savings, Federal Reserve Chairman Alan Greenspan
2:00pm to 5:15pm Concurrent Breakout Sessions, Delegates will review model programs and then develop action plans for retirement savings campaigns targeting the assigned generation and lifestage. Facilitators and Generational Experts
5:15pm to 5:45pm Break
5:45pm to 6:00pm Bus Departs Hotel for Reception and Dinner, The Great Hall, Thomas Jefferson Building, Library of Congress
6:00pm to 7:00pm Cocktail Reception
7:00pm to 9:00pm Dinner, Neil Howe and William Strauss, Generational Experts

DAY 2—Friday, March 1, 2002

8:00am to 9:00am Congressional Breakfast, Introduction of Congressional Members, Secretary Elaine L. Chao
9am to 11am Concurrent Breakout Sessions, Delegates will continue to develop and then share proposed action plans for feedback, improvement and discussion. Facilitators and Generational Experts
11am to 12:30pm Final Plenary Session, Action plans and insights for retirement savings campaigns Facilitators
12:30pm to 12:45pm Closing Remarks, Secretary Elaine L. Chao

Signed at Washington, DC, this 31st day of January 2002.

Paul R. Zurawski,

Deputy Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 02–2743 Filed 2–4–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–015)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Ice Management Systems, Inc., of Temecula, CA, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,772,912, entitled ''Environmentally Friendly Deicing/Anti-Icing Fluid,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATE(S): Responses to this notice must be received by March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, NASA Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000, telephone (650) 604–5104.

Dated: January 31, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–2880 Filed 2–5–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before March 8, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on October 26, 2001 (66 FR 54289 and 54290). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Researcher Application.
OMB number: 3095–0016.
Agency form number: NA Forms 14003 and 14003A.
Type of review: Regular.
Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.
Estimated number of respondents: 22,728.
Estimated time per response: 8 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 3,030 hours.
Abstract: The information collection is prescribed by 36 CFR 1254.6. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

2. *Title:* Order Forms for Genealogical Research in the National Archives.
OMB number: 3095–0027.
Agency form numbers: NATF Forms 81, 82, 83, 84. 85, and 86.
Type of review: Regular.
Affected public: Individuals or households.
Estimated number of respondents: 97,600.
Estimated time per response: 10 minutes.
Frequency of response: On occasion.

Estimated total annual burden hours: 16,267 (rounded up).

Abstract: Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 12,000 per year for the NATF 81, approximately 600 per year for the NATF 82, approximately 1,000 per year for the NATF 83, approximately 6,000 per year for the NATF 84, approximately 46,000 per year for the NATF 85, and approximately 32,000 per year for the NATF 86) and the need to obtain specific information from the researcher to search for the records sought. The form will be printed on carbonless paper as a multi-part form to allow the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies.

Dated: January 23, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–2759 Filed 2–5–02; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Agency Information Collections Activities; Submission for OMB Review, Comment Request Evaluation General Operating Support Program

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of Requests for New Information Collection Approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by March 8, 2002. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Send comments to: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

Pub. L. 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization Pub. L. 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Evaluation of IMLS General Operating Support program.

OMB Number: None.

Agency Number: 3137.

Frequency: One-time.

Affected Public: Museums.

Number of Respondents: 1,500.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 750.

Total Annualized capital/startup costs: $46,508.

Total Annual Costs: $0.

Contact. Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 02–2819 Filed 2–5–02; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 445, Request for Approval of Official Foreign Travel.
2. *Current OMB approval number:* 3150–0193.
3. *How often the collection is required:* One time per trip.
4. *Who is required or asked to report:* Consultants, contractors and NRC-invited travelers.
5. *The number of annual respondents:* 200.
6. *The number of hours needed annually to complete the requirement or request:* 1,200.
7. *Abstract:* NRC Form 445, ''Request for Approval of Foreign Travel,'' is supplied by consultants, contractors and NRC invited travelers who must travel to foreign countries in the course of conducting business for the NRC. In accordance with 48 CFR 20, ''NRC Acquisition Regulation,'' contractors traveling to foreign countries are required to complete this form. The information requested includes the name of the Office Director/Regional Administrator recommending travel, approved by the Office Director, Regional Administrator or Chairman, as appropriate, the traveler's identifying information, purpose of travel, a listing of the trip coordinators, other NRC travelers and contractors attending the same meeting, and a proposed itinerary.

Submit, by April 8, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to

properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 31st day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2811 Filed 2–5–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission:* Revision.

2. *The title of the information collection:* NUREG/BR–0238, Materials Annual Fee Billing Handbook, NRC Form 628, ''Financial EDI Authorization'', NUREG/BR–0254, Payment Methods, NRC Form 629, ''Authorization for Payment by Credit Card''.

3. *The form number if applicable:* NRC Form 628, ''Financial EDI Authorization'', NRC Form 629, ''Authorization for Payment by Credit Card''.

4. *How often the collection is required:* Annually.

5. *Who will be required or asked to report:* Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

6. *An estimate of the number of responses:* 530 (50 for NRC Form 628 and 480 for NRC Form 629 and NUREG/BR–0254).

7. *The estimated number of annual respondents:* 530 (50 for the NRC Form 628 and 480 for NRC Form 629 and NUREG/BR–0254).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 42 (4 hours for NRC Form 628 and 38 for NRC Form 629 and NUREG/BR–0254).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit cards. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 8, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0190), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 31st day of January 2002.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2813 Filed 2–5–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 20—Standards for Protection Against Radiation.

2. *Current OMB approval number:* 3150–0014.

3. *How often the collection is required:* Annually for most reports and at license termination for reports dealing with decommissioning.

4. *Who is required or asked to report:* NRC licensees, including those requesting license termination.

5. *The number of annual respondents:* The total annual number of NRC licensees responding to this requirement by either reporting or recordkeeping is 5,048.

6. *The number of hours needed annually to complete the requirement or request:* 141,183.

7. *Abstract:* 10 CFR part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC. These standards require the establishment of radiation protection programs, maintenance of radiation records, recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report

to NRC of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

Submit, by April 8, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 31st day of January, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–2812 Filed 2–5–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board Panel

[Docket No's. 50–369–LR, 50–370–LR, 50–413–LR, and 50–414–LR; ASLBP No. 02–794–01–LR]

In the Matter of Duke Energy Corporation, (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2); Notice of Hearing Before Administrative Judges: Ann Marshall Young, Chair, Dr. Charles N. Kelber, Lester S. Rubenstein

January 31, 2002.

This proceeding concerns the license renewal application (LRA) of Duke Energy Corporation (Duke), seeking approval under 10 CFR part 54 to renew the operating licenses for its McGuire Nuclear Station, Units 1 and 2, and Catawba Nuclear Station, Units 1 and 2, for additional twenty-year periods commencing in 2021, 2023, 2024 and 2026, respectively. After noting receipt of the application, *see* 66 FR 37,072 (July 16, 2001), the NRC Staff determined it to be complete and acceptable for docketing and on August 15, 2001, provided a notice of opportunity for hearing with regard to the application. *See* 66 FR 42,893 (Aug. 15, 2001). In response to this notice, Petitioners Nuclear Information and Resource Service (NIRS) and Blue Ridge Environmental Defense League (BREDL), both appearing through non-attorney representatives, timely filed petitions to intervene and requests for hearing on September 14, 2001. By Order dated October 4, 2001, the Nuclear Regulatory Commission referred the hearing requests and intervention petitions to the Atomic Safety and Licensing Board Panel, CLI–01–20, 54 NRC 211 (2001), and on October 5, 2001, an Atomic Safety and Licensing Board, consisting of the members listed above, was established to preside over the proceeding. *See* 66 FR 52,158 (Oct. 12, 2001).

Notice is hereby given that, by Memorandum and Order dated January 24, 2002, the Board granted Petitioners NIRS and BREDL a hearing, after holding oral argument in Charlotte, North Carolina, on December 18–19, 2001. LBP–02–04, 54 NRC (Jan. 24, 2002). In this Memorandum and Order, the Board found that both NIRS and BREDL have standing to proceed, admitted contentions relating to the anticipated use of plutonium mixed oxide (MOX) fuel in the Duke plants and to ice condensers and station blackout risks, and certified one question relating to terrorism risks to the Commission for its consideration.

This proceeding will be conducted under the Commission's hearing procedures set forth in 10 CFR part 2, subpart G. During the course of the proceeding, the Board may conduct additional oral argument as provided in 10 CFR 2.755, hold additional prehearing conferences pursuant to 10 CFR 2.752, and conduct an evidentiary hearing in accordance with 10 CFR 2.750–.751. The time and place of these sessions will be announced in Licensing Board Orders. Except as limited by the parameters of telephone conferences (which will in any event be transcribed), members of the public are invited to attend any such sessions.

Additionally, as provided in 10 CFR 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in the proceeding. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff. A copy of the statement should also be served on the Chair of the Atomic Safety and Licensing Board. At a later date, the Board will entertain oral limited appearance statements at a location in the vicinity of the Duke plants, which are both situated within a 20-mile radius of Charlotte, North Carolina. Notice of these oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR).

Documents related to this proceeding are available electronically through the Agencywide Documents access and Management System (ADAMS), with access to the public through the NRC's Internet Web site (Public Electronic Reading Room Link, *http://www.nrc.gov/reading-rm/adams.html.* The NRC Public Documents Room (PDR) and many public libraries have terminals for public access to the Internet. Documents that may relate to this proceeding that are dated earlier than December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the PDR, Room 0–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Rockville, Maryland.
Dated: January 31, 2002.

For the Atomic Safety and Licensing Board[1]

Ann Marshall Young,

Chair, Administrative Judge.

[FR Doc. 02–2810 Filed 2–5–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through January 2003.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

Amy C. Smith,

Associate Director for Economic Policy, Office of Management and Budget.

Appendix C (Revised February 2002)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of January 2003. Copies of the updated appendix and the Circular can be obtained in an electronic form through the OMB home page, http://www.whitehouse.gov/OMB/circulars/index.html. Updates of the appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381), as is a table of past years' rates.

Nominal Discount Rates. Nominal interest rates based on the economic assumptions from the budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-year	5-year	7-year	10-year	30-year
4.1	4.5	4.8	5.1	5.8

Real Discount Rates. Real interest rates based on the economic assumptions from the budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

3-year	5-year	7-year	10-year	30-year
2.1	2.8	3.0	3.1	3.9

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 02–2771 Filed 2–5–02; 8:45 am]

BILLING CODE 3110–01–P

[1] Copies of this Notice of Hearing were sent this date by Internet e-mail or facsimile transmission, if available, to all participants or counsel for participants.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration on the Pacific Exchange, Inc. (Leggett & Platt, Inc., Common Stock, $.01 Par Value, and Preferred Stock Purchase Rights) File No. 1–7845

January 31, 2002.

Leggett & Platt, Inc., a Missouri corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value, and Preferred Stock Purchase Rights (''Securities'') from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved a resolution on November 14, 2001 to withdraw its Securities from listing on the Exchange. The Board cited low trading volume and negligible benefit derived from the Issuer's listing as reasons for delisting its Securities from the PCX. The Issuer will continue to list its Securities on the New York Stock Exchange, Inc. (''NYSE'').

The Issuer has stated in its application that it has met the requirements of PCX Rule 5.4(b) governing an issuer's voluntary withdrawal of a security from listing and registration on the Exchange. The Issuer's application relates solely to the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

withdrawal of the Securities from listing on the PCX and shall have no affect upon the Securities' continued listing on the NYSE and registration under Section 12(b) of the Act.[3]

Any interested person may, on or before February 22, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–2864 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the American Stock Exchange LLC (Scientific Games Corporation, Class A Common Stock, $.01 par value) File No. 1–11693

January 31, 2002.

Scientific Games Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

On January 9, 2002, the Board of Directors of the Issuer approved resolutions to withdraw the Issuer's Security from listing on the Amex and to list it on the Nasdaq National Market, Inc. (''Nasdaq''). The Issuer stated in its application that trading in the Security on the Amex ceased on January 29, 2002, and trading of the Security began on the Nasdaq at the opening of business on January 29, 2002. The Issuer made the decision to withdraw its Security from the Amex and list the Security on Nasdaq in order to increase the visibility and liquidity of the Security.

Any interested person may, on or before February 22, 2002 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–2863 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25406; 812–12764]

Credit Suisse First Boston Corporation, et al.; Notice of Application

January 30, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Applicants have received a temporary order exempting them and other entities of which Credit Suisse First Boston Corporation (''CSFB'') is or becomes an affiliated person from section 9(a) of the Act, with respect to a securities-related injunction entered into on January 29, 2002, until the Commission takes final action on an application for a permanent order. Applicants also have requested a permanent order.

Applicants: CSFB, Credit Suisse Asset Management, LLC (''CSAM Americas''), Credit Suisse Asset Management Securities, Inc. (''CSAM Securities''), Credit Suisse Asset Management Limited (''CSAM London''), and Credit Suisse First Boston, Inc. (''CSFBI'').

Filing Date: The application was filed on January 30, 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 25, 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, CSFB and CSFBI, Eleven Madison Avenue, New York, NY 10010–3629; CSAM Americas and CSAM Securities, 466 Lexington Avenue, New York, NY 10017–3147; CSAM London, Beaufort House, 15 St. Botolph Street, London (England), United Kingdom EC3A 7JJ.

FOR FURTHER INFORMATION, CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Michael W. Mundt, Senior Special Counsel, 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 (tel. 202–942–8090).

Applicants' Representations

1. CSFB, a Massachusetts corporation, is a full service investment banking firm and is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'') and as an investment adviser under the

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[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Investment Advisers Act of 1940 (''Advisers Act''). CSAM Americas, a Delaware limited liability company, is registered as an investment adviser under the Advisers Act. CSAM Securities, a New York corporation, is registered as a broker-dealer under the Exchange Act. CSAM London, a corporation organized under the laws of England and Wales, is registered as an investment adviser under the Advisers Act. CSFB, CSAM Americas, and CSAM Securities are indirect wholly owned subsidiaries of CSFBI, which is an indirect wholly owned subsidiary of Credit Suisse Group (''Group'') that functions as the holding company for most of the Group's US investment banking and asset management operations. CSAM London and CSFB are indirect subsidiaries of Credit Suisse First Boston. CSAM Americas and CSAM London currently serve as investment advisers (in some case, as subadvisers) to a number of registered open-end and closed-end management investment companies, and CSAM Securities currently serves as principal underwriter to a number of registered open-end management investment companies (together, such investment companies are ''Funds'').[1]

2. On January 29, 2002, the U.S. District Court for the District of Columbia entered a Final Judgment of Permanent Injunction and Other Relief (''Final Judgment'') in a matter brought by the Commission.[2] The Commission alleged that CSFB allocated ''hot'' initial public offerings (''IPOs'') to customers willing to pay higher than normal commissions to CSFB and violated section 17(a) of the Exchange Act, rule 17a–3 under the Exchange Act, and Conduct Rules 2110 and 2330 of the National Association of Securities Dealers, Inc. (''NASD''). The Final Judgment, among other things, enjoined CSFB, directly or through its officers, directors, agents, and employees, from violating section 17(a), rule 17a–3, and NASD Conduct Rules 2110 and 3220. Additionally, the Final Judgment ordered CSFB to pay disgorgement of $70 million, pay a civil penalty of $30 million, and comply with certain undertakings, including an undertaking to adopt and implement certain policies and procedures relating to the allocation of IPO shares.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Applicants state that, as a result of the Final Judgment, applicants may be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) of the Act seeking temporary and permanent orders exempting the Covered Persons from the provisions of section 9(a) of the Act.

3. Applicants state that the prohibitions of section 9(a) as applied to the Covered Persons would be unduly and disproportionately severe and that the conduct of applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants state that the matters forming the basis of the Final Judgment did not involve any registered investment companies. Applicants state that no current or former employee of any of the applicants who is or was involved in providing advisory or underwriting services to registered investment companies advised or underwritten by the applicants was involved in the conduct resulting in the Final Judgment. CSFB also will adopt and implement certain policies and procedures, as required in the Final Judgment, regarding allocation of IPO shares.

4. CSAM Americas, CSAM London, and CSAM Securities will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds regarding the Final Judgment and the reasons they believe relief pursuant to section 9(c) is appropriate. CSAM Americas, CSAM London, and CSAM Securities will provide the Funds with all information concerning the Final Judgment and the exemptive application necessary for those Funds to fulfill their disclosure and other obligations under the federal securities laws.

5. Applicants assert that the inability of CSAM Americas and CSAM London to continue providing advisory services to the Funds and the inability of CSAM Securities to continue to serve as principal underwriter to Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that if they were prohibited from providing services to registered investment companies, the effect on their businesses and employees would be severe.

6. Applicants note that they have previously received exemptive orders pursuant to section 9(c) of the Act. In 1986, The First Boston Corporation (''FBC,'' a former name of CSFB) became subject to a permanent injunction arising out of a violation of section 10(b) of the Exchange Act and rule 10b–5 under the Exchange Act involving purchases for its own account of certain securities while in possession of material nonpublic information (''1986 Injunction'').[3] The Commission issued orders under section 9(c) with respect to the 1986 Injunction.[4] In 1975, Credit Suisse (currently known as Credit Suisse First Boston) became subject to a permanent injunction arising out of violations of various provisions of the federal securities laws in connection with the distribution of unregistered gold-related securities (''1975 Injunction'').[5] The Commission issued orders under section 9(c) with respect to the 1975 Injunction.[6] Applicants do not believe that the existence of these prior

[1] Applicants request that any relief granted pursuant to the application also apply to any other entity of which CSFB is or hereafter becomes an affiliated person (together with the applicants, the ''Covered Persons'').

[2] *Securities and Exchange Commission* v. *Credit Suisse First Boston Corporation*, Final Judgment of Permanent Injunction and Other Relief as to Credit Suisse First Boston Corporation, 02 Civ. 00090 (RWR) (D.D.C., Jan. 29, 2002).

[3] *Securities and Exchange Commission v. The First Boston Corporation,* Final Judgment of Permanent Injunction and Other Relief as to The First Boston Corporation, 86 Civ. 3524 (S.D.N.Y. May 5, 1986).

[4] *See, e.g., First Boston Asset Management Corporation, et al.,* Investment Company Act Release Nos. 15086 (May 5, 1986) (notice and temporary order) and 15221 (July 24, 1986) (permanent order).

[5] *Securities and Exchange Commission v. American Institute Counselors, Inc., et al.,* Final Judgment of Permanent Injunction and Other Relief as to American Institute Counselors, Inc., et al., 75 Civ. 1965 (D.D.C. Nov. 25, 1975).

[6] *See, e.g., First Boston Corporation,* Investment Company Act Release Nos. 12867 (Dec. 3, 1982) (notice and temporary order) and 12928 (Dec. 27, 1982) (permanent order).

violations should preclude them from obtaining the requested relief.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly, *it is hereby ordered*, under section 9(c), that the Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Final Judgment, subject to the condition in the application, until the Commission takes final action on an application for a permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2794 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXHANGE COMMISSION

(Release No. 34–45360; File No. SR–Amex–2001–102)

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change Relating to a Retroactive Increase in Floor, Membership and Options Trading Fees

January 29, 2002.

I. Introduction and Description of the Proposal

On December 6, 2001, the American Stock Exchange LLC (''Amex'' 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 apply retroactively fee increases made under SR–Amex–2001–101,[3] which was filed for immediate effectiveness pursuant to section 19(b)(3)(A)(ii) of the Act.[4] Specifically, the Exchange proposed to increase floor, membership and option trading fees and to impose the increased license fees and to eliminate of the fee cap for options as of October 1, 2001. Amendment No. 1 was filed with the Commission on December 17, 2001.[5]

The proposed rule change was published for comment, as amended, in the **Federal Register** on December 27, 2001.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act [7] and the rules and regulations thereunder applicable to a national securities exchange.[8] The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act [9], which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the increase reflects additional costs that Amex has represented it has incurred since August 2001 for services provided to issuers. The Amex stated that it has committed additional resources to provide enhancements to the Floor, and major improvements in technology, facilities and services, which included a major expansion of the Amex Trading Floor in 2001. The Exchange represented that the increase in options transactions charges is necessitated by the large and increasing costs incurred by the Exchange in implementing options trading technology. The Exchange further represented that it has subsidized such expenses before August 1, 2001.

III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [10], that the proposed rule change (File No. SR–Amex–2001–102), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2791 Filed 2–5–02; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) for a description of these increased fees. (SR–Amex–2001–101).

[4] 15 U.S.C. 78s(b)(3)(a)(ii).

[5] *See* letter from Claire P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 14, 2001 (''Amendment No. 1''). In Amendment No. 1, the Amex provided greater detail as to the basis for the proposed rule change.

[6] *See* Securities Exchange Act Release No. 45165 (December 27, 2001), 66 FR 66957.

[7] 15 U.S.C. 78f.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45365; File No. SR–AMEX–2001–106]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Unlisted Trading Privileges in Nasdaq National Market Securities

January 30, 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 American Stock Exchange LLC (''Amex'' 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 Amex filed an amendment to its proposal on January 14, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission (January 11, 2002) (''Amendment No. 1'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt new Amex Rule 118 and to amend Amex Rules 1, 3, 7, 24, 115, 170, 175, 190, 205 and Section 950 of the Amex Company Guide to provide for the trading of Nasdaq National Market securities pursuant to unlisted trading privileges. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 1. Hours of Business

No change.

Commentary

.01 through .04. No change.

.05 The hours of business for a security traded on the Exchange pursuant to unlisted trading privileges shall be the same as the hours during which the security is traded in the primary market for such security.

Rule 3. Excessive Dealing

(a) No change.

(b) Trading with non-member.

No regular or options principal member shall effect, in the rooms of the Exchange, a transaction with an associate member or with a non-member, in any security dealt in on the Exchange; but this rule shall not prohibit transactions permitted by *Rule 118*, Rule 152 or by Section 7 of Part II of the Rules of the Exchange or with an employee of the Exchange or American Stock Exchange Clearing Corporation engaged in carrying out arrangements approved by the Board of Governors to facilitate the borrowing and lending of money.

(c) through end. No change.

Rule 7. Short Sales

No change.

Commentary

.01 No change.

.02 This Rule 7 does not apply to transactions on the Exchange in Nasdaq National Market securities pursuant to unlisted trading privileges effected under Exchange Rule 118.

Rule 24. Block Transactions

(a) No change.

(b) The restrictions of paragraph (a) shall not apply to:

(i) through (v) No change.

(vi) orders in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

Rule 115. Exchange Procedures for Use of Unusual Market Exception

No change.

Commentary .01.

1. and 2. No change.

3. The Market Operations Division, either upon receiving notification from a Floor Official with respect to a specialist as provided in paragraph 1(b) or upon making its own determination with respect to the Exchange as provided in paragraph 2, shall notify the Securities Industry Automation Corporation (and request that it notify quotation vendors) *or, with respect to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, the Processor for Nasdaq National Market securities,* regarding the Exchange's inability to accurately collect, process, and make available the quotation data required by SEC.

Rule 11Ac1–1.

4. No change.

Commentary .02 No change.

Trading in Nasdaq National Market Securities

Rule 118. (a) Definitions

(i) The term ''Nasdaq National Market security'' shall mean any security designated as such pursuant to National Association of Securities Dealers (''NASD'') Rule 4200 and as to which the Exchange has extended unlisted trading privileges pursuant to Section 12(f) of the Securities Exchange Act of 1934.

(ii) The term ''Nasdaq System'' shall mean the Nasdaq's Automated Quotation System.

(b) Except to the extent that the provisions of Rule 118 govern, or unless the context otherwise requires, the provisions of the Constitution and Rules of the Exchange are applicable to trading in Nasdaq National Market securities.

(c) Each Exchange specialist shall permit each Nasdaq System market maker, acting in its capacity as market maker, direct telephone access to the specialist post in each Nasdaq National Market security in which such market maker is registered as a market maker. Such access shall include appropriate procedures to assure the timely response to communications received through telephone access. Nasdaq System market makers may use such telephone access to transmit orders for execution on the Exchange. Any order received on the Floor via telephone from a Nasdaq System market maker shall be effected in accordance with the rules relating to the making of bids and offers and transactions on the Floor, subject to exceptions to Exchange rules applicable to trading in Nasdaq National Market Securities as set forth in Commentary .01 to this Rule.

(d) The Exchange will display on its trading floor the quotations distributed by any Nasdaq System market maker in Nasdaq National Market securities. Exchange specialists may send orders from the Floor of the Exchange for execution via telephone to any Nasdaq System market maker in each Nasdaq National Market security in which it displays quotations. Quotations in Nasdaq National Market securities from other market centers shall have no standing in the trading crowds on the Floor.

(e) Pursuant to the Nasdaq Unlisted Trading Privileges Plan (''Plan''), the Exchange shall report to the Plan Processor intermarket transactions effected on the Exchange for which the Exchange member is the seller.

(f) Comparison of intermarket transactions in Nasdaq National Market securities will be made pursuant to procedures to be established between Nasdaq and the Exchange.

(g) Registration of Specialists—Specialists who wish to trade Nasdaq National Market securities must be registered and qualified by the Exchange. Such persons will be required to:

(1) if conducting business with the public, obtain a Series 7, General Securities Representative license; and,

(2) complete a training period as deemed adequate by the Exchange.

(h) Non-Liability of Exchange-Article IV, Section 1(e) of the Exchange Constitution shall apply to trading of Nasdaq National Market securities on the Exchange pursuant to unlisted trading privileges, and the Exchange, its affiliates, and any of its or their respective officers, governors, committee members, employees or agents shall not be liable to a member of the Exchange, a member organization, or a person associated with a member or member organization to the extent provided in Article IV, Section 1(e).

(i) Specialists in Nasdaq National Market securities are subject to the financial requirements set forth in Rule 171, Commentary .04.

Commentary

.01 The following rules refer to trading in Nasdaq National Market securities and should be consulted by members and member organizations trading Nasdaq National Market securities on the Floor: Rule 1 (Commentary .05); Rule 3; Rule 7 (Commentary .02); Rule 24(b); Rule 115 (Commentary .01); Rule 170 (Commentary .11); Rule 175 (Commentary .01); Rule 190

(Commentary .06); and Rule 205 (Commentary .05).

Rule 170. Registration and Functions of Specialists

(a) through (e) No change.

Commentary

.01 through .10 No change.

.11 The following provisions of this Rule shall not apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges: paragraph (e), Commentary .01, .02, .05, .07, .08 and .09.

Rule 175. Specialist Prohibitions

(a) through (c) No change.

Commentary

.01 Paragraph (a)(1) and paragraph (b) of this Rule shall not apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges. In addition, ''Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175'' shall not apply to such trading.

Rule 190. Specialists' Transactions with Public Customers

(a) through (e) No change.

Commentary

.01 through .05 No change.

.06 Paragraph (b) of this Rule shall not apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

Rule 205. Manner of Executing Odd-Lot Orders

No change.

Commentary

.01 through .04. No change.

.05 With respect to odd-lot market and marketable limit orders in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, orders to sell (buy) shall be filled at the best bid (offer) disseminated pursuant to SEC Rule 11Ac1–1 at the time the order has been received at the trading post or through the Amex Order File.

Company Guide Sec. 950 Explanation of Difference Between Listed and Unlisted Trading Privileges

First paragraph—No change.

Subject to Commentary .01 of this section, [S]securities other than those fully listed on the Exchange were, in the past, admitted to dealings on the Exchange under the designation ''admitted to unlisted trading privileges''. Securities in this category were admitted to dealings without a formal listing application or request for listing by the issuing company. Most of these securities were admitted to dealings prior to 1934, and further admission of securities to this type of dealings has been virtually terminated. Since companies whose securities are admitted to unlisted trading privileges never filed any listing application or request with the Exchange for trading privileges in their securities, they are not subject to any of the listing agreements applicable to fully listed companies.

Commentary

.01 Notwithstanding the provisions of Section 950, the Exchange may extend unlisted trading privileges to Nasdaq National Market securities pursuant to Section 12(f) of the Securities Exchange Act of 1934. Nasdaq National Market securities are designated as such by the NASD, pursuant to NASD rules. The Exchange has implemented certain rules applicable to trading in Nasdaq National Market securities. See Amex Rule 118.

* * * * *

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 is proposing rules to accommodate trading of Nasdaq National Market securities on the Exchange pursuant to unlisted trading privileges (''UTP''), in accordance with provisions of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Plan''). The Exchange is a participant in the Plan. Exchange trading in Nasdaq National Market securities will be governed by proposed Amex Rule 118. The Exchange intends to limit Nasdaq UTP trading to Nasdaq National Market issues and not to include Nasdaq SmallCap issues at this time.

Proposed Rule 118 includes the following provisions:

(a) Defines Nasdaq National Market security and Nasdaq System.

(b) States that the Exchange Constitution and rules apply to trading Nasdaq National Market securities, except to the extent that Rule 118 governs or unless the context otherwise requires.

(c) Requires Amex specialists to permit Nasdaq market makers direct telephone access to the specialist post and allows Nasdaq market makers to use telephone access to transmit orders for execution on the Amex.

(d) Provides that quotations distributed by Nasdaq market makers will be displayed on the Floor, that Amex specialists may send orders from the Floor for execution via telephone to Nasdaq market makers, and that quotations in Nasdaq securities from other market centers have no standing on the Floor.

(e) Provides that the Exchange will report intermarket transactions in which the Exchange member is the seller to the Nasdaq UTP Processor.

(f) Provides that comparison of intermarket transactions in Nasdaq National Market securities will be made pursuant to procedures to be established between Nasdaq and the Exchange.[4]

(g) Provides that specialists in Nasdaq securities must be registered and qualified, and includes specified testing and training requirements.

(h) Provides for a disclaimer of Exchange liability with request to transactions on the Exchange in Nasdaq National Market securities, in accordance with Article IV, Section 1(e) of the Exchange Constitution.

(i) Provides that the specialist financial requirements of Rule 171, Commentary .04 apply to specialists in Nasdaq securities. Rule 171, Commentary .04 currently provides that a specialist in a security principally traded or priced in another U.S. market must maintain a cash or net liquid asset position sufficient to assume a position of 20 trading units. For Amex-listed securities, the requirement is 60 trading units.

[4] The Commission notes that these procedures must be established before the Commission can take final action on this proposal.

The following existing Amex rules also would be amended to accommodate Nasdaq UTP trading[5]:

Rule 1, Comm. .05

Provides that the hours of business for securities traded on the Exchange pursuant to UTP are the same as the hours of trading in the primary market for such securities (Comm. .05).[6]

Rule 3

Exempts trading with non-member Nasdaq market makers from the prohibition on trading with non-members.

Rule 7

States that Rule 7, which includes the short selling ''tick-test'' restriction of SEC Rule 10a–1, does not apply to transactions in Nasdaq National Market securities effected under Rule 118.

Rule 24

Exempts Nasdaq National Market securities from the rule's block transactions restrictions. Rule 24 states that, after learning about a trade executed or about to be executed on the Floor involving 10,000 shares or more, a member or employee of a member or member organization cannot initiate or transmit to the Floor an order for the account of a member or member organization for two minutes following the print of such trade on the tape. The Exchange does not believe it is appropriate to apply the restrictions in Rule 124 to Nasdaq National Market securities, for which Amex would not be the primary market.

Rule 115

Amends Commentary .01(3) to provide for notification to the Processor for Nasdaq National Market securities in the event unusual market activity or an unusual condition exists that prevents the specialist from updating quotations on a timely basis.

Rule 170, Comm. .10

Exempts specialists from Rule 170, paragraph (e) and specified Commentary to the rule. Rule 170(e) restricts members or persons affiliated with a specialist or the specialist's member organization from purchasing or selling a specialty security for an account in which such person or party has an interest, except when the specialist is acting pursuant to Rule 170(c) or (d) (*e.g.,* is engaged in dealings reasonably necessary to maintain a fair and orderly market, and to maintain price continuity and reasonable depth). The requirements of Rule 170 are imposed by Amex as a primary market but are not imposed by regional exchanges or Nasdaq. Therefore, the proposed exemption provides regulatory parity with other markets trading Nasdaq securities. The Exchange notes that the requirements of Rules 150 and 155 will apply to orders entered with a specialist in Nasdaq National Market securities from affiliates of the specialist.

The rationale underlying the proposed exemption from paragraph (e) also underlies the proposed exemptions from the stabilization and liquidating transaction restrictions of Commentaries .01 and .02;[7] restrictions on adjustment of a LIFO inventory (Commentary .05), and restrictions on assignment to the specialist's investment account (Commentary .07). Commentaries .08 and .09, which relate to transactions in the Intermarket Trading System (''ITS'') are inapplicable insofar as Nasdaq securities are not traded in ITS.

Rule 175

Provides that Rule 175(a)(1) and (b) and Rule 175 ''Guidelines'' shall not apply to Nasdaq UTP securities. Rule 175(a)(1) provides that a specialist, the specialist's member organization, or other specified persons cannot acquire, hold or grant an interest in any option to purchase or sell or to receive or deliver shares of the specialist's specialty stock, except as provided by Rule 175. Paragraph (b) sets out restrictions on specialists' ability to establish or maintain positions in listed options overlying their specialty securities, which positions must conform to the rule's ''Guidelines.'' The Exchange does not believe these provisions are appropriately applied to options positions overlying Nasdaq UTP securities insofar as the Exchange would not be the primary market for these securities, and restrictions such as those in Rule 175 are not imposed by regional exchanges or Nasdaq.

Rule 190

Provides that paragraph (b) shall not apply to Nasdaq UTP securities. Paragraph (b) prohibits specialists from accepting an order to buy or sell the specialist's specialty securities directly from specified entities, including the issuer; an officer, director or 10% shareholder in the issuer; a pension fund; or a bank, insurance company or investment company. The Exchange does not view the potential abuses addressed by paragraph (b) as raised by trading in Nasdaq UTP securities insofar as the Exchange would not be the primary market for these securities, and restrictions such as those in Rule 190(b) are not imposed by regional exchanges or Nasdaq.

Rule 205, Comm. .05

Provides that odd-lot and marketable limit orders should be filled at the best bid or offer disseminated through Nasdaq.

Company Guide

Section 950.

Adds Commentary .01 to state that the Exchange may trade Nasdaq securities pursuant to UTP. This provision would distinguish Nasdaq UTP trading from Amex securities that were admitted to unlisted trading privileges and that, for the most part, were traded on the Amex prior to 1934.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] The Exchange has separately filed pursuant to Rule 19b–4 allocation procedures applicable to Nasdaq National Market securities (SR–Amex–2001–107).

[6] The Commission notes that the Plan defines Primary Market. However, in draft Plan Amendment No. 13, the Plan participants propose to delete the Primary Market definition and add a Listing Market definition. If the Primary Market definition is ultimately deleted and the Listing Market definition is added to the Plan, the Exchange should reflect this change in its rules where applicable.

[7] Stabilization requirements refer to Amex rules that generally prohibit Amex specialists from buying on plus ticks (*i.e.,* a trade at a positive variation from the prior transaction) or selling on minus ticks (*i.e.,* a trade at a negative variation from the prior transaction). The Exchange currently has a proposed rule change pending with the Commission that would revise stabilization requirements as applied to Amex specialists. *See* SR–Amex–2001–54.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–2001–106 and should be submitted by February 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2793 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45366; File No. SR–Amex–2002–06)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Implementation of a Fee for the Issuance of Temporary Identification Badges

January 30, 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 24, 2002, the American Stock Exchange LLC (''Amex'' 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b–4 of the Act, proposes to charge a flat fee of $50 per occasion for the issuance of temporary identification badges for any member or member firm employee who fails to bring his or her badge to the Exchange. According to the Exchange, members and/or their firms will be automatically billed monthly for each temporary idenitification badge for both affiliated employees and members.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, 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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, sest forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex represents that current circumstances require heightened security measures, and thus, that the Amex's Security Department's resources need to be focused on these measures. According to the Amex, issuing temporary identification badges interferes with more important duties and is an expense to the Exchange. As a result, the Amex is proposing to charge a flat fee of $50 per occasion for the issuance of temporary identification badges for any member or member firm employee who fails to bring his or her badge to the Exchange. Members and/or their firms will be automatically billed monthly for each temporary identification badge for both affiliated employees and members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)[3] of the Act, in general, and Section 6(b)(4) of the Act,[4] in particular, because 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 propposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4[6] 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

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–06 and should be submitted by February 27, 2002.

For the commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2865 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45351; File No. SR–PCX–2001–51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Schedule of Fees and Charges for Options Market Share Shortfall Fee, Surcharge Fee, and Options Issue Transfer Fee

January 29, 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 26, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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 the Exchange. 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify its Schedule of Fees and Charges to reflect a new options market share shortfall fee, surcharge fee, and options issue transfer fee.

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 PCX 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 PCX 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

Option Market Share Shortfall Fee

The Exchange is proposing to adopt a new Lead Market Maker (''LMM'') shortfall fee, of $.35 per contract, to be paid by the LMM allocated any ''Top 120 Option'' if at least 10 percent of the total national monthly contract volume (''total volume'') for such Top 120 Option is not achieved on the PCX in that month.[3] A ''Top 120 Option'' is defined by the proposal as one of the 120 most actively traded equity options in terms of the total number of contracts traded nationally for a specified month based on volume reflected by the Options Clearing Corporation (''OCC'')[4].

The PCX states that at the end of each trading month, the total number of contracts executed on the PCX (the ''PCX volume'') in a particular Top 120 Option will be subtracted from the amount that represents 10 percent of the total national volume for that option (''10% total volume'') to determine the number of contracts that represent the ''shortfall'' for that Top 120 Option for purposes of calculating this fee.

Specifically, the PCX will apply the following calculation: 10% total volume minus PCX volume equals the shortfall volume. If the shortfall volume is a number of contracts greater than zero, the shortfall volume will be multiplied by $.35 per contract to determine the LMM shortfall fee for that month for that Top 120 Option.[5]

In sum, if the PCX fails to garner 10 percent of the total volume for a particular month for a Top 120 Option, the LMM for that Top 120 Option would be required to pay the Exchange the LMM shortfall fee for each contract that falls below 10 percent up to the amount that would represent 10 percent of the total volume for that option.[6]

The total volume for purposes of the 10 percent threshold is based on the current month's volume.[7] However, the determination of whether an equity option is considered a Top 120 Option for purposes of the fee is based on a different time period. The Top 120 Options for January will be based on November's volume. Thereafter, the Exchange will continue the two-month differentiation, so that February's Top 120 Options will be based on December's volume, and March's Top 120 Options will be based on January's volume, and so forth.

The purpose of the proposed rule change is to amend PCX's schedule of dues, fees and charges to impose a fee for any deficiency between what the PCX actually traded and 10 percent of the total volume for each respective month. PCX intends the proposed fee to provide the PCX with the approximate revenue it would have received had a Top 120 Option traded at least 10 percent of the total volume in a given month on the PCX. The PCX represents that the options LMM shortfall fee

[3] The shortfall fee is similar to the Philadelphia Stock Exchange's shortfall fee. *See* Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000).

[4] The PCX intends to divide by two the total volume amount reported by OCC, which reflects both sides of an executed transaction, thus avoiding one trade being counted twice for purposes of determining overall volume.

[5] If the result of the first equation (10% total volume minus PCX volume) was negative, meaning the PCX volume exceeded 10% total volume for a Top 120 Option, then there would be no shortfall to which the LMM shortfall fee would apply. Under the proposal, any excess volume (over the 10% total volume target) could not be carried over to another month, nor could any excess volume in one option be assigned to another option. Telephone conversation between Cindy Sink, Senior Attorney, Regulatory Policy, PCX, and Ira Brandriss, Special Counsel, and John Riedel, Attorney-Advisor, Division of Market Regulation (''Division''), Commission, January 15, 2002 (''Telephone conversation with the PCX'').

[6] Telephone conversation with the PCX.

[7] For example, for the month of December, the LMM shortfall fee would apply to 10 percent of total December volume minus the PCX December volume.

generally parallels the amount that the Exchange would have received if an equity option contract were traded on the PCX with an LMM.[8]

Pursuant to PCX rules, options are allocated to LMMs based on certain factors. LMMs submit written applications that include the LMMs experience and capitalization, a demonstration of the LMM's ability to trade the particular option, and any other reasons why the LMM believes it should be assigned or allocated the security.[9] Once an option is allocated to an LMM, certain performance reviews may be conducted.[10] A Top 120 Option is unique and may require specific qualifications as determined by the Options Allocation Committee (''OAC'') and strategic efforts.

Moreover, the PCX believes that the options traded by the LMM and the transactions related thereto, may be especially valuable to that LMM and to the Exchange due to their potential profitability. Therefore, the Exchange believes that the LMM should compete for order flow in the national market, because that LMM is the key party responsible for marketing and receiving order flow in that particular option. The PCX believes that an LMM's willingness to apply to be or continue to be an LMM in a Top 120 Option, in light of the shortfall fees, is an important tangible demonstration of commitment to making the efforts required to achieve at least a 10 percent national volume level at the PCX.

The Exchange believes that it is necessary to continue to attract order flow to the Exchange in order to remain competitive. The proposed fee should encourage LMMs to vigorously compete for order flow, which not only enhances the LMM's role, but also provides additional revenue to the Exchange. Moreover, the Exchange expects that LMMs' efforts to maintain at least 10 percent of the total volume should contribute to deeper, more liquid markets and tighter spreads. Thus, competition should be enhanced, and important auction market principles preserved.

The above-described proposed fee will be effective the January 2002 trade month.

Surcharge Fee

The Exchange proposes to adopt a surcharge fee of 2.5% on the total amount billed on regular PCX member monthly invoices. The rate will be applied to total invoice amounts excluding registered representative fees, marketing fees and member dues and fines. This fee includes fees, charges, and pass through fees, and applies only to Options billings, not Equities and Clearing billings. The PCX states that the purpose of the fee is to generate revenue for the Exchange.

The above-described proposed fee will be effective the January 2002 trade month.

Options Issue Transfer Fee

The Exchange proposes to establish a new fee for transfers of options issues. The fee imposes a charge of $1000 per option issue transferred upon the transferor. PCX Rule 6.82(e) provides for allocation of option issues to LMMs by the Options Allocation Committee (''OAC''). The OAC selects the candidate who appears best able to perform the functions of an LMM in the designated option issue. Factors to be considered for selection include, but are not limited to, experience with trading the option issue; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; and trading crowd evaluations.[11] Issues may only be transferred by a firm or between nominees with the express approval of the OAC.[12] To transfer issues, the transferor must file an application with the Exchange. That application is posted to the floor for comment. After the comment period, the OAC evaluates and approves or denies the transfer. The Exchange researches the relevant statistics for the OAC evaluation. Each issue transferred expends Exchange resources.

Transfers of issues were first permitted in June 2000. Since that time, the Exchange has processed 37 transfers involving over 452 issues. The PCX states that the purpose of the fee is to cover administrative fees relating to transfers.

The above described proposed transfer fee will be effective January 1, 2002.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[13] in general, and section 6(b)(4),[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 not solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[15] and subparagraph (f)(2) of Rule 19b–4[16] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, 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

[8] The $.35 is intended by the PCX to represent the following amounts, which, the PCX believes, may be generated by a trade on the PCX with an LMM: a $0.21 LMM transaction fee, an estimated $.06 from Options Price Reporting Authority (recognizing that tape revenue can fluctuate significantly due to changes in trade and pool size), and a $.05 options comparison fee, all of which could have been collected by the Exchange per contract traded by the crowd. Transactions not involving an LMM would generate less revenue. The above listing of fees commonly charged in an LMM transaction does not represent the fees generated by every such transaction, but has been utilized by the PCX on a general basis, with room for fluctuation, to calculate what it believes to be an appropriate shortfall fee. Telephone conversation with the PCX.

[9] *See* PCX Rule 6.82(e)(1).

[10] *See* PCX Rule 6.82(f).

[11] *See* PCX Rule 6.82(e)(1).

[11] *See* PCX Rule 6.82(e)(2).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b-4(f)(2).

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 PCX. All submissions should refer to file number SR–PCX 2001–51 and should be submitted by February 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–2792 Filed 2–5–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #3885]

Notice of Meetings; United States International Telecommunication Advisory Committee, Radiocommunication Sector

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU).

The ITAC will meet from 1 to 5 on Wednesday, February 20, 2002 to complete preparations for ITU–R Study Group 6 (Broadcasting). This meeting will be held in room 8–B411 at the Federal Communications Commission, 445 12th St., SW., Washington, DC, 20554.

Members of the general public may attend these meetings. Directions to meeting location and actual room assignments may be determined by e-mailing *holidaycc@state.gov.*

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Dated: January 30, 2002.

Cecily Holiday,

Director, Radiocommunication, U.S. Department of State.

[FR Doc. 02–2862 Filed 2–5–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Notice Number 3883]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee, will conduct an open meeting at 9:30 a.m. on Tuesday, February 26, 2002, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting will be to review the agenda items to be considered at the forty-seventh Session of the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC 47) to be held at the IMO headquarters in London from 4 through 8 March 2002. Proposed U.S. positions on the agenda items for MEPC 47 will be discussed. The major items for discussion for MEPC 47 include the following:

a. Harmful aquatic organisms in ballast water;

b. Recycling of ships;

c. Prevention of air pollution from ships;

d. Implementation of the Convention on the Prevention on Oil Pollution Preparedness, Response and Co-operation (OPRC) and the OPRC Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 and relevant conference resolutions;

e. Interpretation and amendments of Convention on the Prevention of Oil Pollution from Ships (MARPOL 73/78) and related Codes;

f. Harmful effects of the use of anti-fouling paints for ships;

g. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

h. Inadequacy of reception facilities;

i. Promotion of implementation and enforcement of MARPOL 73/78 and related Codes;

j. Preparation for the Ten-Year Review Conference of the United Nations Conference on Environment and Development (RIO+10);

k. Future role of formal safety assessment and human element issues; and

l. Matters related to the 1973 Intervention Protocol.

Please note that hard copies of documents associated with MEPC 47 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD-ROM on the day of the meeting. To requests documents prior to the meeting date, please write to the address provided below or download the documents from our web site.

Members of the public are invited to attend this meeting up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Lieutenant Dave Beck, U.S. Coast Guard, Environmental Standards Division (G–MSO–4), 2100 Second Street, SW., Washington, DC 20593–0001; telephone (202) 267–0713; fax (202) 267–4690, e-mail *dbeck@comdt.uscg.mil*; or on-line at: *http://www.uscg.mil/hq/g-m/mso/mso4/mepc.html.*

Dated: January 28, 2002.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–2861 Filed 2–5–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Virginia Highlands Airport, Abingdon, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 0.45 acres of land at the Virginia Highlands Airport, Abingdon, Virginia to Highlands Properties, Inc. in exchange for 1.4 acres of land within the Runway Protection Zone. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land has been assessed for both parcels and will be an even exchange for the Airport Sponsor.

DATES: Comments must be received on or before March 8, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, P.O. Box 16780, Washington, DC 20041–6780.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ronald Deloney, Airport Manager, Virginia Highlands Airport, at the following address: Ronald Deloney, Airport Manager, Virginia Highlands Airport Commission, P.O. Box 631, Abingdon, Virginia 24212–0631.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington

Airports District Office, P.O. Box 16780, Washington, DC 20041–6780; telephone (703) 661–1354, fax (703) 661–1370, e-mail *Terry.Page@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia, on November 2, 2001.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 02–2829 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–08]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington DC., on February 1, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10932 (previously Docket No. 29058).

Petitioner: Mr. John Leo Heverling.

Section of 14 CFR Affected: 14 CFR 91.109(a) and 9(b)(3).

Description of Relief Sought/Disposition: To permit Mr. Heverling to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, 11/09/2001, Exemption No. 6719B.*

Docket No.: FAA–2001–10875 (previously Docket No. 29534.

Petitioner: Fresh Water Adventures, Inc.

Section of 14 CFR Affected: 14 CFR 91.323(b)(4).

Description of Relief Sought/Disposition: To permit FWA to operate its Grumman goose G–21A amphibian aircraft at a weight that is in excess of that airplane's maximum certificated weight. *Grant, 11/06/2001, Exemption No. 7070A.*

Docket No.: FAA–2001–9940 (previously Docket No. 28639).

Petitioner: Peninsula Airways, Inc., dba PenAir.

Section of 14 CFR Affected: 14 CFR 121.574(a)(1) and (3).

Description of Relief Sought/Disposition: To permit the carriage and operation of oxygen storage and dispensing equipment for medical use by patients requiring emergency or continuing medical attention while onboard an aircraft operated by PenAir when the equipment is furnished and maintained by a hospital treating the patient. *Grant, 11/06/2001, Exemption No. 6523C.*

[FR Doc. 02–2831 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–05–C–00–GPT To Impose and use the Revenue From a Passenger Facility Charge (PFC) at Gulfport-Biloxi International Airport, Gulfport, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gulfport-Biloxi International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before date which is 30 days after date of publication in the **Federal Register**.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce Frallic of the Gulfport-Biloxi Regional Airport Authority at the following address: 14035–L Airport Road, Gulfport, MS 39503 Air carriers and foreign air carriers may submit copies of written comments previously provided to the Gulfport-Biloxi Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Southern Region, Jackson Airports District Office, Patrick D. Vaught, Program Manager, 100 West Cross Street, Suite B, Jackson MS 39208–2307, Phone Number (601) 664–9885. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Gulfport-Biloxi International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (145 CFR part 158).

On January 30, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Gulfport-Biloxi Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application in whole or in part, no later than May 17, 2002.

The following is a brief overview of the application.

Proposed charge effective date: June 1, 2002.

Proposed charge expiration date: June 1, 2005.

Level of the proposed PFC: $3.00.

Total Estimated PFC revenue: $3,765,993.

Brief description of proposed projects:

1. Land Acquisition RPZ, Runways 14, 18, and 36.

2. Blast Study
3. Clear, Grub, and Preserve Padgett & Cuevas Property
4. Upgrade Closed Circuit Television, Security Improvements for Terminal, General Aviation, and Cargo Areas
5. Acquire Explosives Detection Dog
6. Construct Perimeter Road—Schedule B (North)
7. Rehabilitate Perimeter Fence—Security Improvements
8. South Central Cargo Area Expansion—Road, Utilities, and Site Work
9. Construct South West General Aviation Area, Phase II
10. Terminal Expansion—Baggage Claim Area, Federal Inspection Service, Baggage Search Area at Ticket Counters, and Security Screening
11. Conduct Pavement Condition Index Update, All Taxiways, Ramps, and Runway 18/36.

Class or classes of air carriers which the public agency had requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 1701 Columbia Avenue, College Park, GA 30337. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Gulfport-Biloxi International Airport.

Issued in Jackson, Mississippi on January 30, 2002.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 02–2830 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Silicon Valley Rapid Transit Corridor—BART Extension to Milpitas, San Jose, and Santa Clara, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Santa Clara Valley Transportation Authority (VTA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) and an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act (CEQA) for the proposed BART Extension to Milpitas, San Jose, and Santa Clara in the Silicon Valley Rapid Transit Corridor. The proposed extension was selected following completion of the Silicon Valley Rapid Transit Corridor Major Investment Study (MIS) in November 2000. The MIS evaluated 11 alternatives representing various modes of travel (express bus, bus rapid transit, commuter rail, diesel and electric light rail, and BART) and various alignments and stations located in the cities of Fremont, Milpitas, San Jose, and Santa Clara, California. The MIS screening and evaluation process resulted in the adoption of a Preferred Investment Strategy by the VTA Board of Direcctors on November 9, 2001. The Preferred Investment Strategy consists of an approximate 16.3-mile extension of the BART system, which would begin at the planned Warm Springs BART station in Fremont, extend along the Union Pacific Railroad line to Milpitas, and then continue to 28th and Santa Clara Streets in San Jose. From there, BART would leave the railroad right-of-way, tunneling under downtown San Jose to the Diridon Caltrain Station. The BART extension would then turn north under the Caltrain line and terminate at the Santa Clara station. The BART extension will be further refined during the conceptual design phase of the project and carried forward in the EIS/EIR. The EIS/EIR will evaluate a No-Action Alternative, a future ''New Starts'' Baseline Alternative, the BART Extension Alternative including alignment and station options, and additional alternatives that emerge from the scoping process. Scoping will be accomplished through correspondence and discussions with interested persons; organizations; federal, state and local agencies; and through public meetings.

DATES: Comment Due Date: Written comments on the scope of alternatives and impacts to be considered in the EIS/EIR must be received no later than March 29, 2002, and must be sent to VTA at the address indicated below. Scoping Meetings: Public scoping meetings will be held on: (1) February 7, 2002, from 6 p.m. to 8 p.m. at Pomeroy Marshall Elementary School, 1505 Escuela Parkway, Multi-purpose Room, Milpitas, CA; (2) February 11, 2002, from 6 p.m. to 8 p.m. at San Jose Fire Training Center, 255 S. Montgomery Street, San Jose, CA; and (3) February 13, 2002, from 6 p.m. to 8 p.m. at Bowers Park, 2582 Cabrillo Avenue, Santa Clara, CA. The project purpose and alternatives will be presented at these meetings. The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact VTA Community Outreach at (408) 321–7575 or TDD only at (408) 321–2330. Scoping material will be available at the meeting.

ADDRESSES: Written comments should be sent to Ms. Lisa Ives, Project Manager, VTA, 3331 North First Street, San Jose, CA 95134–1906. Phone: (408) 321–5744. Fax: (408) 321–9765, E-mail: *svrtc@vta.org.*

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Ives, Project Manager, VTA, 3331 North First Street, San Jose, CA 95134–1906. Phone (408) 321–5744 or Mr. Jerome Wiggins, Office of Planning and Program Development, FTA, 201 Mission Street, Room 2210, San Francisco, CA 94105. Phone: (415) 744–3115. People with special needs should contact VTA Community Outreach at (408) 321–7575 or TDD only at (408) 321–2330.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and VTA invite all interested individuals and organizations, and federal, state, regional, and local agencies to provide comments on the scope of the project and environmental considerations. The Silicon Valley Rapid Transit Corridor, Major Investment Study Final Report (November 2000) is available for public review at the following public libraries: (1) Dr. Martin Luther King, Jr. Main Library, 180 West San Carlos Street, San Jose, CA 95113; (2) Fremont Main Library, 2400 Stevenson Boulevard, Fremont, CA 94538; (3) Milpitas Library, 40 N. Milpitas Boulevard, Milpitas, CA 95035; and (4) Mission Library, 1098 Lexington Avenue, Santa Clara, CA 95050. The Silicon Valley Rapid Transit Corridor, Major Investment Study Final Report is also available by contacting Ms. Ives at the address and phone number given above. Ms. Ives should also be contacted to be placed on the project mailing list and to receive additional information about the project. Written comments on the alternatives and potential impacts to be considered should also be sent to Ms. Ives.

II. Project Purpose and Need

The project purpose is to improve public transit service in the Silicon Valley Rapid Transit Corridor by addressing the following specific goals established in the MIS: (1) Improve

public transit service in this severely congested corridor by providing increased transit capacity and faster, convenient access throughout the San Francisco Bay Area Region, including southern Alameda County, central Contra Costa County, Tri-valley, San Joaquin Valley, and Silicon Valley; (2) enhance regional connectivity through expanded, interconnected rapid transit services between BART in Alameda County and light rail and commuter rail in Silicon Valley; (3) accommodate future travel demand in the corridor by expanding modal options; (4) alleviate severe and ever-increasing traffic congestion on the I–880 and I–680 freeways between Alameda County and Silicon Valley; (5) improve regional air quality by reducing auto emissions; (6) improve mobility options to employment, education, medical, retail, and entertainment centers for corridor residents, in particular low income, youth, elderly, disabled, and ethnic minority populations; and (7) support local economic and land use plans and goals. In general, the project would provide improved transit service to address an anticipated 52 percent growth in corridor travel over the next 20 years. The proposed BART extension would better connect corridor workers and residents with such rail transit systems as VTA light rail, Caltrain, Altamont Commuter Express (ACE), Capitol Corridor Intercity Rail Service, and Amtrak and would enhance direct public transit access to other regional activity centers.

III. Alternatives

The Silicon Valley Rapid Transit Corridor Project is examining several alternatives to be carried forward into the environmental review process. The No-Action Alternative will consist of the existing conditions, in accordance with both NEPA and CEQA requirements. The future ''New Starts'' Baseline Alternative includes programmed transportation improvements in the corridor and expanded express bus service. The Build or BART Extension Alternative includes an extension of the BART system from the proposed Warm Springs Station, south along the UPRR right-of-way to east San Jose, tunneling through downtown San Jose to the Diridon multi-modal Station, and north to a terminal station in Santa Clara near the Caltrain Station. Along the alignment, seven conceptual station locations have been proposed: (1) Montague/Capital, (2) Berryessa, (3) Alum Rock, (4) Civic Plaza/San Jose State University, (5) Market Street, (6) Diridon/Arena, and (7) Santa Clara. An optional North Calaveras station is also proposed in Milpitas. More precise station locations and alignment options will be developed during preparation of the Draft EIS/EIR. The EIS/EIR will also address any additional alternatives that are identified during the scoping process.

IV. Probable Effects

The purpose of the EIS/EIR is to fully disclose the environmental consequences of building and operating the BART Extension in advance of any decisions to commit substantial financial or other resources towards its implementation. The EIS/EIR will explore the extent to which project alternatives and design options result in environmental impacts and will discuss actions to reduce or eliminate such impacts. Environmental issues to be examined in the EIS/EIR include: changes in the physical environment (natural resources, air quality, noise/vibration, water quality, floodplains, geology/seismicity, visual/aesthetics, hazardous materials, energy, utilities, and electromagnetic fields/interference); changes in the social environment (land use, business, community facilities, and neighborhood disruptions); changes in traffic and pedestrian circulation; changes in transit service and patronage; associated changes in traffic congestion; and impacts on parklands and historic and cultural resources. Impacts will be identified for both the construction period and the long-term operation of the alternatives. The proposed evaluation criteria include transportation, environmental, social, economic, and financial measures, as required by current federal (NEPA) and state (CEQA) environmental laws and current Council on Environmental Quality and FTA guidelines. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interests parties. Comments or questions concerning this proposed action and the EIS/EIR should be directed to VTA, as noted above.

V. FTA Procedures

The Draft EIS/EIR for the proposed BART extension will be prepared simultaneously with conceptual design for station and alignment options. The Draft EIS/EIR/conceptual design process will address the potential use of federal funds for the proposed project, as well as assess the social, economic, and environmental impacts of station and alignment design options. Station design and alignment options will be refined to minimize and mitigate any adverse impacts identified. After publication, the Draft EIS/EIR will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS/EIR and comments received, VTA will select a preferred alternative for further assessments in the Final EIS/EIR.

Issued on January 31, 2002.

Leslie T. Rogers,

Region IX Administrator.

[FR Doc. 02–2828 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11453]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BLUE LAGOON.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11453. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through

Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: BLUE LAGOON. Owner: Joseph Vincer.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''47 feet in length, 24 feet 7 inches in beam, 3 feet 7 inches draft'' ''19 tons gross, 15 tons net''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

> Vessel would be used for 6 to 12 passengers for evening sunset sailing cruises, and sailing cruises of Sarasota Bay, FL and mouth of Tampa Bay, FL. On occasion I might like to take people on overnight sails to Naples, FL and the Upper Keys, departing from Sarasota and returning to Sarasota.

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1989. Place of construction: Marseilles, France. Major refit at Bob & Annies Boatyard, Pine Island FL, 1996 in excess of $100,000.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''Approval of this waiver will have minimal impact on other commercial passenger vessel operators'As there [is] no other sailboat operator engaged in the day sail business in my area, there would be no competition to other operators.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant:

> Blue Lagoon was rescued from abandonment and ill-care by myself and have had extensive work done on her in US boatyards, and by my own labor in the US to bring her back to her ''full glory''. I have spent well over $100,000 doing so, helping the us marine industry. She continues to have work done in the US, and nowhere else * * * therefore, there is no competition to US boat builders, but may actually help local boat builders as some people who would take a ride upon BLUE LAGOON may decide to buy a catamaran of US origin.

Dated: January 31, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–2796 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11454]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CINNABAR.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11453. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: CINNABAR. Owner: Capt. Bruce F. Benike, Kimberly D. Benike.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''22 net tons, 38.6 Ft.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Sportfishing Charters in San Francisco Bay and Calif. Oceans.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1978. Place of construction: Kaohsiung Taiwan R.O.C.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:

I don't believe having a small sportfishing charter vessel will impact the 50+ charter boats in the area, who are bigger and faster. My clientele will mostly exist of friends and fellow club members from Bay Sportsman Fishing Club. My vessel goes a maximum of 9Kts. And would not compete with the larger and faster boats.'' (6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''There have been no new charter Boat in San Francisco area for the past 15 years. Several new boats have come into the area that are built in Seattle WA. These vessels are 50+ ft. catamarans and very fast.

Dated: January 31, 2002.

By Order of the Maritime Administrator.

Murrary A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–2798 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11452]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FIN'S & PINS.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11452. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: FIN'S & PINS. Owner: Mr. Howard Rettberg and Raquel Rettberg.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''The boat size is 44.1 feet in length and weighs 31,000 gross.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

The vessel has been equipped for the specific purpose of operating as a commercial sport fishing vessel. * * * The vessel will be primarily based in San Diego, California and operate south into Mexican waters up to 300 miles and North to the waters off of Moro Bay California.

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1985. Place of construction: Kaohsiung, Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:

There is currently operating in the Southern California area approximately 18 Six Pac Sport Fishing Boats that conduct the same fishing operation as contemplated by applicant. There should be no impact as the skipper/operators Ron Baker has been in this business or operating a Six PAC Sport Vessel for the last two years on another boat. Captain Ron Baker is simply seeking to switch boats and continue a business that already exists. No new business is being started.

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant:

A Six Pac Sport fishing operation does not generate enough cash flow for any of the operators in Southern California to purchase a large new boat. They all operate used vessels. * * * The boat will receive service and repair only at a ship yard in Southern California. The twin Caterpillar engines on board the boat that power the vessel are made in the USA and will require US made parts and service. The boat has been upgraded substantially with materials made and purchased in the USA.

By Order of the Maritime Administrator.
Dated: January 31, 2002.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–2795 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11456]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PILGRIM.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the

effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 8, 2002.

ADDRESSES: Comments should refer to docket number MARAD–11456. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: PILGRIM. Owner: Ocean Institute.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Sparred length: 130′, Beam: 24′6″, Rig height: 104′ * * * Tons: 99 GRT, * * * Capacity: 55 Crew.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: '' * * * fundraising activities to help support our educational goals. During these times the Pilgrim would travel from Dana Point Harbor to no further north than Point Conception and no further south than Ensenada, Mexico and remain within 50 miles of the coast.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1945. Place of construction: Holbaek, Denmark.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''The Ocean Institute does not foresee any impact that this waiver would have on other commercial passenger vessel operators * * * ''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The Ocean Institute does not foresee any impact that this waiver would have on * * * U.S. shipyards.''

By Order of the Maritime Administrator.
Dated: January 31, 2002.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–2797 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 17, 2001 (66 FR 52827).

DATES: Comments must be submitted on or before March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Filbert at the National Highway Traffic Safety Administration, Office of State and Community Services (NSC–01), 202–366–2701. 400 Seventh Street, SW, Room 5238, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: National Highway Traffic Safety Administration

Title: Uniform Criteria for State Observational Surveys of Seat Belt Use.

OMB Number: 2127—0597.

Type of Request: Extension of a currently approved collection.

Abstract: This collection requires the respondents, which are the States, the District of Columbia, and Puerto Rico to provide seat belt use survey information to NHTSA before they receive grant money. To be eligible for funding, the surveys must be completed by end of the calendar year and submitted to NHTSA by March 1 of the following calendar year.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 17,942.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 31, 2002.

Delmas Johnson,

Associate Administrator for Administration.

[FR Doc. 02–2823 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 17, 2001 (66 FR 52827–52828).

DATES: Comments must be submitted on or before March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Filbert at the National Highway Traffic Safety Administration, Office of State and Community Services (NSC–01), 202–366–2701. 400 Seventh Street, SW, Room 5238, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 23 CFR, part 1345, Occupant Protection Incentive Grant—Section 405.

OMB Number: 2127–0600.

Type of Request: Extension of a currently approved collection.

Abstract: An occupant protection incentive grant is available to states that can demonstrate compliance with at least four of six criteria. Demonstration of compliance requires submission of copies of relevant seat belt and child passenger protection statutes plan and/or reports on statewide seat belt enforcement and child seat education programs and possibly some traffic court records. In addition, States eligible to receive grant funds must submit a Program Cost Summary (Form 217), allocating section 405 funds to occupant protection programs.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 1,736.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 31, 2002.

Delmas Johnson,

Associate Administrator for Administration.

[FR Doc. 02–2824 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–11420, Notice 1]

DaimlerChrysler Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

DaimlerChrysler Corporation (DaimlerChrysler) has determined that approximately 28,265 of its model year 2002 RS vehicles (Dodge and Chrysler mini vans) do not meet the labeling requirements of paragraph S5.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 ''Tire Selection and Rims for Motor Vehicles Other than Passenger Cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), DaimlerChrysler has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

DaimlerChrysler determined that the rim size was inadvertently omitted from the tire size designation included on the certification label affixed to 28,265 of its model year 2002 RS vehicles. The recommended tire size designation for these vehicles is P215/65R16. Due to an error in the printing process, the rim size designation number, specifically the number 16, was inadvertently omitted from the certification label. As a result, the recommended tire size designation on the vehicle's certification label reads as ''P215/65R,'' rather than ''P215/65R16.''

DaimlerChrysler believes that the noncompliance is inconsequential to motor vehicle safety for several reasons. First, the noncompliant 2002 RS vehicles were constructed with P215/65 R16 tires. DaimlerChrysler believes that most vehicle owners, dealers, and tire service technicians would refer to the vehicles' existing tires (specifically P215/65 R16 tires) to determine the appropriate size for a replacement tire rather than to the certification label. Second, the certification label lists the complete designated rim size, including the rim diameter, appropriate for the P215/65 R16 tires.

The purpose of S5.3 is to ensure that vehicle owners can readily determine the appropriate size replacement tire for their particular vehicle. DaimlerChrysler is confident that sufficient information is available to fulfill the safety purpose of S5.3 despite the noncompliance. As discussed above, individual vehicle owners can refer to the tire currently installed on the vehicle, the vehicle's recommended rim size, and the vehicle owner's manual to determine the appropriate tire size for the vehicle. DaimlerChrysler believes, therefore, that the noncompliance is inconsequential to motor vehicle safety because, despite the noncompliance, sufficient information is available to inform the owners as to the appropriate size for a replacement tire for the vehicles at issue.

DaimlerChrysler cited several petitions for inconsequential noncompliance filed by tire and vehicle manufacturers over the past 15 years. The petitions, which were granted by the agency, involved tire, rim and vehicle placard labeling issues similar to noncompliance issues in this petition.

Interested persons are invited to submit written data, views and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department to Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible.

When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 8, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 1, 2002.

Stephen R. Kratzke,

Associate Administrator, for Safety Performance Standards.

[FR Doc. 02–2827 Filed 2–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–195–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–195–78 (TD 8426), Certain Returned Magazines, Paperbacks or Records (§ 1.458–1).

DATES: Written comments should be received on or before April 8, 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 regulation should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Returned Magazines, Paperbacks, or Records.

OMB Number: 1545–0879.

Regulation Project Number: IA–195–78.

Abstract: The regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of retaining physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect a certain method of accounting, are affected.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 19,500.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 8,125 hours.

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 31, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–2872 Filed 2–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209485–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209485–86 (TD 8812), Continuation Coverage Requirements Application to Group Health Plans (§§ 54.4980B–6, 54.4980B–7, and 54.4980B–8).

DATES: Written comments should be received on or before April 8, 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 regulation should be directed to Carol Savage, (202) 622–3945, or through the internet *CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Continuation Coverage Requirements Applicable to Group Health Plans.

OMB Number: 1545–1581.

Regulation Project Numbers: REG–209485–86.

Abstract: The regulations require group health plans to provide notices to individuals who are entitled to elect COBRA (The Consolidated Omnibus Budget Reconciliation Act of 1985) continuation coverage of their election rights. Individuals who wish to obtain the benefits provided under the statute

are required to provide plans notices in the cases of divorce from the covered employee, a dependent child's ceasing to be a dependent under the terms of the plan, and disability. Most plans will require that elections of COBRA continuation coverage be made in writing. In cases where qualified beneficiaries are short by an insignificant amount in a payment made to the plan, the regulations require the plan to notify the qualified beneficiary if the plan does not wish to treat the tendered payment as full payment. If a health care provider contacts a plan to confirm coverage of a qualified beneficiary, the regulations require that the plan disclose the qualified beneficiary's complete rights to coverage.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 1,800,000.

The estimated time per respondent varies from 30 seconds to 330 hours, depending on individual circumstances, with an estimated average of 14 minutes.

Estimated Total Annual Burden Hours: 404,640.

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 31, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–2873 Filed 2–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans

Employment and Training

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice of availability of funds and Solicitation for Grant Applications (SGA) for Veterans' Workforce Investment Program (VWIP), Section 168, Program Year 2001—Female Veterans Program Competitive Grants (SGA 02–02).

SUMMARY: All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service, (VETS) announces a grant competition for Veterans' Workforce Investment Program (VWIP), Section 168, Program Year 2001—female veteran competitive grants. These grants will assist eligible female veterans who: have service-connected disabilities; served on active duty in the armed forces during a war, campaign or expedition for which a campaign badge was authorized; are recently separated veterans, and veterans with significant barriers to employment, by providing training, employment and supportive service assistance in areas of high demand, non-traditional occupations.

Under this solicitation, VETS anticipates that up to $400,000 will be available for grant awards in Program Year (PY) 2001 and expects to award up to two grants. The VWIP programs are designed to be flexible in addressing the universal as well as local or regional problems barring veterans from the workforce. The program in PY 2001 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of supportive service resources for veterans entering the labor force, and strategies for employment and retention.

This notice describes the background, application process, description of program activities, evaluation criteria, and reporting requirements for this SGA. The information and forms contained in the Supplementary Information Section constitute the official application package. All necessary information and forms needed to apply for grant funding is included.

Forms or Amendments: If another copy of a form is needed, go online to *http://www.nara.gov.* To receive amendments to this Solicitation (Please reference SGA 02–02), *all applicants must register their name and address with the Grant Officer at the following address:* U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

Closing Date: Applications are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., Eastern Standard Time, March 8, 2002.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 02–02, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline.

SUPPLEMENTARY INFORMATION:

Veterans' Workforce Investment Program, Section 168, Program Year 2001—Female Veterans Program Competitive Grants Solicitation

I. Purpose

The U.S. Department of Labor (DOL) VETS is requesting grant applications that will provide employment and training services for female veterans who meet the eligibility criteria set forth in the VWIP, section 168 of the Workforce Investment Act, Pub.L. 105–220 (WIA). These instructions contain general program information, requirements, and forms to apply for funds to operate a veterans employment and training program in areas of high demand occupations non-traditional for women. Accordingly, the Assistant Secretary for Veterans' Employment and

Training (ASVET) is making up to $400,000 of the funds available to award grants for unique and innovative Employment and Training programs.

Programs should maximize the eligible female veterans' military skills, training, and experience by effectively exploring the transitional or transferable occupational opportunities of the geographical area in which the grant would be awarded.

II. Background

Section 168 of the Veterans' Workforce Investment Program provides that the Secretary will conduct, directly or through grants or contracts, such employment and training programs as the Secretary deems appropriate to assist veterans who have service-connected disabilities, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, recently separated veterans, and those veterans with significant barriers to employment, to obtain gainful employment.

III. Application Process

A. Eligible Applicants

Applications for funds will be accepted from State and local workforce investment boards, local public agencies, and private nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and populations to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBs), as defined in sections 111 and 117 of the Workforce Investment Act, are eligible applicants.

2. Local public agencies, meaning any public agency of a general purpose political subdivision of a State that has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction. Applicants are encouraged to utilize, through sub-grants, experienced public agencies, private nonprofit, private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are private nonprofit organizations that have operated an employment and training program for females and proven a capacity to manage grants and have or will provide the necessary linkages with other service providers. *Entities described in section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement* as section 18 of the Lobbying Disclosure Act of 1995, Pub. L. No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

B. Funding Levels

The total funds anticipated for this solicitation is $400,000. It is anticipated that two awards will be made under this solicitation. Individual Awards will not exceed $200,000. The Federal Government reserves the right to negotiate the amounts to be awarded under this competition. Applicant requests exceeding the $200,000 will be considered non-responsive.

C. Period of Performance

The VWIP funds for this competition are for a maximum period of one year. The period of performance will be for twelve months from the date of the award. VETS expects that successful applicants will commence program operations under this solicitation on or before April 1, 2002. Funds must be expended by March 31, 2003, not including the 6-month follow-up period referred to in the budget narrative. VETS has no plans to provide second year funding beyond this period.

D. Requirements of Submission

A cover letter, an original proposal, and three (3) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal must consist of two (2) separate and distinct parts: (1) One completed, blue ink-signed original SF 424 grant application; three (3) copies of the Technical Proposal; and three (3) copies of the Cost Proposal.

E. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services after 4:45 p.m. EST, March 8, 2002, will *not* be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail no later than the fifth calendar day before March 8, 2002;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to March 8, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline.

F. Proposal Content

The proposal will consist of two (2) separate and distinct parts:

Part I—The *Technical Proposal* will consist of a narrative proposal that demonstrates the applicant's knowledge

of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal will consist of a narrative not to exceed fifteen (15) pages double-spaced—font size no less than 11pt., and typewritten on one side of the paper only. The applicant must complete the forms i.e., quarterly goals chart provided or referred to in the SGA. Charts and exhibits are not counted toward the page limit.

G. Required Features

There are four program activities that all applications must contain to be found technically acceptable under this SGA. These activities are:

—Pre-Enrollment Assessments;
—Employment Development Plans for all clients;
—Core Training for eighty percent (80%) or more of the clients; (training does not have to be received from an eligible provider under WIA. This requirement is only for formula grants covered under WIA.)
—Job Placement and 90 and 180 day follow-up Services for all clients.

The following format is strongly recommended:

1. *Need for the project:* The applicant must identify the geographical area to be served and provide an estimate of the number of veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to employment and other employment barriers faced by the targeted veterans and how the project would respond to these needs. Also, include the outlook for job opportunities in the service area.

2. *Approach or strategy to provide training, employment and job retention:* The applicant must be responsive to the Rating Criteria contained in Section VIII, and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (1) Provide the type(s) of training to be offered, the length of the training, the training curriculum and describe how the training will enhance the eligible veterans' employment opportunities within that geographical area; (2) describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (3) provide a plan for follow up to address retention after 90 and 180 days with participants who entered employment. (*See* discussion on results in Section X. D., 2.); and (4) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. *Linkages with other providers of employment and training services to veterans:* The applicant must: describe the linkages this program will have with other providers of services to veterans outside of the grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) program, and programs operated under the Workforce Investment Act; and list the types of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system [including State Employment Security Agencies (State Workforce Agencies'')] must be delineated. Describe any linkages with any other resources and/or other programs for veterans. Indicate how the program will be coordinated with any efforts for veterans that are conducted by agencies in the community.

4. *Proposed supportive service strategy for veterans:* Describe how supportive or ancillary service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local, or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary.

5. *Organization's capability to provide required program activities:* The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant which has operated a Veterans program, JTPA IV–C program, or VWIP program, must include final or most recent technical performance reports. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit. The applicant must also provide evidence of key staff capability. Nonprofit organizations must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

(This information is subject to verification by the government. Veterans' Employment and Training Service reserve the right to have a representative within each State provide programmatic and fiscal information about applicants and forward those findings to the VETS National Office during the review of the applications.)

Note: Resumes, charts, and standard forms, transmittal letters, letters of support are not included in the page count. [If provided, include these documents as attachments to the technical proposal.]

Part II—The *Cost Proposal* must contain: (1) The Standard Form (SF) 424, ''Application for Federal Assistance''; (2) the Standard Form (SF) 424A ''Budget Information Sheet'' in Appendix B; and (3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the ''Budget Narrative'' and ensure that costs reported on the SF424A correspond accurately with the Budget Narrative.

In addition to the cost proposal, the applicant must include the Assurance and Certification signature page, Appendix C, and copies of all required forms with instructions for completion provided as appendices to this SGA.

The Catalog of Federal Domestic Assistance number for this program is 17.802. It must be entered on the SF 424, Block 10.

IV. Budget Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on a separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub-grantees);

(b) An explanation and breakout of extraordinary fringe benefit rates and associated charges (i.e., rates exceeding 35% of salaries and wages);

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-grants/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges must not exceed 34.5 cents per mile;

(d) In order that the Department of Labor meet legislative requirements, the applicant must submit a plan for, along with all costs associated with, retaining participant information pertinent to a longitudinal follow-up survey for at least six months after the ninety-day closeout period;

(e) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, and personal property having a useful life of

more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

(f) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

V. Participant Eligibility

Female veterans who have service-connected disabilities, female veterans who are recently separated, or female veterans with significant barriers to employment are eligible for participation under this program.

A. The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 U.S.C. 4101(2)]

B. The term ''Campaign veteran''—refers to any veteran who served on active duty in the United States armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized. A list of the Wars, Campaigns and Expeditions can be found at the Office of Personnel Management Web site at *http://www.opm.gov/veterans/html/vgmedal2.htm.*

C. The term ''service-connected disabled''—refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (DVA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C. 1503(27)(B)).

D. The term ''recently-separated veteran''—refers to any veteran who applies for participation in a VWIP funded activity within 48 months after separation from military service. (29 U.S.C. 2801 (49))

VI. Project Summary

A. Program Concept and Emphasis

The grants awarded under this SGA are intended to address two objectives: (1) To provide services to assist in reintegrating female veterans into meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing female veterans trying to transition into non-traditional employment.

In addition to the mandatory activities, proposed programs should include, if applicable, optional program activities, such as ancillary and/or support services, to assure that participants are placed in unsubsidized employment that meets their ''minimum economic need.'' Both categories of program activities are more fully described below.

1. Mandatory Program Activities

a. Pre-Enrollment Assessments.

The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff for pre-enrollment assessments is strongly encouraged.

A definition of pre-enrollment assessment can be found in the Glossary of Terms. Costs are allowed for pre-enrollment assessments that enable grantees to determine the employability needs of applicants by conducting meaningful evaluations of applicant skills and barriers. Grantees are then able to refer those applicants who may not be appropriate for the services of the proposed program to other service providers. The assessment of applicants prior to enrollment is an allowable cost to VWIP provided it has been determined that the assessed applicants meet the legislative criteria for VWIP eligibility. In the Program Design, the grant applicant must identify the means of pre-enrollment assessment that it intends to use and the purpose for the information to be derived from those assessments.

b. The Employment Development Plan (EDP). The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff in the EDP process is strongly encouraged. A definition of Employment Development Plan (EDP) can be found in the Glossary of Terms.

The implementation of an EDP is required for all female veterans enrolled in programs supported by VWIP resources. A copy of an EDP is maintained in each participant's file. The EDP must document a summary of the assessments conducted to ascertain the abilities, barriers and needs of the participant. At a minimum, the EDP must substantiate the participant's minimum income needs, identify barriers and skill deficiencies, and describe the services needed and the competencies to be achieved by the participant as a result of program participation. The applicant must also include a description of their proposed EDP process in their application.

c. Core Training Activities. A definition of Core Training Activities can be found in the Glossary of Terms. It refers to any training program that leads to the development of job skills for the participant. At least 80% of all participants who are enrolled in VWIP must receive some form of core training. The Program Design narrative must identify the core training components to be employed in the applicant's program, and these components must agree in scope with the definitions found in the Glossary of Terms. Core training components proposed by the applicant that do not fit the glossary terms or definitions must be adequately described and justified in the Program Design narrative. Core training activities described in this section must include, but are not limited to, the following:

i. Classroom training;
ii. On-the-job training;
iii. Remedial education;
iv. Literacy and bilingual training;
v. Institutional skills training;
vi. Occupational skills training;
vii. On-site industry-specific training;
viii. Customized training;
ix. Apprenticeship training; and
x. Upgrading and retraining.

Definitions of these core training activities are found in the Glossary of Terms.

d. Job Placement and Follow-up Services.

The utilization of Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff for job placement and follow-up services is strongly encouraged.

A definition of job placement and follow-up services can also be found in the Glossary of Terms. The ultimate objective of VWIP services is to place each eligible veteran into meaningful, gainful employment that allows the participant to become economically self-sufficient. The applicants must describe in the Program Design how job placements will occur after core training activities and/or after job development or referral efforts are initiated. Applicants are required to include follow-up in their proposed program to track a participant's progress and status after initial placement. Applicants must describe in the Program Design the follow-up activities that participants will be provided. The description must include the nature of those services. Please note that follow-up is required 90 and 180 days after entering employment.

C. Scope of Program Design

The project design must provide or arrange for the following:

1. Projects must show linkages with other programs and services which provide support to veterans, such as faith based and community based organizations. Coordination with the

Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representative (LVER) is strongly encouraged.

2. Projects must be ''employment-focused.'' The services provided will be directed toward increasing the employability of veterans by providing training that will increase employment opportunities for the participants.

Outreach should, to the degree practical, be provided at Veterans' Job Fairs, Transition Assistance Centers, or Family Service Centers at military installations, and other programs or events frequented by female veterans. Coordination is encouraged with veterans' services programs and organizations such as:

—State Workforce Agencies, the newly instituted workforce development system's One-Stop Centers, or other VWIP Veterans' Employment Programs;
—Department of Veterans' Affairs (DVA) services, including its Education programs; and
—Veterans' service organizations, such as The American Legion, Disabled American Veterans (DAV), Veterans of Foreign Wars (VFW), Vietnam Veterans of America (VVA), and American Veterans (AMVETS).

D. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to local needs, and will carry out the objectives of the program to successfully reintegrate veterans into the workforce.

With the advent of the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than just program processes. Although entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of the program. The following program discussion must be considered in a program model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter veterans. Once the eligible participants have been identified, an assessment must be made of the their abilities, interests and needs. In some cases, these participants may require referrals to services such as drug or alcohol treatment or a temporary shelter before they can be enrolled into core training. When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination must be made as to whether the participant would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, job development, or entry into classroom or on-the-job training. Such services must also be noted in an Employability Development Plan so successful completion of the plan can be monitored by the staff. Entry into full-time employment or a specific job training program must follow, in keeping with the objective of the program, which is to bring the participant closer to self-sufficiency. Supportive Services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff need to be utilized for job development and placement activities for veterans who are ready to enter employment or who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus in assisting those most disadvantaged in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources. If the DVOP and LVER staff are not being utilized, the applicant must submit a written explanation of the reasons why they are not.

The following program discussion emphasizes that follow-up is an integral program component. Follow-up to determine whether the veteran is in the same or similar job at the 90-day and 180-day period after entering employment is required. It is important that the applicant maintain contact with the veterans after placement to assure that employment related problems are addressed. The 90-day and 180-day follow up is fundamental to assessing the results of the program success. Grantees must be careful to budget for this activity so that follow-up will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

Retention of records will be referred to in the Special Grant Provisions provided at the time of award.

VII. Related Program Development Activities

1. Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by the grantees have been an effective means of sharing information and revealing the availability of other services. They are encouraged but are not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

a. Providers of hands-on services to veterans to make veterans more fully aware of the services offered, job-ready and placed in jobs.

b. Federal, State and local services such as the Department of Veterans' Affairs (DVA), State Workforce Agencies and their local Job Service Offices and One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services) to familiarize them with the nature and needs of veterans.

c. Civic and private sector groups, and especially veterans' service organizations, to describe veterans and their needs.

VIII. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although DOL reserves the right to award on the basis of the initial proposal submissions, DOL may establish a competitive range based upon the proposal evaluation for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. DOL reserves the right to ask for clarification or hold discussions, but is not obligated to do so. DOL further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, administrative costs, program costs e.g., cost per enrollment and placement, demonstration models, and geographical service areas. The Grant Officer's determination for award under SGA 02–02 is the final agency action. The

submission of the same proposal from any prior year competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 Points

The applicant must document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers which characterize the target population.

2. Overall Strategy To Increase Employment and Retention: 40 Points

The application must include a description of the proposed approach to providing comprehensive employment services and training, including job development, employer commitments to hire, placement, and post-placement follow-up services. The applicant must address its intent to target occupations in expanding industries, rather than on declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training program such as State Workforce Agencies (DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. Applicants must indicate how the activities will be tailored or responsive to the needs of veterans. A participant flow chart may be used to show the sequence and mix of services. Note: The applicant must complete the chart of proposed program outcomes to include participants served, and job retention. (*See* Appendix D)

3. Quality and Extent of Linkages With Other Providers of Services to the Veterans: 10 Points

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the veterans in the local community and/or on the reservation and outside of the grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. [Describe, to the extent possible, how the project would respond to the needs of the veterans and any linkages to DVA programs or resources to benefit the proposed program.]

4. Demonstrated Capability in Providing Required Program Services: 20 Points

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to those proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant should delineate its staff capability and ability to manage the operational aspects of a grant program, including a recent (within the last 12 months) financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit. The applicant must also address its capacity for timely startup of the program.

5. Quality of Overall Employment and Training Strategy: 15 Points

The application must demonstrate how the applicant proposes to meet the employment and training, and supportive services needs of veterans in the program who will be entering the labor force. This discussion must specify the provisions made to access transportation, child care, temporary, transitional, and permanent housing for participants through community resources, HUD, lease, WIA, or other means. Grant funds cannot be used to purchase housing or vehicles. Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of the placement and enrollment costs.

IX. Post Award Conference

A post-award conference will be held for those awarded PY 2001 VWIP funds from the competition. It is expected to be held in May or June 2002. Up to two grantee representatives must be present; a fiscal and a programmatic representative is recommended. The site of the Post-Award conference will be at a location convenient for the grantee and Grant Officer Technical Representative (GOTR). The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects.

X. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee will report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET), whose address will be provided, no later than 30 days after the ending date of each Federal fiscal quarter (i.e., October 30, January 30, April 30, and July 30) during the grant period.

B. Program Reports

Grantees will submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET which contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts; and
2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

C. Final Report Packages

The grantee will submit, no later than 90 days after the grant expiration date, a final report containing the following:

1. Final Financial Status Report (SF–269A) (copy to be provided following grant awards)
2. Final Technical Performance Report—(Program Goals)
3. Final Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined number of veterans placed in employment during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not so employed; and (f) any recommendations to improve the program.

D. Six (6) Month Close Out

No later than six months after the 90-day closeout period, the grantee will

submit a follow-up report containing the following:

1. Final Financial Status Report (SF–269A)

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) numbers of veterans placed during the entire grant period; (b) the number of veterans still employed during follow-up; (c) are the veterans still employed at the same or similar job, if not what is the reason(s); (d) was the training received applicable to jobs held; (e) wages at placement and during follow-up period; (f) an explanation of why those veterans placed during the grant period, but not employed at the end of the follow-up period, are not so employed; and (g) any recommendations to improving the program.

XI. Administration Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, and any indirect charges claimed, may not exceed 10 percent of the total amount of the grant.

2. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

3. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

4. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Allowable Costs

Determinations of allowable costs will be made in accordance with the following applicable Federal cost principles:

1. State and local government—OMB Circular A–87
2. Educational institutions—OMB Circular A–21
3. Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

Accept as specifically provided, DOL acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must require that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition. All grants will be subject to the following administrative standards and provisions:

1. 29 CFR part 93—Lobbying.
2. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations, and with Commercial Organizations, etc.
3. 29 CFR part 96—Federal Standards for Audit of Federally-funded Grants, Contracts and Agreements. This rule implements, for State and local governments and Indian tribes that receive Federal Assistance from the DOL, Office of Management and Budget (OMB) Circular A–128 ''Audits of State and Local Governments'' which was issued pursuant to the Single Audit Act of 1984, 31 U.S.C. Sec. 7501–7507. It also consolidates the audit requirements currently contained throughout the DOL regulations.
4. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
5. 29 CFR part 98—Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)
6. 29 CFR part 99—Audit of States, Local Governments, and Nonprofit Organization.
7. Section 168(b) of WIA—Administration of Programs. Please note that sections 181–195 also applies.
8. 29 CFR parts 30, 31, 32, 33 and 34—Equal Employment Opportunity in Apprenticeship and Training, nondiscrimination in Federally Assisted Programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964, and Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefitting from Federal Financial Assistance (Incorporated by Reference). These rules implement, for recipients of federal assistance, provisions of nondiscrimination on the basis of race, color, national origin, and disabled condition, respectively.
9. Appeals from non-designation will be handled under 20 CFR part 667.

Signed at Washington, DC, this 30th day of January, 2002.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet, SF 424A

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: The Glossary of Terms

BILLING CODE 4510–79–P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application
- ☐ Construction
- ☐ Non-Construction

Preapplication
- ☐ Construction
- ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:

23. Remarks:

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Appendix C

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Appendix D

Quarterly Performance and Enrollment Goals

(Enter all data cumulatively)

Grant Number: **Program Year:**

Performance Goals

	Quarters 1	2	3	4
Assessments				
Participants/Enrollments				
Employment Development Plans				
Job Placement Services				
Follow-up services at 90 days				
Placements/Entered Employments				
Terminations				

Core Training

	Quarters 1	2	3	4
Classroom Training				
On-the-job training				
Remedial education				
Literacy and bilingual training				
Institutional skills training				
Occupational skills training				
On-site industry-specific training				
Customized training				
Apprenticeship training				
Upgrading and retraining				
Supportive Services				
Other (specify)				
Total Individuals				

Ancillary Services

	Quarters 1	2	3	4

Counseling and/or Vocational Guidance				
Job Search Assistance				
Case Management				
Job Club				
Work Experience				
Tools/Fees/etc.				
Other (specify)				

Enrollment Goals by Eligibility Groups (do not double count)

	Quarters			
	1	2	3	4
Campaign/Wartime veteran				
Service-Connected Disabled veteran				
Recently-separated veteran				

Enrollment Plan by Eligibility Subgroups (from above, as applicable, include here)

	Quarters			
	1	2	3	4
Youth veterans (20-24 years of age)				
Economically Disadvantaged veterans				
Welfare and/or Public Assistance recipient veterans				
Female veterans				
Homeless veterans				
African-American veterans				
Hispanic veterans				
Native American veterans				
Other minority veterans				

Benchmarks

	Quarters			
	1	2	3	4
Average Wage at Placement				
Placement Rate				

Appendix E

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

	Administration	Program
Sub-Total	_____	_____
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs ----------	_____	_____

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

Appendix F

GLOSSARY OF TERMS

Adequate Employment - See Unsubsidized Employment.

Administrative Costs - All direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of recipients and sub-recipients of the grant funds.

Adult Basic Education - Education for adults whose inability to speak, read or write the English language or to effectively reason mathematically, constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level, of education of such individuals with a view to making them less likely to become dependent on others, to improve their ability to benefit from occupational training and otherwise increase their opportunities for more productive and profitable employment, and to make them better able to meet their adult responsibilities.

Ancillary Services - Employment and training related activities other than core training which may enhance a participant's employability.

Apprenticeship Training - A formal occupational training program which combines on-the-job training and related instruction and in which workers learn the practical and conceptual skills required for a skilled occupation, craft, or trade. It may be registered or unregistered.

Assurances and Certifications - The act of certifying compliance with applicable federal and state laws and regulations regarding the receipt and expenditures of grant monies.

ASVET - Assistant Secretary for Veterans' Employment and Training (USDOL)

Average Wage at Placement - This is an average of the wages earned by participants upon entering employment.

Barriers to Employment - Characteristics that may hinder an individual's hiring, promotion or participation in the labor

force. Some examples of individuals who may face barriers to employment include: single parents, displaced homemakers, youth, public assistance recipients, older workers, substance abusers, teenage parents, veterans, ethnic minorities, and those with limited English speaking ability or a criminal record or with a lack of education, work experience, credentials, child care arrangements, transportation or alternative working patterns.

Case Management - A client centered approach in the delivery of services, designed to prepare and coordinate comprehensive employment plans for participants, to assure access to the necessary training and supportive services, and to provide support during program participation and after job placement. In accordance with this definition, the case manager acts as a facilitator in assisting the participant toward a successful completion of training.

Classroom Training - Any training of the type normally conducted in an institutional setting, including vocational education, which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, throughout the provision of courses such as remedial education, training in the primary language of persons with limited English language proficiency, or English-as-language training.

Cognizant Federal Agency - The federal agency that is assigned audit or indirect cost rate approval responsibility for a particular recipient organization by the Office of Management and Budget. (OMB Circulars A-87, A-102)

Community-based organization (CBO)- means a private nonprofit organization that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce investment.

Core Training - Core training activities are employment focused interventions which address basic vocational skills deficiencies that prevent the participant from accessing appropriate jobs and/or occupations.

Counseling - Counseling in this sense can be any form of assistance which (1) provides guidance in the development of a participant's vocational goals and the means to achieve those

goals; and/or (2) assist a participant with the solution to a variety of individual problems which may pose a barrier(s) to the participant in achieving vocational goals, e.g., PTSD counseling, substance abuse counseling, job counseling, etc.

Customized Training - A training program designed to meet the special requirements of an employer who has entered into an agreement with a Service Delivery Area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or may be provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a specified number of trainees who satisfactorily complete the training.

Disabled Veteran - A veteran who is entitled to compensation under laws administered by the Veterans Administration; or an individual who was discharged or released from active duty because of service-connected disability.

DVET - Director for Veterans' Employment and Training

DVOP - Disabled Veterans' Outreach Program specialist

Economically Disadvantaged - means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673 (2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), or (ii) 70 percent of the lower living standard income level; (C) is receiving (or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977; (D) qualified as a homeless individual under section 103 of the Stewart B. McKinney Homeless Assistance Act; (E) is a foster child on behalf of whom State or local government payments are made or (F) in cases permitted by regulations of the Secretary, is an individual with a disability whose income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements.

Employment Development Plan (EDP) - An individualized written plan or intervention strategy for serving an individual which, as a result of an assessment of the veteran's economic needs, vocational interests, aptitudes, work history, etc., defines a reasonable vocational or employment goal and the developmental services or steps required to reach the goal and which documents the accomplishments made by the individual.

Employment Service - the state level organization or public labor exchange system affiliated with DOL's United States Employment Service.

Entered Employment Rate - This is a method used to determine the percentage of participants who become employed. The percentage is calculated by dividing the number of total participants who were enrolled in the program by the number of participants who were placed or entered employment through the program.

ETA - The Employment and Training Administration

Enrolled Veteran - Shall be synonymous with the term participant. A veteran who has been determined eligible for services at intake and who is receiving or scheduled to receive core training.

Follow-up - The tracking of what happens to participants when they leave the program for a period of 180 days after initial placement. The reporting requirements are to include the following data/information employment status (number of Entered Employments/Placements at 180 days after program has ended), average hourly wage (earnings change at 180 days after program has ended), and job retention (of those enrolled in training, provide number of those still employed in trained occupation at 180 days after program has ended), these measures can be used to assess long-term program performance and activity strategies for clients with diverse characteristics.

FTE - Full-time Equivalent, a personnel charge to the grant equal to 2,080 hours per annum.

FY - Fiscal Year. For federal government purposes, any twelve month period beginning on October 1 and ending on September 30.

GED - General Equivalency Diploma. A high school equivalency diploma which is obtained by passing the General Educational Diploma Equivalency Test which measures the application of skills and knowledge generally associated with four years of traditional high school instruction.

In-kind services - Property or services which benefit a federally assisted project or program and which are contributed without charge to the grantee.

Indirect Cost - A cost that is incurred for a common or joint purpose benefitting more than one cost objective and that is not readily assignable to the cost objectives specifically benefitted.

Institutional Skills Training - Skills training conducted in an institutional setting and designed to ensure that individuals acquire the skills, knowledge and abilities necessary to perform a job or group of jobs in an occupation for which there is a demand.

Intake - A process for screening individual applicants for eligibility; making an initial determination whether the program can benefit the applicants; providing information about the program, its services and the availability of those services; and selecting individual applicants for participation in the program.

Job Club Activities - A form of job search assistance provided in a group setting. Usually job clubs provide instruction and assistance in completing job applications and developing resumes and focus on maximizing employment opportunities in the labor market and developing job leads. Many job clubs use telephone banks and provide group support to participants before and after they interview for openings.

Job Development - The process of marketing a program participant to employers, including informing employers about what the participant can do and soliciting a job interview for that individual with the employer.

Job Placement Services - Job placement services are geared towards placing participants in jobs and may involve activities such as job search assistance, training, or job development. These services are initiated to enhance and expedite participants' transition from training to employment.

Job Search Assistance (JSA) - An activity which focuses on

building practical skills and knowledge to identify and initiate employer contacts and conduct successful interviews with employers. Various approaches may be used to include participation in a job club, receive instruction in identifying personal strengths and goals, resume and application preparation, learn interview techniques, and receive labor market information. Job search assistance is often a self-service activity in which individuals can obtain information about specific job openings or general job or occupational information.

Labor Exchange - Refers to the services provided to job seekers and employers by the State Employment Service Agencies, WIA Service -Delivery Areas, or other entities. Services to job seekers may include assessment, testing, counseling, provision of labor market information and referral to prospective employers. Employer service may include accepting job orders, screening applicants, referring qualified applicants and providing follow-up.

Labor Force - The sum of all civilians classified as employed and unemployed and members of the Armed Forces stationed in the United States. (Bureau of Labor Statistics Bulletin 2175)

Labor market area - an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.

Literacy and Bilingual Training - See Adult Basic Education.

LVER - Local Veterans' Employment Representative

Minimum Economic Need - The level of wages paid to a program participant that will enable that participant to become economically self-sufficient.

Minority Veterans - For the purposes of this SGA, veterans who are IV-C eligible and are members of the following ethnic categories: African American, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander.

Occupational Skills Training - Includes both (1) vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs, and (2) on-the-job training.

Offender - Any adult or juvenile who has been subject to any

stage of the criminal justice process for whom services under this Act may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

OASVET - Office of the Assistant Secretary for Veterans' Employment and Training (ASVET)

On-the-job training (OJT) - means training by an employer that is provided to a paid participant while engaged in productive work in a job that-- (A) provides knowledge or skills essential to the full and adequate performance of the job; (B) provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and (C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate. Usually in the OJT agreement, this is a promise on the part of the employer to hire the trainee upon successful completion of the training.

On-site Industry-specific Training - This is training which is specifically tailored to the needs of a particular employer and/or industry. Participants may be trained according to specifications developed by an employer for an occupation or group of occupations at a job site. Such training is usually presented to a group of participants in an environment or job site representative of the actual job/occupation, and there is often an obligation on the part of the employer to hire a certain number of participants who successfully complete the training.

Outreach - An active effort by program staff to encourage individuals in the designated service delivery area to avail themselves of program services.

Outside Funds - Resources pledged to the grant program which have a quantified dollar value. Such resources may include training funds from programs such as WIA Title I that are put aside for the exclusive use by participants enrolled in a program. Outside funds do not include in-kind services.

Participant - means an individual who has been determined to be eligible to participate in and who is receiving services (except followup services authorized under this title) under a program authorized by this title. Participation shall be

deemed to commence on the first day, following determination of eligibility, on which the individual began receiving subsidized employment, training, or other services provided under this title. **An individual who receives only outreach and/or intake and assessment services does not meet this definition.**

Placement - The act of securing unsubsidized employment for or by a participant.

Pre-apprenticeship Training - Any training designed to increase or upgrade specific academic, or cognitive, or physical skills required as a prerequisite for entry into a specific trade or occupation.

Pre-enrollment Assessment - The process of determining the employability and training needs of individuals before enrolling them into the program. Individual factors usually addressed during pre-enrollment assessment include: an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, and personal circumstances.

Program Resources - Includes the total of both program or grant and outside funds.

PY - Program Year. The 12-month period beginning July 1, and ending, on June 30, in the fiscal year for which the appropriation is made.

Recently Separated Veteran - refers to any veteran who applies for participation in a funded activity within 48 months after separation from military service.

Remedial Education - Educational instruction, particularly in basic skills, to raise an individual's general competency level in order to succeed in vocational education or skill training programs, or employment.

Service-Connected Disabled - refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (DVA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C., Chapter 19, section 1503(27)(B))

SGA - Solicitation for Grant Application

Subgrant - An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

Subgrantee - The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Suitable Employment - See "Unsubsidized Employment"

Substance Abuser - An individual dependent on alcohol or drugs, especially narcotics, whose dependency constitutes or results in a substantial barrier to employment..

Supportive Services - means services which are necessary to enable an individual eligible for training, but who cannot afford to pay for such services, to participate in a training program funded under the grant. Such supportive services may include transportation, health care, financial assistance, (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services and materials for individuals with disabilities, job coaches, child care and dependent care, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

Unsubsidized Employment - Employment not financed from funds provided under the grant. In the grant program the term "adequate" or "suitable" employment is also used to mean placement in unsubsidized employment which pays an income adequate to accommodate the participant's minimum economic needs.

Upgrading and Retraining - Training given to an individual who needs such training to advance above an entry level or dead-end position. This training shall include assisting veterans in acquiring needed state certification to be employed in the same field as they were trained in the military (i.e., Commercial Truck Driving License (CDL), Emergency Medical Technician (EMT), Airframe & Powerplant (A&P), Teaching Certificate, etc.).

USDOL - United States Department of Labor

USDVA - United States Department of Veterans Affairs (Formerly the Veterans Administration).

Veteran - shall refer to an individual who served in the United States active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Veterans' Workforce Investment Program (VWIP) - Reference made to the "VWIP Program" means all activity funded by VWIP and outside resources.

VWIP Resources - This term is synonymous with VWIP funds/funding.

Vocational Exploration Training - Through assessments such as interest inventories and/or counseling, a process of identifying occupations or occupational areas in which a person may find satisfaction and potential, and for which his or her aptitudes and other qualifications may be appropriate.

Welfare and/or Public Assistance recipient - An individual who, during the course of the program year, receives or is a member of a family who receives cash welfare or public assistance payments under a Federal, State, or local welfare program.

Workforce Investment Act (WIA) - The purpose of this Act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals, including veterans, who face serious barriers to employment and who are in need of such training to obtain prospective employment. The Act requires the ASVET to consult with the Secretary of the DVA to ensure that programs funded under VWIP of this Act meet the employment and training needs of service-connected disabled, Campaign and recently separated veterans and are coordinated, to the maximum extent feasible, with-related programs and activities.

Work Experience - A temporary activity (six months or less) which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors, and which may be combined with classroom or other training. When wages are paid to a participant on work experience and when such wages are wholly paid for under WIA, the participant <u>may not</u> receive this training under a private, for profit employer.

Youth - An individual, between the age of 20 and 24 years of age, who served on active duty in the U.S. Armed Forces.

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Federal Register

Wednesday,
February 6, 2002

Part II

Federal Communications Commission

47 CFR Part 32, et al.

2000 Biennial Regulatory Review Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 43, 51, 54, 64, 65, and 69

[CC Docket Nos. 00–199, 97–212, and 80–286; FCC 01–305]

2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission consolidates and streamlines Class A accounting requirements; relaxes certain aspects of the affiliate transactions rules; significantly reduces the accounting and reporting rules for mid-sized carriers; and reduces the ARMIS reporting requirements for both large and mid-sized incumbent local exchange carriers (LECs). The Commission anticipates that the rule changes adopted in the Report and Order will reduce regulatory burdens on incumbent LECs.

DATES: Effective August 6, 2002. The Commission will, however, permit carriers to implement accounting changes as of January 1, 2002.

Written comment by the public on the new and/or modified information collections are due March 8, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, TW–A325, Washington, DC 20554.

In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Peterson, Deputy Division Chief, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–1575 or Mika Savir, Accounting Safeguards Division, Common Carrier Bureau, Legal Branch, at (202) 418–0384. For additional information concerning the information collections in this document, contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted October 11, 2001 and released November 5, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 10413. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act: This Report and Order contains either a new or modified information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act

This Report and Order contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due March 8, 2002. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Type of Review: Revision of currently approved collections.

Respondents: Business or other for-profit.

OMB Control No.	Title	Number of respondents	Est. time per respondent	Total annual resposnes	Cost to respondents
3060–0370	Part 32	239	6,123.4	1,463,496	$0
3060–0384	Sections 64.904 & 64.905	12	107	1,285	1,200,000
3060–0470	Sections 64.901–64.903	10	200	2,000	0
3060–0511	ARMIS Access Report (43–04)	121	157.2	19,031	0
3060–0512	ARMIS Annual Summary Report (43–01)	121	96.5	11,680	0
3060–0734	Affiliates Transactions	20	24	480	0

Needs and Uses: In the Report and Order, the Commission is completing the second phase of its Comprehensive Accounting and ARMIS review. In the Report and Order, the Commission, among other things, reduces the number of Class A accounts in 47 CFR part 32 by 45%; reduces the current Class B accounts by 27%; revises the affiliate transaction rules; simplifies the preparation of cost allocation manuals for Class A carriers; modifies several ARMIS reporting for the large incumbent LECs; significantly streamlines ARMIS Report 43–04; significantly simplifies the reporting requirements for mid-sized incumbent LECs by eliminating the requirement that they file certain ARMIS reports; and eliminates the cost allocation manual filing requirements and the biennial attestation requirement for mid-sized LECs.

The information provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities.

Summary of Report and Order

I. Accounting Rules

A. Chart of Accounts

The Commission concludes that the number of Class A accounts can be reduced from 296 accounts to 164 accounts, and adopts the proposal in 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3, CC Docket No. 00–199, *Notice of Proposed Rulemaking*, 65 FR 67675 (11–13–2000) (*NPRM*), with the following modifications: Instead of consolidating the buried cable, submarine cable, and deep sea cable accounts, the Commission is consolidating the deep sea cable and submarine cable accounts and is retaining the buried cable accounts. In addition, the Commission is not consolidating Account 4040, Customer's deposits, with the other current liabilities accounts. The Commission is also modifying the proposal in the *NPRM* regarding the consolidation of the local network services revenues accounts. Instead of consolidating these accounts (Accounts 5001 through 5069) into Account 5000, Basic local service revenue, the Commission is combining these accounts into three accounts. Finally, the Commission retains Account 6790, Provision for uncollectible notes receivable and Account 6613, Product advertising, and consolidates the remaining customer operations expense and corporate operations expense accounts as proposed.

The Commission adopts several of the new Class A accounts proposed in the *NPRM:* circuit and packet switching subaccounts to the digital switching accounts; electronic and optical circuit equipment subaccounts to the circuit equipment accounts; and wholesale and resale subaccounts to Account 6620, Services. The Commission is not adopting the remaining proposed Class A accounts. Appendix C of the Report and Order contains the revised list of Class A accounts.

The Commission also streamlines the Class B accounts, as proposed in the *NPRM*. Appendix D of the Report and Order contains the revised list of Class B accounts.

B. Other Accounting Rule Changes

1. *Inventories.* Rule 32.1220(h) of the Commission's rules, 47 CFR 32.1220(h), requires that inventories of material and supplies be taken during each calendar year and that adjustments to this account be charged or credited to Account 6512, Provisioning expense. Section 32.2311(f) of the Commission's rules, 47 CFR 32.2311(f), requires an annual inventory of all station apparatus in stock included in this account. In the *NPRM*, the Commission sought comment on the United States Telecom Association's (USTA's) proposal to eliminate the detailed inventory requirements in the rules and instead permit companies to perform inventories based on risk assessment and on existing controls. The Commission concludes that companies should have the latitude to determine the appropriate inventory validation methodology based on risk assessment. Surrogate measures such as inventory cycle counts and statistical sampling measures may be more cost effective for a carrier than a complete physical inventory. The Commission therefore revises §§ 32.1220(h) and 32.2311(f) to eliminate the annual inventory requirement.

2. *Contributions.* In the *NPRM*, the Commission sought comment on adopting, for federal accounting purposes, Statement of Financial Accounting Standards No. 116 (SFAS–116), ''Accounting for Contributions Received and Contributions Made.'' SFAS–116 requires companies to record in the current period a liability and related expense for unconditional pledges to make contributions in future years. Prior to adoption of SFAS–116, companies would record such pledges annually when the contributions were made. In 1994, shortly after FASB adopted SFAS–116, the Common Carrier Bureau (Bureau) informed carriers not to adopt SFAS–116 for federal accounting purposes. The Commission's primary concern was the effect such a rule could have on the carriers' rates. The adoption of SFAS–116 would allow carriers to record increased expenses in a given year to reflect contributions pledged for future years. Adopting SFAS–116 would establish an accounting rule that would be consistent with generally accepted accounting principles (GAAP). The Commission's rules require financial records to be kept in accordance with GAAP, to the extent permitted by the system of accounts. The Commission adopts SFAS–116 for federal accounting purposes and directs the Bureau to monitor the carriers' accounting treatment of contributions to determine whether implementation of SFAS–116 has a significant impact on rates.

3. *Section 252(e) Agreements.* In the *NPRM,* the Commission sought comment on USTA's proposal that the Commission clarify that section 252(e) agreements are treated the same as tariffed services in part 64 cost allocation rules. The Commission adopts the proposal. Accordingly, to the extent a carrier provides a non-tariffed service to its nonregulated operations pursuant to a section 252(e) agreement, that service will be recorded to nonregulated operations at the amount of that service as set forth in an interconnection agreement approved by a state commission pursuant to section 252(e).

4. *Affiliate Transactions Rules.* In Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996, CC Docket No. 96–150, *Report and Order*, 62 FR 02918 (1–21–1997) (*Accounting Safeguards Order*), the Commission modified the affiliate transactions rules to provide greater protection against subsidization of competitive activities by subscribers to regulated telecommunication activities. The Commission amended the affiliate transactions rules for assets and services provided by a carrier to its affiliate and services received by a carrier from its affiliate. Under these rules, such transactions are to be valued at publicly available rates, if possible. The publicly available rates, in order of precedence, are (1) an existing tariff rate, (2) (for services only) a publicly filed agreement or statements of generally available agreements, or (3) a qualified prevailing price valuation. If there is no tariff price for the asset, and the transfer does not qualify for prevailing price treatment, the carrier must compare the asset's net book cost to its fair market value and value it at the higher of the two if the transfer is from the (regulated) carrier, and at the lower of the two if the transfer is to the (regulated) carrier. Carriers must make a good faith determination of the asset's fair market value.

The Commission revises the affiliate transactions rules to eliminate the requirement that carriers make a fair market value comparison for assets when the total annual value of that asset is less than $500,000. In Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1, CC Docket No. 99–253, *Report and Order*, 65 FR 16328 (3–28–2000) (*Phase 1 Report and Order*), the Commission eliminated the requirement that carriers make a good faith determination of fair market value for services when the total annual value of that service is less than $500,000. Below that threshold, the administrative cost and effort of making such a

determination would outweigh the regulatory benefits of a good faith determination of fair market value. In such cases, the service should be recorded at fully distributed cost.

In the *NPRM*, the Commission proposed a conforming exemption for assets. Under the Commission's proposal, carriers would not be required to perform the net book cost/fair market value comparison for asset transfers totaling less than $500,000 per year. For assets within this exception, carriers would use net book cost instead of fair market value. This exception would be on a product-by-product basis similar to the services-by-services basis adopted in the *Phase 1 Report and Order*. The exception applies ''going forward,'' so that the net book cost/fair market value comparison would be required once the total amount of transfers (i.e., total net book cost) for a given product line in a given year exceeds $500,000. The threshold will be applied to the aggregate transactions, for a given affiliate. Carriers, therefore, will not be required to perform the net book cost/fair market value comparison for the first $500,000 of asset transfers, on a product-by-product basis, per year, per affiliate. In such cases, the asset should be recorded at net book cost. Carriers (except average schedule companies) will reflect these transactions in their cost allocation manuals (CAMs) as well as ARMIS reports, if ARMIS filing is required.

In the *NPRM*, the Commission sought comment on giving carriers the flexibility to use the higher or lower of cost or market valuation as either a floor or ceiling. For certain transactions carriers must compare the cost of the service or asset to market value. If the carrier is the recipient of the asset or service, it must be recorded on the carrier's books at the lower of cost or market. If the carrier is the provider, it must be recorded at the higher of cost or market. The Commission proposed giving carriers flexibility in valuing these transactions by allowing the higher or lower of cost or market valuation to operate as either a floor or ceiling, depending on the direction of the transaction. This proposal would permit the regulated carrier to either pay less or charge more to the nonregulated affiliate for the service or asset. The Commission recognizes that adopting a ceiling and floor for recording affiliate transactions could potentially have an anti-competitive effect. The Commission observes that it would be unlikely that a transaction would have such an effect, particularly if the transaction is *de minimis* and is *not* priced below incremental cost. The Commission therefore adopts the proposal in the *NPRM* and allows the higher or lower of cost or market valuation to operate as either a floor or ceiling, depending on the direction of the transaction. Such transaction must comply with the Communications Act, Commission rules and orders, and must not be otherwise anti-competitive.

In the *NPRM*, the Commission sought comment on USTA's proposal to revise the prevailing price definition. The prevailing price describes a price at which a company offers an asset or service to the general public. To qualify for prevailing price treatment, greater than 50 percent of sales of the subject asset or service must be to third parties. USTA proposed that the Commission revise § 32.27(d) to decrease the threshold from greater than 50 percent to 25 percent for use of prevailing price in valuing affiliate transactions. The Commission concludes that a lower threshold would be consistent with a more competitive environment, and adopts the proposal.

In the *NPRM*, the Commission sought comment on USTA's proposal to expand the current exception to the estimated fair market value rule to include ''all services provided by a carrier or its affiliate(s) where the service is provided solely to members of the carrier's corporate family.'' Under the Commission's current affiliate transactions rules, if a transaction cannot be valued at publicly available rates, it must be valued based on a comparison of cost and fair market value. If a comparison is used, the carrier must make a good faith determination of fair market value. If the regulated company purchases the asset or service from a nonregulated affiliate, the carrier must record the transaction at the lower of cost or market value. On the other hand, if the carrier sells the asset or service to a nonregulated affiliate, the carrier must record the transaction at the higher of cost or market. The Commission adopted this valuation rule in the *Accounting Safeguards Order* to ensure that the transactions between the carriers and their nonregulated affiliates take place on an ''arm's length'' basis, guarding against cross-subsidization of competitive services by subscribers to regulated services.

The exception USTA seeks to expand provides that when an incumbent carrier purchases services from an affiliate that exists solely to provide services to members of the carrier's corporate family, the carrier may record the services at fully distributed cost rather than applying the cost or market rule. When the Commission adopted this exception in the *Accounting Safeguards Order*, it explained that the narrow exception to the general rule was justified because an affiliate that provides services solely to the incumbent carrier's corporate family is established to take advantage of economies of scale and scope. The benefits of such economies of scale and scope are reflected in the affiliate's costs and are ultimately transferred to ratepayers through transactions with the incumbent carrier for such services valued at fully distributed costs. Requiring incumbent carriers to perform fair market valuations for such transactions would increase the cost to ratepayers while providing limited benefit.

The Commission does not adopt the proposal to expand the scope of the exception to the valuation rule. If the exception is applied based on an individual service being offered solely to the corporate family, while other services of the affiliate are subject to market valuation studies because they are offered to third parties, the risk of improper cross-subsidization increases. This risk of cost shifting between third party services and the incumbent carrier's services does not exist when the exception applies only to affiliates offering service within the corporate family.

5. *Section 32.5280(c) Subsidiary Record Requirement*. In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate the § 32.5280(c) subsidiary record requirement. This rule requires carriers to maintain subsidiary record categories for each nonregulated revenue item recorded in Account 5280, Nonregulated operating revenue. The Commission simplifies the manner in which incumbent LECs record their nonregulated revenues, but does not eliminate § 32.5280(c) altogether. The Commission concludes that incumbent LECs do not need to break out each nonregulated revenue item; instead they may group their nonregulated revenues into two groups: 1 subsidiary record for all the revenues from regulated services treated as nonregulated for federal accounting purposes pursuant to Commission order and the second for all other nonregulated revenues.

6. *Accounts 1437 and 4361*. In the *NPRM*, the Commission sought comment on USTA's proposal to simplify deferred tax accounting by allowing carriers to book Account 1437, Deferred tax regulatory asset net of Account 4361, Deferred tax regulatory liability. The Commission concludes that netting Accounts 1437 and 4361 would simplify deferred tax accounting.

The Commission revises §§ 32.1437 and 32.4361 accordingly to reflect this change. The Commission retains the tax on tax gross up requirement in Part 32.

7. *Expense Limits.* Section 32.2000(a)(4) of the Commission's rules, 47 CFR 32.2000(a)(4), requires that the cost of individual items of equipment with a cost of $2000 or less or having a life of less than one year, classifiable in specified accounts, shall be charged to the applicable expense accounts rather than capitalized. The expense limit reduces the cost of maintaining property records for the acquisition, depreciation, and retirement of a multitude of low-cost, high-volume assets. This expense limit applies to equipment classifiable in Account 2112, Motor vehicles; Account 2113, Aircraft; Account 2114, Tools and other work equipment; Account 2122, Furniture; Account 2123, Office equipment; and Account 2124, General purpose computers, except for personal computers falling within Account 2124. Personal computers classifiable to Account 2124, with a total cost for all components of $500 or less, are charged to the applicable Plant Specific Operations Expense accounts.

The Commission concludes that the tools and test equipment located in the central office should be included in the $2000 limit because these assets are virtually the same as the tools and test equipment located in the general support function. Moreover, tools and test equipment are generally individual units rather than components of a larger unit. The Commission revises the expense limit rules to include the central office tools and test equipment.

The Commission concludes that it should not increase the expense limit to $2000 for personal computers. Personal computers should be subject to a special limit because of the nature of these assets. Individual personal computers are made up of relatively low cost components, such as the monitor, keyboard, and CPU, that should be looked at as a single unit for purposes of applying the expense limit. Moreover, although relatively low cost individually, personal computers are part of larger networks within each company and represent substantial investments. These investments should be capitalized. Accordingly, the Commission does not revise the rules regarding personal computers.

8. *Incidental Activities.* The Commission adopts the proposal in the *NPRM* to eliminate the ''treated traditionally'' requirement from incidental activities. Under § 32.4999(l) of the Commission's rules, 47 CFR 32.4999(l), revenues from minor nontariffed activities that are an outgrowth of the carrier's regulated activities may be recorded as regulated revenues under certain conditions. These activities, known as ''incidental activities,'' must: (1) Be an outgrowth of regulated operations; (2) have been treated traditionally as regulated; (3) be a non-line-of business activity; and (4) result in revenues that, in the aggregate, represent less than one percent of total revenues for three consecutive years. Accounting for incidental activities as regulated revenues obviates the need to make detailed cost allocations to remove the costs of the nonregulated activity from regulated costs. Carriers must list their incidental activities in their CAM. They may not add new incidental activities because of the ''treated traditionally'' criterion. Eliminating the ''treated traditionally'' criterion would permit carriers to add to their incidental activities, provided that the remaining three criteria were satisfied. The Commission finds that the three remaining criteria provide sufficient safeguards to prevent misuse of the incidental activities exception.

9. *Allocation of Costs at Class B Level.* Section 64.903 of the Commission's rules, 47 CFR 64.903, requires incumbent LECs with annual operating revenues from regulated telecommunications operations equal to or above a designated indexed revenue threshold, to file cost allocation manuals annually setting forth the procedures that they use to allocate costs between regulated and nonregulated services. In the *NPRM*, the Commission sought comment on USTA's proposal that all carriers have the option to allocate part 64 costs at a Class B level. The Commission does not adopt the proposal and concludes that it is necessary to continue to require Class A carriers to allocate costs at the Class A level for the Class A accounts needed for the administration of the universal service high-cost support mechanism, listed in Appendix E of the Report and Order.

10. *Section 32.16 Requirement for Implementing New Accounting Standards.* In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate the § 32.16 requirement for notification and approval to implement new accounting standards prescribed by the Financial Accounting Standards Board (FASB). Section 32.16 of the Commission's rules, 47 CFR 32.16, requires carriers to revise their records and accounts to reflect new accounting standards prescribed by FASB. This section provides that Commission approval of a change in an accounting standard shall automatically take effect 90 days after a carrier notifies the Commission of its intention to follow a new standard and files a revenue requirement study for the current year analyzing the effects of the accounting standards changes. The Commission concludes that accounting standard changes often raise questions regarding exogenous treatment under price cap rules and that when they do, cost data must be available to resolve such issues. Additionally, mere compliance with GAAP does not ensure compliance with the Commission's rules. The Commission finds that the prior review period ensures uniformity in LEC accounting practices and allows the Commission to assess the implications of GAAP changes for LEC revenue requirements. The Commission retains the requirement for carriers to notify the Commission of their intentions to adopt a FASB change and how the carrier intends to implement this change. The Commission eliminates, however, the requirement to provide a revenue requirement study.

11. *Charges to Plant Accounts.* Section 32.2003(b) of the Commission's rules, 47 CFR 32.2003(b), is an exception to the general rule that construction costs are recorded in Construction Work-in-Progress accounts until the construction project is completed. It allows carriers to charge directly to the appropriate plant accounts the cost of any construction project that is estimated to be completed and ready for service within two months from the date on which the project was begun. In addition, this section allows carriers to charge directly to the plant accounts the cost of any construction project for which the gross additions to the plant are estimated to amount to less than $100,000. The purpose of this exception is to allow carriers to record short-term and small-cost construction projects directly to the plant accounts without having to first record these costs in the Construction Work-in-Progress accounts. In the *NPRM,* the Commission sought comment on USTA's proposal to permit carriers to record construction projects in the relevant account rather than a work-in-progress account. The Commission does not adopt USTA's proposal. Allowing carriers to set their own materiality levels for deciding when construction costs and assets should be capitalized would give carriers an incentive to capitalize large dollar amounts of uncompleted construction. The Commission's current rules ensure that carriers have an opportunity to earn the authorized rate of return on the interstate portion of all investment they

make in the telephone network, while reducing the amount recovered from ratepayers for assets under construction during the period in which they are under construction. The revenue requirement offset method effectively limits the amount that current ratepayers pay for assets prior to their placement into service. Moreover, allowing carriers to establish their own materiality level for capitalizing plant work in progress accounting, as proposed, would eliminate the uniformity and consistency in reporting that Part 32 strives to achieve. Consistency and uniformity in carriers' books of accounts should be maintained so that the Commission can readily compare their regulatory operating results.

12. *Continuing Property Records.* In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate detailed requirements for property record additions, retirements, and recordkeeping. The property records consist of continuing property records (CPR) and all supplemental records necessary to provide the property record details required by the Commission. CPR records provide data for cost allocations studies used in state regulatory proceedings. In addition, these records provide material-only costs for accounting for transfers, reallocations, and adjustments of plant. State regulators rely heavily on the CPR records in their local ratemaking processes. For these reasons, the Commission does not adopt USTA's proposal.

13. *Cost Allocation Forecasts.* The Commission's cost allocation rules require that costs be allocated between regulated and nonregulated activities. Carriers are required to assign costs directly to regulated and nonregulated activities, whenever possible. Costs that cannot be directly assigned are known as ''shared'' or ''common costs'' and are allocated between regulated and nonregulated use based on a hierarchy of principles. Section 64.901(b)(4) of the Commission's rules, 47 CFR 64.901(b)(4), requires that carriers allocate the costs of central office equipment and outside plant investment between regulated and nonregulated activities based on a forecast of the relative regulated and nonregulated usage during a three calendar year period beginning with the current calendar year. The policy consideration underlying this rule recognizes that investment decisions are made in anticipation of future use. In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate the forecast use rule. The Commission concludes that eliminating the forecast use rule for allocating joint investments between the carrier's regulated operations and nonregulated ''start up'' operations could result in the over-allocation of nonregulated costs to the LECs' regulated activities. Moreover, to the extent there is an overallocation of costs to the regulated books, that overallocation will flow through to the states through separations. As a consequence, ratepayers would be bearing a portion of the costs of deploying networks used to provide nonregulated activities in the future. The Commission finds that the three-year peak forecast method is a reasonable approach to allocating joint and common costs.

14. *Classification of Companies.* Section 32.11 of the Commission's rules, 47 CFR 32.11, divides companies into Class A and Class B for accounting purposes. This rule does not state that the accounting rules apply only to incumbent LECs. Currently, the Commission applies these requirements to incumbent LECs only, because they are the dominant carriers in their markets. In the *NPRM*, the Commission sought comment on whether § 32.11 should be amended so that its requirements explicitly pertain only to incumbent LECs. The Commission adopts the proposal and amends § 32.11 to specifically apply to incumbent LECs and any other companies that the Commission designates by order. Now that new carriers have entered the local exchange market, the Commission is conforming the rules to today's marketplace and replacing the term ''companies'' with ''incumbent LEC.''

II. ARMIS Reporting Requirements

A. *Consolidating ARMIS Reports.* In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate most of ARMIS reporting. In particular, USTA proposed to combine the ARMIS 43–01, 43–02, 43–03, and 43–04 into one report, and have carriers report only at the aggregated operating company level. The Commission concludes that eliminating state-by-state ARMIS information would destroy the utility of ARMIS to states that wish to compare cost information of the incumbent LEC in their state to that incumbent LEC's costs in other states. The Commission does not adopt USTA's proposal.

B. *ARMIS Report 43–01 (Annual Summary Report).* The ARMIS 43–01 Annual Summary Report summarizes the carriers' accounting and cost allocation data prescribed in parts 32, 36, 64, 65, and 69 of the Commission's rules. It consists of Table I, an aggregated and comprehensive view of the carriers' financial and cost allocation data and Table II, a summary of demand in minutes of use and billable access lines. All incumbent LECs with annual operating revenues for the preceding year equal to or above the indexed revenue threshold file the 43–01 Report on a study area basis.

Table I summarizes the carrier's costs and revenues as reported in the part 32 accounts (43–02 USOA Report), and shows the allocation of costs between regulated and nonregulated activities (43–03 Joint Cost Report), the separation of regulated costs between state and interstate jurisdictions, and the interstate costs used to support access elements (43–04 Separations and Access Report). The Commission does not adopt the proposal in the *NPRM* to eliminate the filing of Tables I and II. With respect to Table II, the Commission adopts the proposal to eliminate the Common Line Minutes of Use (rows 2010, 2020, 2030, and 2040). The remaining eight rows (2050, 2060, 2090, 2100, 2110, 2120, 2140, and 2150) will remain in Table II. Rows 2100, Residence Lifeline Access Lines and 2110, Residence Non-Lifeline Access Lines are needed by the Commission to track support amounts the Universal Service Administrative Company (USAC) pays to qualifying companies. In addition, all of these eight rows are needed by the Commission to verify data received in tariff filings.

C. *ARMIS Report 43–02 (USOA Report).* The ARMIS 43–02 Report provides the annual operating results of the carriers' telecommunications operations for every account in Part 32. All incumbent LECs with annual operating revenues for the preceding year equal to or above the indexed revenue threshold file the 43–02 Report on an operating company basis. The 43–02 Report collects information about the carrier's ownership (Table C Series), balance sheet (Table B Series), and income statement accounts (Table I Series). Information collected in Tables B and I provides data about the carrier's financial accounts, including overall investment and expense levels, affiliate transactions, property valuations, and depreciation rates. The Commission does not adopt the proposal in the *NPRM* to automatically generate Table I–1 of the ARMIS 43–02 Report. In addition, the Commission does not adopt the proposal in the *NPRM* to add rows to ARMIS Report 43–02, tables for the reporting of metallic and non-metallic cable investment and expense.

D. *ARMIS Report 43–03 (Joint Cost Report).* The ARMIS 43–03 Report contains the allocation of the carriers'

revenues, expenses, and investments between regulated and nonregulated activities. All incumbent LECs with annual operating revenues for the preceding year equal to or above the indexed revenue threshold file the 43–03 Report on a study area basis. In the *NPRM*, the Commission proposed to reduce the number of columns currently reported on the 43–03 Report by eliminating the distinction between ''SNFA and Intra-co. Adjustments'' and ''Other Adjustments'' and combining these columns into one column entitled ''Adjustments.'' The Commission finds no significant regulatory need to retain the ''SNFA and Intra-co. Adjustments'' column and therefore adopts the proposal. The Commission also makes a conforming change to the 43–01 Report.

E. *ARMIS Report 43–04 (Separations and Access Report).* The Commission revises the ARMIS 43–04 (Separations and Access) Report to reduce the data required to be reported during the interim freeze of certain jurisdictional cost categories and allocation factors prescribed in part 36 of the Commission's rules. Carriers will file this revised ARMIS 43–04 Report on April 1, 2002, and on an annual basis thereafter for the duration of the freeze. The Commission adopts the streamlined ARMIS 43–04 Table I–Separations and Access Table, attached as Appendix G of the Report and Order. This revised ARMIS 43–04 will be filed on April 1, 2002, and on an annual basis thereafter, for the duration of the separations freeze.

F. *ARMIS 43–07 (Infrastructure Report).* The ARMIS 43–07 Report collects data about the carrier's switching and transmission equipment, call set up time, and cost of total plant in service. This report is prescribed for every mandatory price cap carrier. The report is filed on a study area and holding company level. The report captures trends in telephone industry infrastructure development under price cap regulation. Policymakers at the federal and state levels use this information, which is critical data not available through other public sources. The information collected in ARMIS 43–07 provides the Commission with information about the infrastructure—capacity, and operating characteristics of the vast majority of the nation's wireline network—basic infrastructure information on carriers that provide service to 93 percent of the Nation's customers.

Table I—Switching Equipment. In the *NPRM*, the Commission proposed to eliminate the collection of outdated information and to collect information on newer technologies. In Table I (Switching Equipment), the Commission proposed to eliminate all reporting requirements for electromechanical switches (rows 0130–0141). For the year 2000, the total for all reporting companies of electromechanical switches was zero. The Commission concludes that there is little value in requiring carriers to continue to report that they have no electromechanical switches. Therefore, the Commission adopts the proposal in the *NPRM* and eliminates all reporting requirements for electromechanical switches (rows 0130–0141).

The Commission also proposed to eliminate reporting requirements for analog stored-program-control (ASPC) and digital stored-program-control (DSPC) switches except for the total number of switches and lines served (retain rows 0150, 0160, 0170 and 0180; eliminate rows 0151–0155, 0161, 0171–0175, and 0181). The Commission finds that there is no regulatory need for carriers to report percentages and eliminates rows 0151, 0153, 0155, 0161, 0171, 0173, 0175, and 0181. For the year 2000, the total reported in row 154 (ASPC Tandems) was two. The Commission finds that there is little value in requiring carriers to continue to report such a minimal quantity, and therefore eliminates row 0154. The Commission also concludes that there is also no need to require carriers to report row 0152 (ASPC Local Switches), which is substantially the same as the Total ASPC switches in row 0150; and therefore eliminates row 0152. Similarly, because row 0170 is substantially the sum of row 0172 plus row 0174, the Commission eliminates rows 0172 and 0174.

The Commission notes that for the year 2000 virtually all the reporting carriers' access lines had equal access and touch-tone capability. The Commission concludes that there is little value in continuing to require these carriers to report the data regarding touch-tone capability and equal access, and eliminates all such reporting requirements (rows 0190–0221).

With respect to reporting of information related to Signaling System 7 (SS7) and integrated services digital network (ISDN) capabilities, the Commission concludes that there is no need for carriers to report percentages, as any interested party can easily calculate them. Therefore, the Commission is eliminating rows 0231, 0233, 0235, 0237, 0241, 0247, 0251, 0257, 0271, 0281, 0291, and 0301.

In addition, the Commission notes that most switches equipped with SS7–394 capability are also equipped with SS7–317 capability; therefore, the data reported in the interLATA and intraLATA rows for switches and tandems in this section are almost identical. Having carriers report information in both the row for SS7–394 capability and the row for SS7–317 capability appears to be superfluous. Therefore, the Commission is eliminating rows 0234, 0236, 0246, and 0256. The Commission is renaming row 0230 ''Total switches equipped with SS7.'' The Commission is renaming row 0240 ''Local switches equipped with SS7'' and row 0250 ''Tandems equipped with SS7.'' The Commission concludes that there is no need to continue reporting the number of lines with SS7 service because that is essentially the same as row 0120 and eliminates row 0232.

Table II—Transmission Facilities. In the first section of Table II, ''Sheath Kilometers,'' carriers report data on transmission facilities within their operating areas. Carriers use either analog or digital technology on copper wire, coaxial cable, fiber, radio, and other media. In the *NPRM*, the Commission proposed to change the title ''Sheath Kilometers'' to ''Loop Sheath Kilometers'' and to narrow the collection of data to only local loop facilities connecting customers to their serving offices. The Commission concludes that this information would be more useful for policymakers and interested parties if it were narrowed to local loop facilities connecting customers to their service offices. Therefore, the Commission changes the title to ''Loop Sheath Kilometers'' and limits the collection of data to local loop facilities.

In the second section of Table II, ''Interoffice Working Facilities,'' total circuit links are reported for baseband, analog carrier, and digital carrier. The Commission sought comment on whether to eliminate the reporting requirements that further distinguish baseband, analog, and digital (rows 0331, 0332, 0333, 0350, 0351, 0352, 0360, 0361, 0362, 0363). The Commission concludes that these data are often reported in an inconsistent manner by the carriers, and therefore are not reliable for benchmarking purposes. The Commission eliminates these rows.

In the *NPRM*, the Commission proposed to eliminate reporting of fiber strands terminated at the customer premises at the DS–0 rate (row 0481) and fiber strands terminated at the customer premises at the DS–2 rate (row 0483) from the fourth section of Table II, ''Other Transmission Facility Data.'' The Commission concludes that

virtually no incumbent LEC reports the termination of DS–2 level services at the customer premises, and therefore row 0483 does not provide useful information and should be eliminated. The Commission also eliminates row 0481 (DS–0 rate) because DS–0 level services are generally bundled into DS–1 size packages, and by capturing the required information at the DS–1 level, the Commission does not need to collect the information at the DS–0 level. Row 0482 (DS–1) will be renamed, because fiber is terminated at customer premises at the DS–3 level or greater, and referring to fiber terminations at the DS–1 level is inaccurate.

The Commission also sought comment on adding information on hybrid fiber-copper loop interface locations, number of customers served from these interface locations, xDSL customer terminations associated with hybrid fiber-copper loops, and xDSL customer terminations associated with non-hybrid loops. Such information is not presently collected through any federal reporting program. The Commission finds that the addition of these rows to ARMIS would help satisfy an immediate and pressing need to assess the penetration of fiber in the local loop and gauge the development of broadband infrastructure. Hybrid architectures will likely become increasingly important in providing broadband services and are directly relevant to current criticisms by new entrants that the new architectures are systematically diminishing their ability to provide competing DSL service to end-user retail customers. The Commission concludes that there is a present federal regulatory need, at least for the near term, to collect such data to evaluate the effects of our public policy decisions and to consider whether more market-oriented approaches are appropriate. Therefore, the Commission is adding the following rows to ARMIS: ''Hybrid Fiber/Metallic Loop Interface Locations,'' ''Switched Access Lines Served from Interface Locations,'' ''Total xDSL Terminated at Customer Premises,'' and ''xDSL Terminated at Customer Premises via Hybrid Fiber/Metallic Interface Locations.''

Table III—ILEC Call Set-up Time. In Table III, information is provided about incumbent LEC call set-up time for calls delivered by the incumbent LEC to interexchange carriers. The Commission concludes that this information was important when carriers used different signaling systems, but now that SS7 is predominant, there is little difference among LECs. Therefore, the Commission eliminates Table III.

Table IV—Additions and Book Costs. In Table IV, carriers report data concerning total access lines in service, access line gain, and total gross capital expenditures. This information provides data on carriers' actions to maintain and upgrade the network. The data in this table are at the study-area level. Similar data in the ARMIS 43–02 Report are available at either the operating-company or company-study-area (state) level, but are not directly comparable to these data. The Commission eliminates the filing of this table because similar data are available in other ARMIS reports or can be generated by reference to other ARMIS reports.

G. *ARMIS 43–08 (Operating Data Report).* The ARMIS 43–08 Report collects data about the carrier's outside plant, access lines in service by technology and by customer, number of telephone calls, and billed access minutes.

Table I.A—Outside Plant Statistics—Cable and Wire Facilities. The Commission sought comment on whether to eliminate the reporting requirements in Table 1.A (Outside Plant Statistics—Cable and Wire Facilities), that distinguish among aerial, underground, buried, submarine, deep sea, and intrabuilding cable plant (columns d–o). The Commission concludes that columns d through i, n, and o are useful and should not be eliminated. Columns j, k, l, and m, however, can be eliminated because little, if any, data are reported for these categories. Therefore, the Commission is eliminating columns j, k, l, and m.

Table I.B—Outside Plant Statistics—Other. The Commission proposed to eliminate the reporting of information on satellite channels and video circuits for carriers' radio relay and microwave systems (columns be, bj, bm). Due to changes in technology, data collected in these areas no longer are relevant to the Commission's policy analysis on various issues. Therefore, the Commission is eliminating these three columns.

Table II—Switched Access Lines in Service by Technology. The Commission proposed to eliminate the distinction between analog and digital lines, and require carriers to report the total of main access lines, PBX and Centrex units, and Centrex extensions (retain columns cc, cd, and ce on a total basis; and eliminate columns cf, cg, and ch). The Commission concludes that this information would be more useful if provided on a total basis, instead of disaggregated by analog and digital. Due to changes in technology, data collected in some of these areas no longer provides relevant information. Therefore, the Commission is adopting the proposal in the *NPRM*, and eliminating the distinction between analog and digital by eliminating columns cf, cg, and ch.

Table III—Access Lines in Service by Customer. The Commission proposed to narrow the information collection to total number of Business Access Lines (Single-Line and Multi-Line) and Residential Access Lines (Lifeline/Non-Lifeline and Primary/Non-Primary). The Commission also sought comment on whether Special Access Lines (Analog and Digital) (columns dk and dl) provide accurate information about the carriers' provision of special access lines and whether there is a need for clarification of this reporting requirement. The Commission concludes that extensive structural changes to Table III are warranted. The Commission eliminates the column for Mobile Access Lines, because little, if any, data are reported for this category. The revised table will also contain new columns matching the revised data requirements. Columns ''Single Line Business Access Lines'' and ''Multiline Business Access Lines'' will be under the ''Business Switched Access Lines'' heading. Columns ''Lifeline Access Lines,'' ''Non-Lifeline Primary Access Lines,'' and ''Non-Lifeline Non-Primary Access Lines'' will be under the ''Residential Switched Access Lines'' heading. A column ''Local Private Lines'' is added. Finally, the Commission concludes that the instructions and definitions for columns dk and dl are sufficiently clear and that there is no need to revise or clarify them.

III. Relief for Mid-Sized Carriers

A mid-sized carrier is defined as a carrier whose operating revenue equals or exceeds the indexed revenue threshold, and whose revenue when aggregated with the revenues of any LEC that it controls, is controlled by, or with which it is under common control is less than $7 billion. Previously, the Commission permitted mid-sized carriers to file financial ARMIS reports at a Class B level of detail and allowed these LECs to submit CAMs based on Class B accounts and to obtain an attestation every two years in lieu of an annual financial audit. *See* 1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements, *Report and Order in CC Docket 98–81, Order on Reconsideration in CC Docket No. 96–150, and Fourth Memorandum Opinion and Order in AAD File No. 98–43*, 64 FR 50002 (9–15–1999). In the *NPRM*, the Commission proposed to eliminate mandatory

annual CAM filings and biennial CAM attestation engagements for mid-sized carriers. The Commission adopts this proposal. Mid-sized carriers no longer will be required to annually file a CAM, they, like all other carriers, must be prepared to produce documentation of how they separate regulated from nonregulated costs to the Common Carrier Bureau, upon request. The Commission also adopts the proposal in the *NPRM* to eliminate the requirement that CAMs of mid-sized carriers be subject to an attest audit every two years. Instead of requiring mid-sized carriers to incur the expense of a biennial attestation engagement, they will file a certification with the Commission stating that they are complying with § 64.901 of the Commission's rules. The certification must be signed, under oath, by an officer of the incumbent LEC, and filed with the Commission on an annual basis.

In the *NPRM*, the Commission proposed eliminating the ARMIS 43–02, 43–03, and 43–04 reporting requirements for mid-sized carriers. The Commission adopts this proposal. The Commission concludes that the mid-sized carriers will not be required to file the ARMIS 43–02, 43–03, or 43–04 Reports, for 2002 data. Mid-sized carriers will, however, file these ARMIS reports on April 1, 2002, for 2001 data.

The mid-sized carriers will continue to file the ARMIS 43–01 and 43–08 Reports. The Commission notes that in addition to information contained in ARMIS Reports 43–01 and 43–08, other accounting information from mid-sized carriers is used to develop inputs for the universal service model. While mid-sized carriers no longer are required to report certain information in ARMIS, the Commission expects those companies will maintain sufficient information to be able to produce the data, listed in Appendix E of the Report and Order, upon request. In addition, mid-sized incumbent LECs should continue to maintain subsidiary record categories to provide the data currently provided in the Class A accounts, which are necessary to calculate just and reasonable pole, duct, conduit, and right-of-way attachment rates pursuant to section 224 of the Communications Act. These carriers must report this information, necessary for the Commission and interested parties to calculate and verify attachment rates, in ARMIS, so that the information is publicly available and verifiable.

The Commission indexes the $7 billion threshold that divides the mid-sized carriers and the larger Class A carriers. The Commission concludes it would be analytically consistent with § 402(c) to henceforth index for inflation the revenue threshold that separates the larger Class A carriers and the mid-sized carriers.

Waivers for Roseville and CenturyTel. Due to the significant changes adopted in this Report and Order to the Chart of Accounts and the reporting requirements for mid-sized carriers, the Commission is waiving the ARMIS reporting requirements and CAM attestation requirements for Roseville and CenturyTel for the years 2000 and 2001. These two mid-sized companies have yet to file ARMIS reports for 2000. Without a waiver, these companies would be required to prepare ARMIS reports for the years 2000 and 2001 based on the old chart of accounts. The ARMIS reports filed on April 1, 2003 (i.e., for year 2002) will be based on the new chart of accounts adopted in this report and order. Similarly, the Commission is also waiving the requirements for a CAM attestation for these mid-sized incumbent LECs. The attestation cannot take place until the ARMIS reports are prepared. The Commission cannot, therefore, require a CAM attestation until after the ARMIS reports are filed and a CAM attestation will no longer be required of mid-sized companies under the rules adopted in the Report and Order.

Regulatory Flexibility Analysis

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3, CC Docket No. 00–199, *Notice of Proposed Rulemaking* 65 FR 67675 (11–13–2000) (*NPRM*) and ''Commission Seeks Further Comment in Phase 2 of the Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers,'' *Public Notice*, 66 FR 33938 (6–26–2001) (*June 8 Public Notice*) seeking further comment in this proceeding. The Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) of any possible significant economic impact on small entities by the adoption of rules in the *Report and Order.*

Need for, and Objectives of, this Report and Order. Under our rules, there are two classes of incumbent LECs for accounting purposes: Class A and Class B. Carriers with annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold, currently $117 million, are classified as Class A; those falling below that threshold are considered Class B. Class A carriers (operating companies of SBC, Qwest, Verizon, and BellSouth) have been required to maintain 296 Class A accounts, which provide more detailed records of investment, expense, and revenue than the 113 Class B accounts that Class B carriers are required to maintain. The more generalized level of accounting required under Class B was established to accommodate smaller carriers. In the *Report and Order*, the Commission streamlines the Class A and Class B accounts and ARMIS reporting requirements for incumbent LECs, and further reduces the accounting and reporting requirements for mid-sized incumbent LECs. In addition, this *Report and Order* eliminates the certain inventory requirements; allows carriers to adopt SFAS–116 for federal accounting purposes; eliminates the requirement for a fair market value comparison for asset transfers under $500,000; eliminates the ''treated traditionally'' requirement from ''incidental activities'; modifies the expense limit rules to include central office tools and test equipment in the expense limit; and amends section 32.11 of the Commission's rules to expressly limit the rule to incumbent LECs. Finally, the Commission modifies the ARMIS reporting requirements to eliminate out-of-date requirements and to add reporting for new technologies. These rule changes generally reduce the accounting and reporting requirements for all incumbent LECs.

Summary of Significant Issues Raised by Commenters. No comments were received in response to the IRFA in the *NPRM* or the IRFA in the *June 8 Public Notice*. Several commenters, in the initial comments in this proceeding, suggested completely eliminating ARMIS reporting for mid-sized LECs.

Description and Estimate of the Number of Small Entities to which the Rules Will Apply. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. To estimate the number of small entities that may be affected by the proposed rules, the Commission first considers the statutory definition of ''small entity'' under the RFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term

''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

The Commission has included small incumbent LECs in this present RFA analysis. A ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Wireline carriers (incumbent LECs). According to Trends in Telephone Service, there were 1,335 incumbent local exchange carriers filing the FCC Form 499-A on April 1, 2000. Of these carriers, 1,037 had, in combination with affiliates, 1,500 or fewer employees and 298 had, in combination with affiliates, more than 1,500 employees. Some of these carriers may not be independently owned or operated, but we are unable at this time to estimate with greater precision the number of wireline carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,037 wireline small entities that may be affected by the rules adopted in the *Report and Order.*

The changes to the accounting and reporting requirements in this *Report and Order*, are for the most part, reductions in the Commission's accounting and reporting requirements. These rule changes could affect all incumbent local exchange carriers. Some of these companies may be considered ''small entities'' under the SBA definition. Therefore, it is possible that some of the 1,037 small entity telephone companies may be affected by the rule changes. The increased ARMIS reporting requirements will only affect the Bell Operating Companies, none of which are small entities. There are several new subaccounts adopted in this *Report and Order* for Class A carriers, although the total number of accounts is substantially reduced. These new subaccounts are Class A subaccounts, and will be maintained by the Bell Operating Companies only.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. This *Report and Order* generally reduces accounting and reporting requirements for all incumbent local exchange companies. These rule changes will result in fewer accounting and reporting requirements for all incumbent local exchange carriers, including small entities. This *Report and Order* has several new accounting and ARMIS reporting requirements that apply to the Bell Operating Companies only. For instance, the *Report and Order* adds several Class A subaccounts; however, these will be maintained by the largest incumbent LECs (i.e., Bell Operating Companies) only. Small entities will not have any additional accounting or ARMIS reporting requirements.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

This *Report and Order* significantly reduces accounting and reporting requirements for the smaller (i.e., ''mid-sized'') incumbent LECs, which may include small entities. Specifically, the *Report and Order* eliminates the cost allocation manual filing requirements and biennial attestation requirement for mid-sized LECs. In addition, the *Report and Order* eliminates the requirement that mid-sized LECs file ARMIS 43–02, 43–03, and 43–04 Reports. Generally, the rule changes adopted herein result in fewer accounting and reporting requirements for all incumbent LECs (except for several new accounting and ARMIS reporting requirements that apply to the Bell Operating Companies only). Several commenters suggested completely eliminating ARMIS reporting for mid-sized carriers. The Commission rejected that alternative primarily due to the need to obtain information used to compute non-rural carrier universal service high-cost support. The Commission retains the requirement that mid-sized carriers file the ARMIS 43–01and 43–08 Reports. Data in these reports are used to develop inputs to the high cost model for universal service purposes and develop inputs to models used to determine forward-looking economic costs in UNE ratemaking proceedings.

Report to Congress. The Commission's Consumer Information Bureau, Reference Information Center shall include a copy of this *Report and Order* and Final Regulatory Flexibility Analysis in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order,* including the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

Pursuant to sections 1, 4, 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 201–205, 215, and 218–220, parts 32, 43, 51, 54, 64, 65, and 69 of the Commission's rules, 47 CFR Parts 32, 43, 51, 54, 64, 65, and 69, are amended as described previously.

Pursuant to section 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. 220)(g), changes to part 32, System of Accounts, adopted in the Report and Order shall take effect August 6, 2002, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. Carriers may implement part 32 accounting changes as of January 1, 2002.

The proceeding in CC Docket No. 97–212 is terminated.

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 215, and 218–220, that FCC Report 43–04, the Separations and Access Report is revised, as set forth in the rule changes, for filings due April 1, 2002.

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 215, and 218–220, that revisions to FCC Report 43–01, the Annual Summary Report; FCC Report 43–02, the USOA Report; FCC Report

43–03, the Joint Cost Report; FCC Report 43–07, the Infrastructure Report; and 43–08, the Operating Data Report as set forth in the Report and Order, shall be for filings due April 1, 2003.

Pursuant to the authority contained in § 0.291 of the Commission's rules, 47 CFR 0.291, that the Common Carrier Bureau is delegated authority to implement all changes to ARMIS reporting as set forth.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the two Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 32, 43, 51, 54, 64, 65, and 69

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends parts 32, 43, 51, 54, 64, 65, and 69 of title 47 of the CFR as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), and 154(j) and 220 as amended, unless otherwise noted.

2.–3. Section 32.11 is revised to read as follows:

§ 32.11 Classification of companies.

(a) For purposes of this section, the term ''company'' or ''companies'' means incumbent local exchange carrier(s) as defined in section 251(h) of the Communications Act, and any other carriers that the Commission designates by Order.

(b) For accounting purposes, companies are divided into classes as follows:

(1) *Class A.* Companies having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold.

(2) *Class B.* Companies having annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold.

(c) Class A companies, except mid-sized incumbent local exchange carriers, as defined by § 32.9000, shall keep all the accounts of this system of accounts which are applicable to their affairs and are designated as Class A accounts. Class A companies, which include mid-sized incumbent local exchange carriers, shall keep Basic Property Records in compliance with the requirements of §§ 32.2000(e) and (f).

(d) Class B companies and mid-sized incumbent local exchange carriers, as defined by § 32.9000, shall keep all accounts of this system of accounts which are applicable to their affairs and are designated as Class B accounts. Mid-sized incumbent local exchange carriers shall also maintain subsidiary record categories necessary to provide the pole attachment data currently provided in the Class A accounts. Class B companies shall keep Continuing Property Records in compliance with the requirements of §§ 32.2000(e)(7)(i)(A) and 32.2000(f).

(e) Class B companies and mid-sized incumbent local exchange carriers, as defined by § 32.9000 of this part, that desire more detailed accounting may adopt the accounts prescribed for Class A companies upon the submission of a written notification to the Commission.

(f) The classification of a company shall be determined at the start of the calendar year following the first time its annual operating revenue from regulated telecommunications operations equals, exceeds, or falls below the indexed revenue threshold.

§ 32.13 [Amended]

4. Section 32.13 is amended by removing paragraph (a)(1) and redesignating paragraphs (a)(2) and (a)(3) as (a)(1) and (a)(2).

5. Section 32.14 is amended by revising paragraph (e) to read as follows:

§ 32.14 Regulated accounts.

* * * * *

(e) All costs and revenues related to the offering of regulated products and services which result from arrangements for joint participation or apportionment between two or more telephone companies (e.g., joint operating agreements, settlement agreements, cost-pooling agreements) shall be recorded within the detailed accounts. Under joint operating agreements, the creditor will initially charge the entire expenses to the appropriate primary accounts. The proportion of such expenses borne by the debtor shall be credited by the creditor and charged by the debtor to the account initially charged. Any allowances for return on property used will be accounted for as provided in Account 5200, Miscellaneous revenue.

* * * * *

6. Section 32.16 is amended by revising paragraph (a) to read as follows:

§ 32.16 Changes in accounting standard.

(a) The company's records and accounts shall be adjusted to apply new accounting standards prescribed by the Financial Accounting Standards Board or successor authoritative accounting standard-setting groups, in a manner consistent with generally accepted accounting principles. The change in an accounting standard will automatically take effect 90 days after the company informs this Commission of its intention to follow the new standard, unless the Commission notifies the company to the contrary. Any change adopted shall be disclosed in annual reports required by § 43.21(f) of this chapter in the year of adoption.

* * * * *

7. Section 32.24 is amended by revising paragraph (b) to read as follows:

§ 32.24 Compensated absences.

* * * * *

(b) With respect to the liability that exists for compensated absences which is not yet recorded on the books as of the effective date of this part, the liability shall be recorded in Account 4130. Other current liabilities, with a corresponding entry to Account 1438, Deferred maintenance, retirements and other deferred charges. This deferred charge shall be amortized on a straight-line basis over a period of ten years.

* * * * *

8. Section 32.27 is revised to read as follows:

§ 32.27 Transactions with affiliates.

(a) Unless otherwise approved by the Chief, Common Carrier Bureau, transactions with affiliates involving asset transfers into or out of the regulated accounts shall be recorded by the carrier in its regulated accounts as provided in paragraphs (b) through (f) of this section.

(b) Assets sold or transferred between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed assets sold or transferred between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other assets sold by or transferred from a carrier to its affiliate, the assets shall be recorded at no less than the higher of fair market value and net book cost. For all other assets sold by or transferred to a carrier from its affiliate, the assets shall be

recorded at no more than the lower of fair market value and net book cost.

(1) *Floor.* When assets are sold by or transferred from a carrier to an affiliate, the higher of fair market value and net book cost establishes a floor, below which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, Commission rules and orders, and is not otherwise anti-competitive.

(2) *Ceiling.* When assets are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and net book cost establishes a ceiling, above which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, Commission rules and orders, and is not otherwise anti-competitive.

(3) *Threshold.* For purposes of this section carriers are required to make a good faith determination of fair market value for an asset when the total aggregate annual value of the asset(s) reaches or exceeds $500,000, per affiliate. When a carrier reaches or exceeds the $500,000 threshold for a particular asset for the first time, the carrier must perform the market valuation and value the transaction on a going-forward basis in accordance with the affiliate transactions rules on a going-forward basis. When the total aggregate annual value of the asset(s) does not reach or exceed $500,000, the asset(s) shall be recorded at net book cost.

(c) Services provided between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a carrier and its affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other services sold by or transferred from a carrier to its affiliate, the services shall be recorded at no less than the higher of fair market value and fully distributed cost. For all other services sold by or transferred to a carrier from its affiliate, the services shall be recorded at no more than the lower of fair market value and fully distributed cost.

(1) *Floor.* When services are sold by or transferred from a carrier to an affiliate, the higher of fair market value and fully distributed cost establishes a floor, below which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, Commission rules and orders, and is not otherwise anti-competitive.

(2) *Ceiling.* When services are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, Commission rules and orders, and is not otherwise anti-competitive.

(3) *Threshold.* For purposes of this section, carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds $500,000, per affiliate. When a carrier reaches or exceeds the $500,000 threshold for a particular service for the first time, the carrier must perform the market valuation and value the transaction in accordance with the affiliate transactions rules on a going-forward basis. All services received by a carrier from its affiliate(s) that exist solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost.

(d) In order to qualify for prevailing price valuation in paragraphs (b) and (c) of this section, sales of a particular asset or service to third parties must encompass greater than 25 percent of the total quantity of such product or service sold by an entity. Carriers shall apply this 25 percent threshold on an asset-by-asset and service-by-service basis, rather than on a product-line or service-line basis. In the case of transactions for assets and services subject to section 272, a BOC may record such transactions at prevailing price regardless of whether the 25 percent threshold has been satisfied.

(e) Income taxes shall be allocated among the regulated activities of the carrier, its nonregulated divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by the carrier and other members of the affiliated group, the income tax expense to be recorded by the carrier shall be the same as would result if determined for the carrier separately for all time periods, except that the tax effect of carry-back and carry-forward operating losses, investment tax credits, or other tax credits generated by operations of the carrier shall be recorded by the carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group.

(f) Companies that employ average schedules in lieu of actual costs are exempt from the provisions of this section. For other organizations, the principles set forth in this section shall apply equally to corporations, proprietorships, partnerships and other forms of business organizations.

9. Section 32.101 is revised to read as follows:

§ 32.101 Structure of the balance sheet accounts.

The Balance Sheet accounts shall be maintained as follows:

(a) Account 1120, Cash and equivalents, through Account 1500, Other jurisdictional assets—net, shall include assets other than regulated-fixed assets.

(b) Account 2001, Telecommunications plant in service, through Account 2007, Goodwill, shall include the regulated-fixed assets.

(c) Account 3100, Accumulated depreciation through Account 3410, Accumulated amortization—capitalized leases, shall include the asset reserves except that reserves related to certain asset accounts will be included in the asset account. (See §§ 32.2005, 32.2682 and 32.2690.)

(d) Account 4000, Current accounts and notes payable, through Account 4550, Retained earnings, shall include all liabilities and stockholders equity.

10. Section 32.103 is revised as follows:

§ 32.103 Balance sheet accounts for other than regulated-fixed assets to be maintained.

Balance sheet accounts to be maintained by Class A and Class B telephone companies for other than regulated-fixed assets are indicated as follows:

BALANCE SHEET ACCOUNTS

Account title	Class A account	Class B account
Current assets		
Cash and equivalents	1120	1120
Receivables	1170	1170
Allowance for doubtful accounts	1171	1171
Supplies:		
Material and supplies	1220	1220
Prepayments	1280	1280
Other current assets	1350	1350
Noncurrent assets		
Investments:		
Nonregulated investments	1406	1406
Other noncurrent assets	1410	1410
Deferred charges:		
Deferred maintenance, retirements and other deferred charges	1438	1438
Other:		
Other jurisdictional assets-net	1500	1500

11. Section 32.1120 is revised to read as follows:

§ 32.1120 Cash and equivalents.

(a) This account shall include the amount of current funds available for use on demand in the hands of financial officers and agents, deposited in banks or other financial institutions and also funds in transit for which agents have received credit.

(b) This account shall include the amount of cash on special deposit, other than in sinking and other special funds provided for elsewhere, to pay dividends, interest, and other debts, when such payments are due one year or less from the date of deposit; the amount of cash deposited to insure the performance of contracts to be performed within one year from date of the deposit; and other cash deposits of a special nature not provided for elsewhere. This account shall include the amount of cash deposited with trustees to be held until mortgaged property sold, destroyed, or otherwise disposed of is replaced, and also cash realized from the sale of the company's securities and deposited with trustees to be held until invested in physical property of the company or for disbursement when the purposes for which the securities were sold are accomplished.

(c) Cash on special deposit to be held for more than one year from the date of deposit shall be included in Account 1410, Other noncurrent assets.

(d) This account shall include the amount of cash advanced to officers, agents, employees, and others as petty cash or working funds from which expenditures are to be made and accounted for.

(e) This account shall include the cost of current securities acquired for the purpose of temporarily investing cash, such as time drafts receivable and time loans, bankers' acceptances, United States Treasury certificates, marketable securities, and other similar investments of a temporary character.

(f) Accumulated changes in the net unrealized losses of current marketable equity securities shall be included in the determination of net income in the period in which they occur in Account 7300, Other Nonoperating Income and Expense.

(g) Subsidiary record categories shall be maintained in order that the entity may separately report the amounts of temporary investments that relate to affiliates and nonaffiliates. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§§ 32.1130, 32.1140, 32.1150, and 32.1160 [Removed]

12. Sections 32.1130 32.1140, 32.1150, and 32.1160 are removed.

13. Section 32.1170 is added to read as follows:

§ 32.1170 Receivables.

(a) This account shall include all amounts due from customers for services rendered or billed and from agents and collectors authorized to make collections from customers. This account shall also include all amounts due from customers or agents for products sold. This account shall be kept in such manner as will enable the company to make the following analysis:

(1) Amounts due from customers who are receiving telecommunications service.

(2) Amounts due from customers who are not receiving service and whose accounts are in process of collection.

(b) Collections in excess of amounts charged to this account may be credited to and carried in this account until applied against charges for services rendered or until refunded.

(c) Cost of demand or time notes, bills and drafts receivable, or other similar evidences (except interest coupons) of money receivable on demand or within a time not exceeding one year from date of issue.

(d) Amount of interest accrued to the date of the balance sheet on bonds, notes, and other commercial paper owned, on loans made, and the amount of dividends receivable on stocks owned.

(e) This account shall not include dividends or other returns on securities issued or assumed by the company and held by or for it, whether pledged as collateral, or held in its treasury, in special deposits, or in sinking and other funds.

(f) Dividends received and receivable from affiliated companies accounted for on the equity method shall be included in Account 1410, Other noncurrent assets, as a reduction of the carrying value of the investment.

(g) This account shall include all amounts currently due, and not provided for in (a) through (g) of this section such as those for traffic settlements, divisions of revenue, material and supplies, matured rents, and interest receivable under monthly settlements on short-term loans, advances, and open accounts. If any of these items are not to be paid currently, they shall be transferred to Account 1410, Other noncurrent assets.

(h) Subsidiary record categories shall be maintained in order that the entity may separately report the amounts contained herein that relate to affiliates and nonaffiliates. Such subsidiary

record categories shall be reported as required by part 43 of this chapter.

14. Section 32.1171 is added to read as follows:

§ 32.1171 Allowance for doubtful accounts.

(a) This account shall be credited with amounts charged to Accounts 5300, Uncollectible revenue, and 6790, Provision for uncollectible notes receivable to provide for uncollectible amounts related to accounts receivable and notes receivable included in Account 1170, Receivables. There shall also be credited to this account amounts collected which previously had been written off through charges to this account and credits to Account 1170. There shall be charged to this account any amounts covered thereby which have been found to be impracticable of collection.

(b) If no such allowance is maintained, uncollectible amounts shall be charged directly to Account 5300, Uncollectible revenue or directly to Account 6790, Provision for uncollectible notes receivable, as appropriate.

(c) Subsidiary record categories shall be maintained in order that the entity may separately report the amounts contained herein that relate to affiliates and nonaffiliates. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§§ 32.1180, 32.1181, 32.1190, 32.1200, 32.1201, and 32.1210 [Removed]

15. Sections 32.1180 32.1181, 32.1190, 32.1200, 32.1201, and 32.1210 are removed.

16. Section 32.1220 is amended by revising paragraphs (g) and (h) to read as follows:

§ 32.1220 Inventories.

* * * * *

(g) Interest paid on material bills, the payments of which are delayed, shall be charged to Account 7500, Interest and related items.

(h) Inventories of material and supplies shall be taken periodically or frequently enough for reporting purposes, as appropriate, in accordance with generally accepted accounting principles. The adjustments to this account shall be charged or credited to Account 6512, Provisioning expense.

* * * * *

17. Section 32.1280 is revised to read as follows:

§ 32.1280 Prepayments.

This account shall include:

(a) The amounts of rents paid in advance of the period in which they are chargeable to income, except amounts chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the rents are paid, this account shall be credited monthly and the appropriate account charged.

(b) The balance of all taxes, other than amounts chargeable to telecommunication plant under construction and minor amounts which may be charged to the final accounts, paid in advance and which are chargeable to income within one year. As the term expires for which the taxes are paid, this account shall be credited monthly and the appropriate account charged.

(c) The amount of insurance premiums paid in advance of the period in which they are chargeable to income, except premiums chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the premiums are paid, this account shall be credited monthly and the appropriate account charged.

(d) The cost of preparing, printing, binding, and delivering directories and the cost of soliciting advertisements for directories, except minor amounts which may be charged directly to Account 6620, Services. Amounts in this account shall be cleared to Account 6620 by monthly charges representing that portion of the expenses applicable to each month.

(e) Other prepayments not included in paragraphs (a) through (d) of this section except for minor amounts which may be charged directly to the final accounts. As the term expires for which the payments apply, this account shall be credited monthly and the appropriate account charged.

§§ 32.1290, 32.1300, 32.1310, 32.1320, and 32.1330 [Removed]

18. Sections 32.1290 32.1300, 32.1310, 32.1320, and 32.1330 are removed.

19. Section 32.1350 is revised to read as follows:

§ 32.1350 Other current assets.

This account shall include the amount of all current assets which are not includable in Accounts 1120 through 1280.

§§ 32.1401 and 32.1402 [Removed]

20. Sections 32.1401 and 32.1402 are removed.

§ 32.1406 [Amended].

21. Section 32.1406 is amended by removing paragraph (b) and designating paragraph (a) as an undesignated paragraph.

§§ 32.1407 and 1408 [Removed]

22. Sections 32.1407 and 32.1408 are removed.

23. Section 32.1410 is revised to read as follows:

§ 32.1410 Other noncurrent assets.

(a) This account shall include the acquisition cost of the company's investment in equity or other securities issued or assumed by affiliated companies, including securities held in special funds (sinking funds). The carrying value of the investment (securities) accounted for on the equity method shall be adjusted to recognize the company's share of the earnings or losses and dividends received or receivable of the affiliated company from the date of acquisition. (Note also Account 1170, Receivables, and Account 7300, Nonoperating income and expense.)

(b) This account shall include the acquisition cost of the Company's investment in securities issued or assumed by nonaffiliated companies and individuals, and also its investment advances to such parties and special deposits of cash for more than one year from date of deposit.

(c) Declines in value of investments, including those accounted for under the cost method, shall be charged to Account 4540, Other capital, if temporary and as a current period loss if permanent. Detail records shall be maintained to reflect unrealized losses for each investment.

(d) This account shall also include advances represented by book accounts only with respect to which it is agreed or intended that they shall be either settled by issuance of capital stock or debt; or shall not be subject to current cost settlement.

(e) Amounts due from affiliated and nonaffiliated companies which are subject to current settlement shall be included in Account 1170, Receivables.

(f) This account shall include the total unamortized balance of debt issuance expense for all classes of outstanding long-term debt. Amounts included in this account shall be amortized monthly and charged to account 7500, Interest and related items.

(g) Debt Issuance expense includes all expenses in connection with the issuance and sale of evidence of debt, such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; costs of engraving and printing bonds, certificates of indebtedness, and other commercial paper; fees paid trustees;

specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen; fees and expenses of listing on exchanges, and other like costs. A subsidiary record shall be kept of each issue outstanding.

(h) This account shall include the amount of cash and other assets which are held by trustees or by the company's treasurer in a distinct fund, for the purpose of redeeming outstanding obligations. Interest or other income arising from funds carried in this account shall generally be charged to this account. A subsidiary record shall be kept for each sinking fund which shall designate the obligation in support of which the fund was created.

(i) This account shall include the amount of all noncurrent assets which are not includable in paragraphs (a) through (h) of this section.

(j) A subsidiary record shall be kept identifying separately common stocks, preferred stocks, long-term debt, advances to affiliates, and investment advances. A subsidiary record shall also be kept identifying special deposits of cash for more than one year from the date of deposit. Further, the company's record shall identify the securities pledged as collateral for any of the company's long-term debt or short-term loans or to secure performance of contracts.

(k) Subsidiary record categories shall be maintained in order that the entity may separately report the amounts contained herein that relate to the equity method and the cost method. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§ 32.1437 [Removed]

24. Section 32.1437 is removed.

25. Section 32.1438 is amended by revising paragraph (a) to read as follows:

§ 32.1438 Deferred maintenance, retirements and other deferred charges.

(a) This account shall include such items as:

(1) The unprovided-for loss in service value of telecommunications plant for extraordinary nonrecurring retirement not considered in depreciation and the cost of extensive replacements of plant normally chargeable to the current period Plant Specific Operations Expense accounts. These charges shall be included in this account only upon direction or approval from this Commission. However, the company's application to this Commission for such approval shall give full particulars concerning the property retired, the extensive replacements, the amount chargeable to operating expenses and the period over which in its judgment the amount of such charges should be distributed.

(2) Unaudited amounts and other debit balances in suspense that cannot be cleared and disposed of until additional information is received; the amount, pending determination of loss, of funds on deposit with banks which have failed; revenue, expense, and income items held in suspense; amounts paid for options pending final disposition.

(3) Cost of preliminary surveys, plans, investigation, etc., made for construction projects under contemplation. If the projects are carried out, the preliminary costs shall be included in the cost of the plant constructed. If the projects are abandoned, the preliminary costs shall be charged to Account 7300, Nonoperating income and expense.

(4) Cost of evaluations, inventories, and appraisals taken in connection with the acquisition or sale of property. If the property is subsequently acquired, the preliminary costs shall be accounted for as a part of the cost of acquisition, or if it is sold, such costs shall be deducted from the sale price in accounting for the property sold. If purchases or sales are abandoned, the preliminary costs included herein (including options paid, if any) shall be charged to Account 7300.

* * * * *

§ 32.1439 [Removed]

26. Section 32.1439 is removed.

27. Section 32.2000 is amended by revising paragraphs (a)(2), (a)(4), (b)(2)(i), (b)(2)(iii), (b)(2)(iv), (c)(2)(x), (c)(2)(xiii), (d)(2)(i), (d)(4), (d)(5), (f)(3)(i), (g)(3), (g)(5), (h)(3), and (j) as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

(a) * * *

(2) The telecommunications plant accounts shall not include the cost or other value of telecommunications plant contributed to the company. Contributions in the form of money or its equivalent toward the construction of telecommunications plant shall be credited to the accounts charged with the cost of such construction. Amounts of non-recurring reimbursements based on the cost of plant or equipment furnished in rendering service to a customer shall be credited to the accounts charged with the cost of the plant or equipment. Amounts received for construction which are ultimately to be repaid wholly or in part, shall be credited to Account 4300, Other long-term liabilities and deferred credits; when final determination has been made as to the amount to be returned, any unrefunded amounts shall be credited to the accounts charged with the cost of such construction. Amounts received for the construction of plant, the ownership of which rests with or will revert to others, shall be credited to the accounts charged with the cost of such construction. (Note also Account 7100, Other operating income and expense.)

* * * * *

(4) The cost of the individual items of equipment, classifiable to Accounts 2112, Motor vehicles; 2113, Aircraft; 2114, Tools and other work equipment; 2122, Furniture; 2123, Office equipment; 2124, General purpose computers, costing $2,000 or less or having a life of less than one year shall be charged to the applicable expense accounts, except for personal computers falling within Account 2124. Personal computers classifiable to Account 2124, with a total cost for all components of $500 or less, shall be charged to the applicable Plant Specific Operations Expense accounts. The cost of tools and test equipment located in the central office, classifiable to central office asset accounts 2210–2232 costing $2,000 or less or having a life of less than one year shall be charged to the applicable Plant Specific Operations Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

(b) * * *

(2) * * *

(i) The amount of money paid (or current money value of any consideration other than money exchanged) for the property (together with preliminary expenses incurred in connection the acquisition) shall be charged to Account 1438, Deferred maintenance, retirements, and other deferred charges.

* * * * *

(iii) Accumulated Depreciation and amortization balances related to plant acquired shall be credited to Account 3100, Accumulated depreciation, or Account 3200, Accumulated depreciation—held for future telecommunications use, or Account 3410, Accumulated amortization—capitalized leases and debited to Account 1438. Accumulated amortization balances related to plant acquired which ultimately is recorded in Accounts 2005, Telecommunications plant adjustment, Account 2682,

Leasehold improvements, or Account 2690, Intangibles shall be credited to these asset accounts, and debited to Account 1438.

(iv) Any amount remaining in Account 1438, applicable to the plant acquired, shall, upon completion of the entries provided in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, be debited or credited, as applicable, to Account 2007, Goodwill, or to Account 2005, Telecommunications plant adjustment, as appropriate.

* * * * *

(c) * * *

(2) * * *

(x) Allowance for funds used during construction (''AFUDC'') provides for the cost of financing the construction of telecommunications plant. AFUDC shall be charged to Account 2003, Telecommunications plant under construction, and credited to Account 7300, Nonoperating income and expense. The rate for calculating AFUDC shall be determined as follows: If financing plans associate a specific new borrowing with an asset, the rate on that borrowing may be used for the asset; if no specific new borrowing is associated with an asset or if the average accumulated expenditures for the asset exceed the amounts of specific new borrowing associated with it, the capitalization rate to be applied to such excess shall be the weighted average of the rates applicable to other borrowings of the enterprise. The amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the company in that period.

* * * * *

(xiii) ''Indirect construction costs'' shall include indirect costs such as general engineering, supervision and support. Such costs, in addition to direct supervision, shall include indirect plant operations and engineering supervision up to, but not including, supervision by executive officers whose pay and expenses are chargeable to Account 6720, General and administrative. The records supporting the entries for indirect construction costs shall be kept so as to show the nature of the expenditures, the individual jobs and accounts charged, and the bases of the distribution. The amounts charged to each plant account for indirect costs shall be readily determinable. The instructions contained herein shall not be interpreted as permitting the addition to plant of amounts to cover indirect costs based on arbitrary allocations.

* * * * *

(d) * * *

(2) * * *

(i) *Retirement units:* This group includes major items of property, a representative list of which shall be prescribed by this Commission. In lieu of the retirement units prescribed with respect to a particular account, a company may, after obtaining specific approval by this Commission, establish and maintain its own list of retirement units for a portion or all of the plant in any such account. For items included on the retirement units list, the original cost of any such items retired shall be credited to the plant account and charged to Account 3100 Accumulated Depreciation, whether or not replaced. The original cost of retirement units installed in place of property retired shall be charged to the applicable telecommunications plant account.

* * * * *

(4) The accounting for the retirement of property, plant and equipment shall be as provided above except that amounts in Account 2111, Land, and amounts for works of art recorded in Account 2122, Furniture, shall be treated at disposition as a gain or loss and shall be credited or debited to Account 7100, Other operating income and expense, as applicable. If land or artwork is retained by the company and held for sale, the cost shall be charged to Account 2006, Nonoperating plant.

(5) When the telecommunications plant is sold together with traffic associated therewith, the original cost of the property shall be credited to the applicable plant accounts and the estimated amounts carried with respect thereto in the accumulated depreciation and amortization accounts shall be charged to such accumulated accounts. The difference, if any, between the net amount of such debit and credit items and the consideration received (less commissions and other expenses of making the sale) for the property shall be included in Account 7300, Nonoperating income and expense. The accounting for depreciable telecommunications plant sold without the traffic associated therewith shall be in accordance with the accounting provided in § 32.3100(c).

* * * * *

(f) * * *

(3) * * *

(i) *Unit identification.* Cost shall be identified and maintained by specific location for property record units contained within certain regulated plant accounts or account groupings such as Land, Buildings, Central Office Assets, Motor Vehicles, garage work equipment included in Account 2114, Tools and other work equipment, and Furniture. In addition, units involved in any unusual or special type of construction shall be recorded by their specific location costs (note also § 32.2000(f)(3)(ii)(B)).

* * * * *

(g) * * *

(3) *Acquired depreciable plant.* When acquired depreciable plant carried in Account 1438, Deferred maintenance, retirements and other deferred charges, is distributed to the appropriate plant accounts, adjusting entries shall be made covering the depreciation charges applicable to such plant for the period during which it was carried in Account 1438.

* * * * *

(5) Upon direction or approval from this Commission, the company shall credit Account 3100, Accumulated depreciation, and charge Account 1438, Deferred maintenance, retirements and other deferred charges, with the unprovided-for loss in service value. Such amounts shall be distributed from Account 1438 to Account 6560, Depreciation and amortization expense over such period as this Commission may direct or approve.

(h) * * *

(3) Amortization charges shall be made monthly to the appropriate amortization expense accounts and corresponding credits shall be made to accounts 2005, 2682, 2690, and 3410, as appropriate. Monthly charges shall be computed by the application of one-twelfth to the annual amortization amount.

* * * * *

(j) Plant Accounts to be Maintained by Class A and Class B telephone companies as indicated:

Account title	Class A account	Class B account
Regulated plant		
Property, plant and equipment:		
Telecommunications plant in service	[1] 2001	[1] 2001
Property held for future telecommunications use	2002	2002

Account title	Class A account	Class B account
Telecommunications plant under construction-short term	2003	2003
Telecommunications plant adjustment	2005	2005
Nonoperating plant	2006	2006
Goodwill	2007	2007
Telecommunications plant in service (TPIS)		
TPIS—General support assets:		
Land and support assets		2110
Land	2111	
Motor vehicles	2112	
Aircraft	2113	
Tools and other work equipment	2114	
Buildings	2121	
Furniture	2122	
Office equipment	2123	
General purpose computers	2124	
TPIS—Central Office assets:		
Central Office—switching		2210
Non-digital switching	2211	
Digital electronic switching	2212	
Operator systems	2220	2220
Central Office—transmission		2230
Radio systems	2231	
Circuit equipment	2232	
TPIS—Information origination/termination assets:		
Information origination termination		2310
Station apparatus	2311	
Customer premises wiring	2321	
Large private branch exchanges	2341	
Public telephone terminal equipment	2351	
Other terminal equipment	2362	
TPIS—Cable and wire facilities assets:		
Cable and wire facilities		2410
Poles	2411	
Aerial cable	2421	
Underground cable	2422	
Buried cable	2423	
Submarine and deep sea cable	2424	
Intrabuilding network cable	2426	
Aerial wire	2431	
Conduit systems	2441	
TPIS—Amortizable assets:		
Amortizable tangible assets		2680
Capital leases	2681	
Leasehold improvements	2682	
Intangibles	2690	2690

[1] Balance sheet summary account only.

28. Section 32.2003 is amended by revising paragraph (c) to read as follows:

§ 32.2003 Telecommunications plant under construction.

* * * * *

(c) If a construction project has been suspended for six months or more, the cost of the project included in this account may remain in this account so long as the carrier excludes the original cost and associated depreciation from its ratebase and ratemaking considerations and reports those amounts in reports filed with the Commission pursuant to §§ 43.21(e)(1) and 43.21(e)(2) of this chapter. If a project is abandoned, the cost included in this account shall be charged to Account 7300, Nonoperating income and expense.

* * * * *

29. Section 32.2005 is amended by revising paragraph (b) to read as follows:

§ 32.2005 Telecommunications plant adjustment.

* * * * *

(b) The amounts recorded in this account with respect to each property acquisition (except land and artworks) shall be disposed of, written off, or provision shall be made for the amortization thereof, as follows:

(1) Debit amounts may be charged in whole or in part, or amortized over a reasonable period through charges to Account 7300, Nonoperating income and expense, without further direction or approval by this Commission. When specifically approved by this Commission, or when the provisions of paragraph (b)(3) of this section apply, debit amounts shall be amortized to Account 6560, Depreciation and amortization expense.

(2) Credit amounts shall be disposed of in such manner as this Commission may approve or direct, except for credit amounts referred to in paragraph (b)(4) of this section.

(3) The amortization associated with the costs recorded in the Telecommunications plant adjustment account will be charged or credited, as appropriate, directly to this asset account, leaving a balance representing the unamortized cost.

(4) Within one year from the date of inclusion in this account of a debit or credit amount with respect to a current

acquisition, the company may dispose of the total amount from an acquisition of telephone plant by a lump-sum charge or credit, as appropriate, to Account 6560 without further approval of this Commission, provided that such amount does not exceed $100,000 and that the plant was not acquired from an affiliated company.

30. Section 32.2007 is amended by revising paragraph (a) to read as follows:

§ 32.2007 Goodwill.

(a) This account shall include any portion of the plant purchase price that cannot be assigned to specifically identifiable property acquired and such amount should be identified as ''goodwill''. Such amounts included in this account shall be amortized to Account 7300, Nonoperating income and expense, on a straight line basis over the remaining life of the acquired plant, not to exceed 40 years.

* * * * *

31. Section 32.2111 is amended by revising paragraphs (f) and (g) to read as follows:

§ 32.2111 Land.

* * * * *

(f) Installments of assessments for public improvement, including interest, if any, which are deferred without option to the company shall be included in this account only as they become due and payable. Interest on assessments which are not paid when due shall be included in Account 7500, Interest and related items.

(g) When land is purchased for immediate use in a construction project, its cost shall be included in Account 2003, Telecommunications plant under construction, until such time as the project involved is completed and ready for service.

* * * * *

§ 32.2123 [Amended]

32. Section 32.2123 is amended by removing paragraph (b) and designating paragraph (a) as an undesignated paragraph.

33. Section 32.2210 is revised to read as follows:

§ 32.2210 Central office—switching.

This account shall be used by Class B companies to record the original cost of switching assets of the type and character required of Class A companies in Accounts 2211 through 2212.

34. Section 32.2211 is amended by revising the section heading and paragraph (a) to read as follows:

§ 32.2211 Non-digital switching.

(a) This account shall include:

(1) Original cost of stored program control analog circuit-switching and associated equipment.

(2) Cost of remote analog electronic circuit switches.

(3) Original cost of non-electronic circuit-switching equipment such as Step-by-Step, Crossbar, and Other Electro-Mechanical Switching.

* * * * *

35. Section 32.2212 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (e), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 32.2212 Digital electronic switching.

(a) This account shall include the original cost of stored program control digital switches and their associated equipment. Included in this account are digital switches which utilize either dedicated or non-dedicated circuits. This account shall also include the cost of remote digital electronic switches. The investment in digital electronic switching equipment shall be maintained in the following subaccounts: 2212.1 Circuit and 2212.2 Packet.

(b) This subaccount 2212.1 Circuit shall include the original cost of digital electronic switching equipment used to provide circuit switching. Circuit switching is a method of routing traffic through a switching center, from local users or from other switching centers, whereby a connection is established between the calling and called stations until the connection is released by the called or calling station.

(c) This subaccount 2212.2 Packet shall include the original cost of digital electronic switching equipment used to provide packet switching. Packet switching is the process of routing and transferring information by means of addressed packets so that a channel is occupied during the transmission of the packet only, and upon completion of the transmission the channel is made available for the transfer of other traffic.

(d) Digital electronic switching equipment used to provide both circuit and packet switching shall be recorded in the subaccounts 2212.1 Circuit and 2212.2 Packet based upon its predominant use.

* * * * *

§ 32.2215 [Removed]

36. Section 32.2215 is removed.

37. Section 32.2231 is revised to read as follows:

§ 32.2231 Radio systems.

(a) This account shall include the original cost of ownership of radio transmitters and receivers. This account shall include the original cost of ownership interest in satellites (including land-side spares), other spare parts, material and supplies. It shall include launch insurance and other satellite launch costs. This account shall also include the original cost of earth stations and spare parts, material or supplies therefor.

(b) This account shall also include the original cost of radio equipment used to provide radio communication channels. Radio equipment is that equipment which is used for the generation, amplification, propagation, reception, modulation, and demodulation of radio waves in free space over which communication channels can be provided. This account shall also include the associated carrier and auxiliary equipment and patch bay equipment which is an integral part of the radio equipment. Such equipment may be located in central office building, terminal room, or repeater stations or may be mounted on towers, masts, or other supports.

38. Section 32.2232 is amended by revising paragraphs (a) and (b), redesignating paragraphs (b) and (c) as (e) and (f), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 32.2232 Circuit equipment.

(a) This account shall include the original cost of equipment which is used to reduce the number of physical pairs otherwise required to serve a given number of subscribers by utilizing carrier systems, concentration stages or combinations of both. It shall include equipment that provides for simultaneous use of a number of interoffice channels on a single transmission path. This account shall also include equipment which is used for the amplification, modulation, regeneration, circuit patching, balancing or control of signals transmitted over interoffice communications transmission channels. This account shall include equipment which utilizes the message path to carry signaling information or which utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels. This account shall also include the original cost of associated material used in the construction of such plant. Circuit equipment may be located in central offices, in manholes, on poles, in cabinets or huts, or at other company locations. The investment in circuit equipment shall be maintained in the following subaccounts: 2232.1 Electronic and 2232.2 Optical.

(b) This subaccount 2232.1 Electronic shall include the original cost of electronic circuit equipment.

(c) This subaccount 2232.2 Optical shall include the original cost of optical circuit equipment.

(d) Circuit equipment that converts electronic signals to optical signals or optical signals to electronic signals shall be categorized as electronic.

* * * * *

39. Section 32.2311 is amended by revising paragraph (f) to read as follows:

§ 32.2311 Station apparatus.

* * * * *

(f) Periodic asset verification, as prescribed by generally accepted accounting principles, shall be taken of all station apparatus in stock that are included in this account. The number of such station apparatus items as determined by this verification together with the number of all other station apparatus items included in this account, shall be compared with the corresponding number of station apparatus items as shown by the respective control records. The original cost of any unreconciled differences thereby disclosed shall be adjusted through Account 3100, Accumulated Depreciation. Appropriate verifications shall be made at suitable intervals and necessary adjustments between this account and Account 3100 shall be made for all station apparatus included in this account.

* * * * *

40. Section 32.2424 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 32.2424 Submarine & deep sea cable.

(a) This account shall include the original cost of submarine cable and deep sea cable and other material used in the construction of such plant. Subsidiary record categories, as defined below, are to be maintained for nonmetallic submarine and deep sea cable and metallic submarine and deep sea cable.

* * * * *

§ 32.2425 [Removed]

41. Section 32.2425 is removed.

42. Section 32.2682 is amended by revising paragraph (c) to read as follows:

§ 32.2682 Leasehold improvements.

* * * * *

(c) Amounts contained in this account shall be amortized over the term of the related lease. The amortization associated with the costs recorded in the Leasehold improvement account will be credited directly to this asset account, leaving a balance representing the unamortized cost.

43. Section 32.2690 is revised to read as follows:

§ 32.2690 Intangibles.

(a) This account shall include the cost of organizing and incorporating the company, the original cost of government franchises, the original cost of patent rights, and other intangible property having a life of more than one year and used in connection with the company's telecommunications operations.

(b) Class A companies, except mid-sized incumbent local exchange carriers, shall maintain subsidiary records for general purpose computer software and for network software. Subsidiary records for this account shall also include a description of each class of all other tangible property.

(c) The cost of other intangible assets, not including software, having a life of one year or less shall be charged directly to Account 6560, Depreciation and Amortization Expense. Such intangibles acquired at small cost may also be charged to Account 6560, irrespective of their term of life. The cost of software having a life of one year or less shall be charged directly to the applicable expense account with which the software is associated.

(d) The amortization associated with the costs recorded in the Intangibles account will be credited directly to this asset account, leaving a balance representing the unamortized cost.

(e) This account shall not include any discounts on securities issued, nor shall it include costs incident to negotiating loans, selling bonds or other evidences of debt, or expenses in connection with the authorization, issuance, sale or resale of capital stock.

(f) When charges are made to this account for expenses incurred in mergers, consolidations, or reorganizations, amounts previously included in this account on the books of the various companies concerned shall not be carried over.

(g) Franchise taxes payable annually or more frequently shall be charged to Account 7240, Operating other taxes.

(h) This account shall not include the cost of plant, material and supplies, or equipment furnished to municipalities or other governmental authorities when given other than as initial consideration for franchises or similar rights. (Note also Account 6720, General & administrative).

(i) This account shall not include the original cost of easements, rights of way, and similar rights in land having a term of more than one year. Such amounts shall be recorded in Account 2111, Land, or in the appropriate outside plant account (see Accounts 2411 through 2441), or in the appropriate central office account (see Accounts 2211 through 2232).

44. Section 32.3000 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 32.3000 Instructions for balance sheet accounts—Depreciation and amortization.

(a) * * *

(2) Subsidiary records shall be maintained for Accounts 2005, 2682, 2690, and 3410 in accordance with § 32.2000(h)(4).

(b) Depreciation and Amortization Accounts to be Maintained by Class A and Class B telephone companies, as indicated:

Account title	Class A account	Class B account
Depreciation and amortization:		
Accumulated depreciation	3100	3100
Accumulated depreciation—Held for future telecommunications use	3200	3200
Accumulated depreciation—Nonoperating	3300	3300
Accumulated amortization—Capitalized leases	3410	3410

45. Section 32.3100 is amended by revising paragraphs (b) and (d) to read as follows:

§ 32.3100 Accumulated depreciation.

* * * * *

(b) This account shall be credited with depreciation amounts concurrently charged to Account 6560, Depreciation and amortization expenses. (Note also Account 3300, Accumulated Depreciation—Nonoperating.)

* * * * *

(d) This account shall be credited with amounts charged to Account 1438, Deferred maintenance, retirements, and other deferred charges, as provided in § 32.2000(g)(4). This account shall be credited with amounts charged to Account 6560 with respect to other than relatively minor losses in service values suffered through terminations of service when charges for such terminations are made to recover the losses.

46. Section 32.3200 is amended by revising paragraph (b) to read as follows:

§ 32.3200 Accumulated depreciation—held for future telecommunications use.

* * * * *

(b) This account shall be credited with amounts concurrently charged to Account 6560, Depreciation and amortization expenses.

47. Section 32.3300 is amended by revising paragraph (b) and (c) to read as follows:

§ 32.3300 Accumulated depreciation—nonoperating.

* * * * *

(b) This account shall be credited with amortization and depreciation amounts concurrently charged to Account 7300, Nonoperating income and expense.

(c) When nonoperating plant not previously used in telecommunications service is disposed of, this account shall be charged with the amount previously credited hereto with respect to such property and the book cost of the property so retired less the amount chargeable to this account and less the value of the salvage recovered or the proceeds from the sale of the property shall be included in Account 7300, Nonoperating income and expense. In case the property had been used in telecommunications service previous to its inclusion in Account 2006, Nonoperating Plant, the amount accrued for depreciation thereon after its retirement from telecommunications service shall be charged to this account and credited to Account 3100, Accumulated depreciation, and the accounting for its retirement from Account 2006 shall be in accordance with that applicable to telecommunications plant retired.

§ 32.3400 [Removed]

48. Section 32.3400 is removed.

49. Section 32.3410 is amended by revising paragraph (b) and (c) to read as follows:

§ 32.3410 Accumulated amortization—capital leases.

* * * * *

(b) This account shall be credited with amounts for the amortization of capital leases concurrently charged to Account 6560, Depreciation and amortization expenses. (Note also Account 3300, Accumulated Depreciation— Nonoperating.)

(c) When any item carried in Account 2681 is sold, is relinquished, or is otherwise retired from service, this account shall be charged with the cost of the retired item. Remaining amounts associated with the item shall be debited to Account 7100, Other operating income and expenses, or Account 7300, Nonoperating income and expense, as appropriate.

§§ 32.3420, 32.3500 and 32.3600 [Removed]

50. Sections 32.3420, 32.3500 and 32.3600 are removed.

51. Section 32.4000 is redesignated as § 32.3999 and redesignated § 32.3999 is revised to read as follows:

§ 32.3999 Instructions for balance sheet accounts—liabilities and stockholders' equity.

LIABILITIES AND STOCKHOLDERS' EQUITY ACCOUNTS TO BE MAINTAINED BY CLASS A AND CLASS B TELEPHONE COMPANIES

Account title	Class A account	Class B account
Current liabilities:		
Current accounts and notes payable	4000	4000
Customer's Deposits	4040	4040
Income taxes—accrued	4070	4070
Other taxes—accrued	4080	4080
Net Current Deferred Nonoperating Income Taxes	4100	4100
Net Current Deferred Nonoperating Income Taxes	4110	4110
Other current liabilities	4130	4130
Long-term debt:		
Long Term debt and Funded debt	4200	4200
Other liabilities and deferred credits:		
Other liabilities and deferred credits	4300	4300
Unamortized operating investment tax credits—net	4320	4320
Unamortized nonoperating investment tax credits—net	4330	4330
Net noncurrent deferred operating income taxes	4340	4340
Net deferred tax liability adjustments	4341	4341
Net noncurrent deferred nonoperating income taxes	4350	4350
Deferred tax regulatory adjustments—net	4361	4361
Other jurisdictional liabilities and deferred credits—net	4370	4370
Stockholder's equity:		
Capital stock	4510	4510
Additional paid-in capital	4520	4520
Treasury stock	4530	4530
Other capital	4540	4540
Retained earnings	4550	4550

52. Section 32.4000 is added to read as follows:

§ 32.4000 Current accounts and notes payable.

(a) This account shall include:(1) All amounts currently due to others for recurring trade obligations, and not provided for in other accounts, such as those for traffic settlements, material and supplies, repairs to telecommunications plant, matured rents, and interest payable under

monthly settlements on short-term loans, advances, and open accounts. It shall also include amounts of taxes payable that have been withheld from employees' salaries.

(2) Accounts payable arising from sharing of revenues.

(3) The face amount of notes, drafts, and other evidences of indebtedness issued or assumed by the company (except interest coupons) which are payable on demand or not more than one year or less from date of issue.

(b) If any part of an obligation, otherwise includable in this account matures more than one year from date of issue, it shall be included in Account 4200, Long term debt and funded debt, or other appropriate account.

(c) The records supporting the entries to this account shall be kept so that the company can furnish complete details as to each note, when it is issued, the consideration received, and when it is payable.

(d) Subsidiary record categories shall be maintained for this account in order that the company may separately report the amounts contained herein that relate to nonaffiliates and affiliates. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§§ 32.4010, 32.4020, and 32.4030 [Removed]

53. Sections 32.4010, 32.4020, and 32.4030 are removed.

54. In § 32.4040, paragraph (b) is revised to read as follows:

§ 32.4040 Customer's deposits.

* * * * *

(b) Advance payments made by prospective customers prior to the establishment of service shall be credited to Account 4130, Other current liabilities.

§§ 32.4050 and 32.4060 [Removed]

55. Sections 32.4050 and 32.4060 are removed.

56. Section 32.4070 is revised to read as follows:

§ 32.4070 Income taxes—accrued.

(a) This account shall be credited or charged and the following accounts shall be charged or credited with the offsetting amount of current year income taxes (Federal, state and local) accrued during the period or adjustments to prior accruals: 7220 Operating Federal Income Taxes, 7230 Operating State and Local Income Taxes, 7400 Nonoperating Taxes, 7600 Extraordinary Items.

(b) If significant, current year income taxes paid in advance shall be reclassified to Account 1280, Prepayments.

57. Section 32.4080 is revised to read as follows:

§ 32.4080 Other taxes—accrued.

(a) This account shall be credited or charged and Account 7240, Operating Other Taxes, or 7400, Nonoperating Taxes, or, for payroll related costs, the appropriate expense accounts shall be charged or credited for all taxes, other than Federal, State and local income taxes, accrued or adjusted for previous accruals during the period. Among the taxes includable in this account are property, gross receipts, franchise, capital stock, social security and unemployment taxes.

(b) Taxes paid in advance of the period in which they are chargeable to income shall be included in the prepaid taxes Account 1280, Prepayments, or 1410, Other Noncurrent Assets, as appropriate.

58. Section 32.4110 is amended by revising paragraphs (c) and (f) to read as follows:

§ 32.4110 Net current deferred nonoperating income taxes.

* * * * *

(c) This account shall be debited or credited with the amount being credited or debited to Account 7400, Nonoperating taxes, in accordance with that account's description and § 32.22.

* * * * *

(f) This account shall be debited or credited with the amount being credited and debited to Account 7600, Extraordinary Items.

* * * * *

§ 32.4120 [Removed]

59. Section 32.4120 is removed.

60. Section 32.4130 is revised to read as follows:

§ 32.4130 Other current liabilities.

This account shall include:

(a) The amount of advance billing creditable to revenue accounts in future months; also advance payments made by prospective customers prior to the establishment of service. Amounts included in this account shall be credited to the appropriate revenue accounts in the months in which the service is rendered or cleared from this account as refunds are made.

(b) The amount (including any obligations for premiums) of long-term debt matured and unpaid without any specific agreement for extension of maturity, including unpresented bonds drawn for redemption through the operation of sinking and redemption fund agreements.

(c) The current portion of obligations applicable to property obtained under capital leases.

(d) The amount of wages, compensated absences, interest on indebtedness of the company, dividends on capital stock, and rents accrued to the date for which the balance sheet is made, but not payable until after that date. Accruals shall be maintained so as to show separately the amount and nature of the items accrued to the date of the balance sheet.

(e) Matured rents, dividends, interest payable under monthly settlements on short-term loans, advances, and open accounts shall be included in Account 4000.

(f) All other liabilities of current character which are not included in Account 4000 through 4110.

61. Section 32.4200 is added to read as follows:

§ 32.4200 Long term debt and funded debt.

(a) This account shall include:

(1) The total face amount of unmatured debt maturing more than one year from date of issue, issued by the company and not retired, and the total face amount of similar unmatured debt of other companies, the payment of which has been assumed by the company, including funded debt the maturity of which has been extended by specific agreement. This account shall also include such items as mortgage bonds, collateral trust bonds, income bonds, convertible debt, debt securities with detachable warrants and other similar obligations maturing more than one year from date of issue.

(2) The premium associated with all classes of long-term debt. Premium, as applied to securities issued or assumed by the company, means the excess of the current money value received at their sale over the sum of their book or face amount and interest or dividends accrued at the date of the sale.

(3) The discount associated with all classes of long-term debt. Discount, as applied to securities issued or assumed by the company, means the excess of the book or face amount of the securities plus interest or dividends accrued at the date of the sale over the current money value of the consideration received at their sale.

(4) The face amount of debt reacquired prior to maturity that has not been retired. Gain or loss shall be recognized at the time of reacquisition by credits or charges to Account 7300, Nonoperating income and expense, except that material gains or losses shall be treated as extraordinary. (See Account 7600, Extraordinary items.)

(5) The noncurrent portion of obligations applicable to property obtained under capital leases. Amounts subject to current settlement shall be included in Account 4130, Other current liabilities.

(6) The amount of advance from affiliated companies. Amounts due affiliated companies which are subject to current settlement shall be included in Account 4000.

(7) Investment advances, including those represented by notes.

(8) Long-term debt not provided for elsewhere.

(b) Subsidiary records shall be maintained for each issue. The subsidiary records shall identify the premium or discount attributable to each issue.

(c) Premiums and discounts on long-term debt recorded in this account shall be amortized monthly by the interest method and charged or credited, as appropriate, to Account 7500, Interest and related items.

(d) Debt securities with detachable warrants shall be accounted for in accordance with generally accepted accounting principles.

(e) Securities maturing in one year or less, including securities maturing serially, shall be included in Account 4130, Other current liabilities.

§§ 32.4210, 32.4220, 32.4230, 32.4240, 32.4250, 32.4260, and 32.4270 [Removed]

62. Sections 32.4210, 32.4230, 32.4240, 32.4250, 32.4260, and 32.4270 are removed.

63. Section 32.4300 is added to read as follows:

§ 32.4300 Other long-term liabilities and deferred credits.

(a) This account shall include amounts accrued to provide for such items as unfunded pensions (if actuarially determined), death benefits, deferred compensation costs and other long-term liabilities not provided for elsewhere. Subsidiary records shall be maintained to identify the nature of these items.

(b) This account shall include the amount of all deferred credits not provided for elsewhere, such as amounts awaiting adjustment between accounts; and revenue, expense, and income items in suspense.

§ 32.4310 [Removed]

64. Section 32.4310 is removed.

65. Section 32.4330 is revised to read as follows:

§ 32.4330 Unamortized nonoperating investment tax credits—net.

(a) This account shall be credited and Account 7400, Nonoperating Taxes, shall be debited with investment tax credits generated from qualified expenditures related to other operations which the company has elected to defer rather than recognize currently in income.

(b) This account shall be debited and Account 7400 credited with a proportionate amount determined in relation to the useful book life of the property to which the tax credit relates.

66. Section 32.4341 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 32.4341 Net deferred tax liability adjustments.

(a) This account shall include the portion of deferred income tax charges and credits pertaining to Account 32.4361, Deferred tax regulatory adjustments—net.

(b) * * *

(2) Reclassification attributable to changes in tax rates (Federal, state and local). As tax rates increase or decrease, the offsetting debit or credit will be recorded in Account 4361 as required by paragraph (a) of this section.

* * * * *

67. Section 32.4350 is amended by revising paragraphs (b) and (e) to read as follows:

§ 32.4350 Net noncurrent deferred nonoperating income taxes.

* * * * *

(b) This account shall be credited or debited, as appropriate, and Account 7400, Nonoperating Taxes, shall reflect the offset for the tax effect of revenues from other operations and extraordinary items and nonoperating expenses which have been included in the determination of taxable income, but which will not be included in the determination of book income or for the tax effect of nonoperating expenses and extraordinary items and nonoperating income which have been included in the determination of book income prior to the inclusion in the determination of taxable income.

* * * * *

(e) This account shall be charged or credited with the contra amount recorded to Account 7600, Extraordinary items, in accordance with § 32.22.

* * * * *

§ 32.4360 [Removed]

68. Section 32.4360 is removed.

69. Section 32.4361 is revised to read as follows:

§ 32.4361 Deferred tax regulatory adjustments—net.

(a) This account shall include amounts of probable future revenue for the recovery of future increases in taxes payable and amounts of probable future revenue reductions attributable to future decreases in taxes payable. As reductions or reversals occur, amounts recorded in this account shall be reduced or increased, with a contra entry being made to Account 4341, Net deferred tax liability adjustments.

(b) This account shall also be adjusted for the impact of prospective tax rate changes on the deferred tax liability for those temporary differences underlying its existing balance.

70. Section 32.4540 is revised to read as follows:

§ 32.4540 Other capital.

This account shall include amounts which are credits arising from the donation by stockholders of the company's capital stock, capital recorded upon the reorganization or recapitalization of the company and temporary declines in the value of marketable securities held for investment purposes. (See also Account 1410, Other noncurrent assets).

71. Section 32.4999 is amended by revising paragraphs (c), (d), (e), (g)(2), (h), (i)(1), and (n), removing paragraphs (f)(2) and (g)(3), redesignating paragraph (f)(1) as (f), and by redesignating paragraph (g)(4) as (g)(3) to read as follows:

§ 32.4999 General.

* * * * *

(c) *Commissions.* Commissions paid to others or employees in place of compensation or salaries for services rendered, such as public telephone commissions, shall be charged to Account 6620 Services, and not to the revenue accounts. Other commissions shall be charged to the appropriate expense accounts.

(d) *Revenue recognition.* Credits shall be made to the appropriate revenue accounts when such revenue is actually earned. When the billing cycle encompasses more than one accounting period, adjustments are necessary to properly recognize the revenue applicable to the current accounting period under report. Revenues recorded under the terms of two-tier contracts or other variable payment plans should be deferred, if necessary, and recognized ratably with expenses over the terms of the related contract. Any amounts deferred shall be credited to Account 4300, Other long-term liabilities and deferred credits.

(e) *Contractual arrangements.* Charges and credits resulting from activities associated with the provisions of regulated telecommunications services shall be recorded in a manner consistent

with the nature of the underlying contractual arrangements. The charges and credits resulting from expense sharing or apportionment arrangements associated with the provision of regulated telecommunications services shall be recorded in the detailed regulated accounts. Charges and credits resulting from revenue settlement agreements or other revenue pooling arrangements associated with the provision of regulated telecommunications services shall be included in the appropriate revenue accounts. Those charges and credits resulting from contractual revenue pooling and/or sharing agreements shall be recorded in each prescribed revenue account and prescribed subsidiary record categories thereof to the extent that each is separately identifiable in the settlement process. It is not intended that settlement amounts be allocated or generally spread to the individual revenue accounts where they are not separately identifiable in the settlement process. When the settlement amounts are not identifiable by a revenue account they shall be recorded in Account 5060, Other basic area revenue, 5105, Long distance message revenue, or 5200, Miscellaneous revenue, as appropriate.

* * * * *

(g) * * *

(2) The revenue section of this system of accounts shall be comprised of six major groups—Local Network Services Revenues, Network Access Services Revenues, Long Distance Network Services Revenues, Miscellaneous Revenues, Nonregulated revenues, and Uncollectible Revenues, which shall be considered as a revenue group for the purposes of the construction of the system.

* * * * *

(h) *Local Network Services revenues.* Local Network Services revenues (Accounts 5001 through 5060) shall include revenues derived from the provision of service and equipment entirely within the basic service area. That area is defined as the normal boundaries for local calling plus Extended Area Service (EAS) boundaries as they apply to that service. It includes revenues derived from both local private network service and local public network services as well as from customer premises facilities services. Local revenues include associated charges such as one-time service connection or termination charges and secondary features such as call waiting.

(i) *Network Access revenues.* (1) Network Access revenues (Accounts 5081–5083) shall include revenues derived from the provision of exchange access services to an interexchange carrier or to an end user of telecommunications services beyond the exchange carrier's network.

* * * * *

(n) Revenue accounts to be maintained.

Account title	Class A account	Class B account
Local network services revenues:		
Basic local service revenue	.....	5000
Basic area revenue	5001	.....
Private line revenue	5040	.....
Other basic area revenue	5060	.....
Network access service revenues:		
End user revenue	5081	5081
Switched access revenue	5082	5082
Special access revenue	5083	5083
Long distance network services revenues:		
Long distance message revenue	5105	5105
Miscellaneous revenues:		
Miscellaneous revenue	5200	5200
Nonregulated revenues:		
Nonregulated operating revenue	5280	5280
Uncollectible revenues:		
Uncollectible revenue	5300	5300

72. Section 32.5000 is revised to read as follows:

§ 32.5000 Basic local service revenue.

Class B telephone companies shall use this account for revenues of the type and character required of Class A companies in Accounts 5001 through 5060.

73. Section 32.5001 is revised to read as follows:

§ 32.5001 Basic area revenue.

(a) This account shall include revenue derived from the provision of the following:

(1) Basic area message services such as flat rate services and measured services. Included is revenue derived from non-optional extended area services. Also included is revenue derived from the billed or guaranteed portion of semi-public services.

(2) Optional extended area service.

(3) Cellular mobile telecommunications systems connected to the public switched network placed between mobile units and other stations within the mobile service area.

(4) General radio telecommunications systems connected to the public switched network placed between mobile units and other stations within the mobile service area, as well as revenue from mobile radio paging, mobile dispatching, and signaling services.

(b) Revenue derived from charges for nonpublished number or additional and boldfaced listings in the alphabetical section of the company's telephone directories shall be included in Account 5200, Miscellaneous revenue.

(c) Revenue from private mobile telephone services which do not have access to the public switched network shall be included in Account 5200, Miscellaneous revenue.

§ 32.5004 [Removed]

74. Section 32.5004 is removed.

75. Section 32.5040 is amended by revising the section heading to read as follows:

§ 32.5040 Private line revenue.

* * * * *

§ 32.5050 [Removed]

76. Section 32.5050 is removed.

77. Section 32.5060 is revised to read as follows:

§ 32.5060 Other basic area revenue.

This account shall include:

(a) Revenue from the provision of secondary features which are integrated with the telecommunications network such as call forwarding, call waiting and touch-tone line service. Also included is revenue derived from the provision of public announcement and other record message services, directory assistance and other call completion services (excluding operator assisted basic long distance calls), as well as revenue derived from central office related service connection and termination charges, and other non-premise customer specific charges associated with public network services. This account shall also include local revenue not provided for in other accounts.

(b) Charges and credits resulting from contractual revenue pooling and/or sharing agreements for tariffed local network services only when they are not separately identifiable by local network services revenue accounts in the settlement process. (See also § 32.4999(e)). To the extent that the charges and credits resulting from a settlement process can be identified by Local Network Services Revenue account they shall be recorded in the applicable account.

(c) Revenue derived from tariffed information origination/termination plant. Included is revenue derived from the provision under leasing arrangements of tariffed customer premises equipment (CPE), terminal equipment, station apparatus and large private branch exchanges as well as tariffed nonrecurring charges related solely to station apparatus. Also included are all tariffed charges for customer premises activities and facilities not related solely to station apparatus.

§§ 32.5069 and 32.5080 [Removed]

78. Sections 32.5069 and 32.5080 are removed.

79. Section 32.5081 is revised to read as follows:

§ 32.5081 End user revenue.

(a) This account shall contain federally and state tariffed monthly flat rate charge assessed upon end users.

(b) Subsidiary record categories shall be maintained in order that the company may separately report amounts related to federal and state tariffed charges.

80. Section 32.5082 is revised to read as follows:

§ 32.5082 Switched access revenue.

(a) This account shall consist of federally and state tariffed charges assessed to interexchange carriers for access to local exchange facilities.

(b) Subsidiary record categories shall be maintained in order that the company may separately report the amounts contained herein that relate to limited pay telephone, carrier common line, line termination, local switching, intercept, information, common transport and dedicated transport. The subsidiary records shall also separately show the federal and state tariffed charges. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

81. Section 32.5083 is revised to read as follows:

§ 32.5083 Special access revenue.

(a) This account shall include all federally and state tariffed charges assessed for other than end user or switched access charges referred to in Account 5081, End user revenue, and Account 5082, Switched access revenue.

(b) Subsidiary record categories shall be maintained in order that the company may separately report the amounts contained herein that relate to recurring charges, nonrecurring charges and surcharges. The subsidiary records shall also separately show the federal and state tariffed charges. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§ 32.5084 [Removed]

82. Section 32.5084 is removed.

83. Section 32.5100 is revised to read as follows:

§ 32.5100 Long distance message revenue.

This account shall include revenue derived from message services that terminate beyond the basic service area of the originating wire center and are individually priced. This includes those message services which utilize the public long distance switching network and the basic subscriber access line. It also includes those long distance calls placed from mobile and public telephones, as well as any charges for operator assistance or special billing directly related to the completion of a specific call. This account shall also include revenue derived from individually priced message services offered under calling plans (discounted long distance) which do not utilize dedicated access lines, as well as those priced at the basic long distance rates where a discounted toll charge is on a per message basis. Any revenue derived from monthly or one-time charges for obtaining calling plan services shall be included in this account. This account includes revenue derived from the following services:

(a) Long distance services which permit unidirectional calls to a subscriber from specified services areas (multipoint-to-point service). These calls require the use of dedicated access lines connecting a subscriber's premises and a designated central office. These dedicated access lines are generally separate from those required for the subscriber to place outward calls. The call is billed to the subscriber even though it is generally initiated by the subscriber's customer or correspondent.

(b) Long distance services which permit the subscriber to place telephone calls from one location to other specified service areas (point-to-multipoint service). These calls are completed without operator assistance and require the use of a dedicated access line. The dedicated access line is generally separate from those required for inward message services and cannot be used to place calls within the basic service area or calls outside the selected service areas. Outward calls are screened and blocked to determine whether the calls are within an authorized service area.

(c) Services extending beyond the basic service area that involve dedicated circuits, private switching arrangements, and/or predefined transmission paths, whether virtual or physical, which provide communications between specific locations (e.g., point-to-point communications). Service connection charges, termination charges, rearrangements and changes, etc., shall be included in this account. Revenue derived from associated administrative and operational support services shall also be included in this account.

(1) Narrow-band analog private network circuits and facilities furnished exclusively for record forms of communications, such as teletypewriter, teletypesetter, telewriter, ticker, Morse, signaling, remote metering, and supervisory services.

(2) Private network circuits and facilities (including multipurpose wide-band) which provide voice grade services for the transmission of analog signals. It includes revenue from services such as voice, data and telephoto communication, as well as remote metering, supervisory control, miscellaneous signaling and channels furnished for the purpose of extending customer—provided communications systems. It includes revenue from the provision of facilities between customer premises and a serving office, a carrier distribution point, or an extension distribution channel.

(3) Private network circuits and facilities furnished for audio program transmission purposes, such as radio broadcasting, sound recording (wired music) and loud speaker services. It includes revenue from the provision of facilities for the transmission of analog signals between customer premises and a serving office, a carrier distribution point, or an extension distribution channel furnished in connection with such services. It also includes revenue from facilities furnished to carry the audio portion of a television program if furnished under separate audio rates. If the rate for television program services includes both the picture and sound portion of the transmission, the revenue shall also be included in this account.

(4) Private network circuits and facilities furnished for television program transmission purposes, such as commercial broadcast and educational or private television services. It includes revenue from the provision of facilities for the transmission of analog signals between customer premises and a serving office, a carrier distribution point, or an extension distribution channel furnished in connection with such services. It also includes revenue from both the picture and sound portions of transmission for television program service when provided under a combined rate schedule.

(5) The provision of circuits and facilities for the transmission of digital signals only.

(6) The provision of common user channels and switching capabilities used for the transmission of telecommunication signals between three (3) or more points in the network. Also included is revenue derived from the provision of basic switching and transfer arrangements used to connect private line channels.

(7) Charges and credits resulting from contractual revenue pooling and/or sharing agreements for tariffed long distance public network services and for tariffed long distance private network services.

§§ 32.5110 through, 32.5112, 32.5120 through 32.5126, 32.5128 and 32.5129, 32.5160, and 32.5169 [Removed]

84. Sections 32.5110 through 32.5112, 32.5120 through 32.5126, 32.5128 and 32.5129, 32.5160, and 32.5169 are removed.

85. Section 32.5200 is revised to read as follows:

§ 32.5200 Miscellaneous revenue.

This account shall include revenue derived from the following:

(a) Alphabetical and classified sections of directories including fees paid by other entities for the right to publish the company's directories. It includes the classified section of the directories, the sale of new telephone directories whether they are the company's own directories or directories purchased from others. It also includes revenue from the sale of specially bound telephone directories and special telephone directory covers; amounts charged for additional and boldface listings, marginal displays, inserts, and other advertisements in the alphabetical of the company's telephone directories; and charges for unlisted and non-published telephone numbers.

(b) Rental or subrental to others of telecommunications plant furnished apart from telecommunications services rendered by the company (This revenue includes taxes when borne by the lessee). It includes revenue from the rent of such items as space in conduit, pole line space for attachments, and any allowance for return on property used in joint operations and shared facilities agreements. The expense of maintaining and operating the rented property, including depreciation and insurance, shall be included in the appropriate operating expense accounts. Taxes applicable to the rented property shall be included by the owner of the rented property in appropriate tax accounts. When land or buildings are rented on an incidental basis for non-telecommunications use, the rental and expenses are included in Account 7300, Nonoperating income and expense.

(c) Services rendered to other companies under a license agreement, general services contract, or other arrangement providing for the furnishing of general accounting, financial, legal, patent, and other general services associated with the provision of regulated telecommunications services.

(d) The provision, either under tariff or through contractual arrangements, of special billing information to customers in the form of magnetic tapes, cards or statements. Special billing information provides detail in a format and/or at a level of detail not normally provided in the standard billing rendered for the regulated telephone services utilized by the customer.

(e) The performance of customer operations services for others incident to the company's regulated telecommunications operations which are not provided for elsewhere. (See also §§ 32.14(e) and 32.4999(e)).

(f) Contract services (plant maintenance) performed for others incident to the company's regulated telecommunications operations. This includes revenue from the incidental performance of nontariffed operating and maintenance activities for others which are similar in nature to those activities which are performed by the company in operating and maintaining its own telecommunications plant facilities. The records supporting the entries in this account shall be maintained with sufficient particularity to identify the revenue and associated Plant Specific Operations Expenses related to each undertaking. This account does not include revenue related to the performance of operation or maintenance activities under a joint operating agreement.

(g) The provision of billing and collection services to other telecommunications companies. This includes amounts charged for services such as message recording, billing, collection, billing analysis, and billing information services, whether rendered under tariff or contractual arrangements.

(h) Charges and credits resulting from contractual revenue pooling and/or sharing agreements for activities included in the miscellaneous revenue accounts only when they are not identifiable by miscellaneous revenue account in the settlement process. (See also § 32.4999(e)). The extent that the charges and credits resulting from a settlement process can be identified by miscellaneous revenue accounts they shall be recorded in the applicable account.

(i) The provision of transport and termination of local telecommunications traffic pursuant to section 251(c) and part 51 of this chapter.

(k) The provision of unbundled network elements pursuant to section 251(c) of the Communications Act and part 51 of this chapter.

(l) This account shall also include other incidental regulated revenue such as:

(1) Collection overages (collection shortages shall be charged to Account 6620, Services.)

(2) Unclaimed refunds for telecommunications services when not subject to escheats;

(3) Charges (penalties) imposed by the company for customer checks returned for non-payment;

(4) Discounts allowed customers for prompt payment;

(5) Late-payment charges;

(6) Revenue from private mobile telephone services which do not have access to the public switched network; and

(7) Other incidental revenue not provided for elsewhere in other Revenue accounts.

(m) Any definitely known amounts of losses of revenue collections due to fire

or theft, at customers' coin-box stations, at public or semipublic telephone stations, in the possession of collectors en route to collection offices, on hand at collection offices, and between collection offices and banks shall be charged to Account 6720, General and Administrative.

§§ 32.5230, 32.5240, 32.5250, 32.5260 through 32.5264, 32.5269, and 32.5270 [Removed]

86. Sections 32.5230, 32.5240, 32.5250, 32.5260 through 32.6264, 32.5269, and 32.5270 are removed.

87. Section 32.5280 is amended by revising paragraph (c) to read as follows:

§ 32.5280 Nonregulated operating revenue.

* * * * *

(c) Separate subsidiary record categories shall be maintained for two groups of nonregulated revenue as follows: one subsidiary record for all revenues derived from regulated services treated as nonregulated for federal accounting purposes pursuant to Commission order and the second for all other revenues derived from a nonregulated activity as set forth in paragraph (a) of this section.

88. Section 32.5300 is revised to read as follows:

§ 32.5300 Uncollectible revenue.

This account shall be charged with amounts concurrently credited to Account 1170, Receivables.

§§ 32.5301 and 32.5302 [Removed]

89. Sections 32.5301 and 32.5302 are removed.

90. Section 32.5999 is amended by removing paragraph (a)(3), redesignating (a)(4) as (a)(3), and revising paragraphs (b)(4), (c), and (g) as follows:

§ 32.5999 General.

* * * * *

(b) * * *

(4) In addition to the activities specified in paragraph (b)(3) of this section, the appropriate Plant Specific Operations Expense accounts shall include the cost of personnel whose principal job is the operation of plant equipment, such as general purpose computer operators, aircraft pilots, chauffeurs and shuttle bus drivers. However, when the operation of equipment is performed as part of other identifiable functions (such as the use of office equipment, capital tools or motor vehicles) the operators' cost shall be charged to accounts appropriate for those functions. (For costs of operator services personnel, see Account 6620, Services, and for costs of test board personnel see Account 6533.)

(c) *Plant nonspecific operations expense.* The Plant Nonspecific Operations Expense accounts shall include expenses related to property held for future telecommunications use, provisioning expenses, network operations expenses, and depreciation and amortization expenses. Accounts in this group (except for Account 6540, Access expense, and Account 6560, Depreciation and amortization expense) shall include the costs of performing activities described in narratives for individual accounts. These costs shall also include the costs of supervision and office support of these activities.

* * * * *

(g) Expense accounts to be maintained.

Account title	Class A account	Class B account
Income statement accounts		
Plant specific operations expense:		
Network support expense		6110
Motor vehicle expense	6112	
Aircraft expense	6113	
Tools and other work equipment expense	6114	
General support expenses		6120
Land and building expenses	6121	
Furniture and artworks expense	6122	
Office equipment expense	6123	
General purpose computers expense	6124	
Central office switching expense		6210
Non-digital switching expense	6211	
Digital electronic switching expense	6212	
Operators system expense	6220	6220
Central office transmission expenses		6230
Radio systems expense	6231	
Circuit equipment expense	6232	
Information origination/termination expense		6310
Station apparatus expense	6311	
Large private branch exchange expense	6341	
Public telephone terminal equipment expense	6351	
Other terminal equipment expense	6362	
Cable and wire facilities expenses		6410
Poles expense	6411	
Aerial cable expense	6421	
Underground cable expense	6422	
Buried cable expense	6423	
Submarine and deep sea cable expense	6424	
Intrabuilding network cable expense	6426	
Aerial wire expense	6431	
Conduit systems expense	6441	
Plant nonspecific operations expense:		
Other property plant and equipment expenses		6510
Property held for future Telecommunications use expense	6511	
Provisioning expense	6512	
Network operations expenses		6530
Power expense	6531	
Network administration expense	6532	

Account title	Class A account	Class B account
Testing expense	6533	.....
Plant operations administration expense	6534	.....
Engineering expense	6535	.....
Access expense	6540	6540
Depreciation and amortization expenses	6560	6560
Customer operations expense:		
Marketing	.....	6610
Product management and sales	6611	
Product advertising	6613	
Services	6620	6620
Corporate operations expense:		
General and administrative	6720	6720
Provision for uncollectible notes receivable	6790	6790

91. Section 32.6110 is revised to read as follows:

§ 32.6110 Network support expenses.

(a) Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6112 through 6114.

(b) Credits shall be made to this account by Class B companies for amounts transferred to Construction and/or other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

92. Section 32.6112 is amended by revising paragraph (b) to read as follows:

§ 32.6112 Motor vehicle expense.

* * * * *

(b) Credits shall be made to this account for amounts transferred to Construction and/or to other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

93. Section 32.6113 is amended by revising paragraph (b) to read as follows:

§ 32.6113 Aircraft expense.

* * * * *

(b) Credits shall be made to this account for amounts transferred to Construction and/or to other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

94. Section 32.6114 is amended by revising paragraph (b) to read as follows:

§ 32.6114 Tools and other work equipment expense.

* * * * *

(b) Credits shall be made to this account for amounts related to special purpose vehicles and other work equipment transferred to Construction and/or to other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

95. Section 32.6120 is revised to read as follows:

§ 32.6120 General support expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6121 through 6124.

96. Section 32.6124 is revised to read as follows:

§ 32.6124 General purpose computers expense.

This account shall include the costs of personnel whose principal job is the physical operation of general purpose computers and the maintenance of operating systems. This excludes the cost of preparation of input data or the use of outputs which are chargeable to the accounts appropriate for the activities being performed. Also excluded are costs incurred in planning and maintaining application systems and databases for general purpose computers. (See also § 32.6720, General and administrative.) Separately metered electricity for general purpose computers shall also be included in this account.

97. Section 32.6210 is revised to read as follows:

§ 32.6210 Central office switching expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6211 through 6212.

98. Section 32.6211 is revised to read as follows:

§ 32.6211 Non-digital switching expense.

This account shall include expenses associated with non-digital electronic switching and electro-mechanical switching.

99. Section 32.6212 is revised to read as follows:

§ 32.6212 Digital electronic switching expense.

(a) This account shall include expenses associated with digital electronic switching. Digital electronic switching expenses shall be maintained in the following subaccounts: 6212.1 Circuit, 6212.2 Packet.

(b) This subaccount 6212.1 Circuit shall include expenses associated with digital electronic switching equipment used to provide circuit switching.

(c) This subaccount 6212.2 Packet shall include expenses associated with digital electronic switching equipment used to provide packet switching.

§ 32.6215 [Removed]

100. Section 32.6215 is removed.

101. Section 32.6230 is revised to read as follows:

§ 32.6230 Central office transmission expense.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6231 and 6232.

§ 32.6231 [Amended]

102. Section 32.6231 is amended by removing paragraph (b) and designating paragraph (a) as an undesignated paragraph.

103. Section 32.6232 is revised to read as follows:

§ 32.6232 Circuit equipment expense.

(a) This account shall include expenses associated with circuit equipment. Circuit equipment expenses shall be maintained in the following subaccounts: 6232.1 Electronic, 6232.2 Optical.

(b) This subaccount 6232.1 Electronic shall include expenses associated with electronic circuit equipment.

(c) This subaccount 6232.2 Optical shall include expenses associated with optical circuit equipment.

104. Section 32.6310 is revised to read as follows:

§ 32.6310 Information origination/termination expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A telephone companies in Accounts 6311 through 6362.

105. Section 32.6410 is revised to read as follows:

§ 32.6410 Cable and wire facilities expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6411 through 6441.

106. Section 32.6424 is revised to read as follows:

§ 32.6424 Submarine and deep sea cable expense.

(a) This account shall include expenses associated with submarine and deep sea cable.

(b) Subsidiary record categories shall be maintained as provided in § 32.2424.

§ 32.6425 [Removed]

107. Section 32.6425 is removed.

108. Section 32.6510 is revised to read as follows:

§ 32.6510 Other property, plant and equipment expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6511 and 6512.

109. Section 32.6512 is revised to read as follows:

§ 32.6512 Provisioning expense.

(a) This account shall include costs incurred in provisioning material and supplies, including office supplies. This includes receiving and stocking, filling requisitions from stock, monitoring and replenishing stock levels, delivery of material, storage, loading or unloading and administering the reuse or refurbishment of material. Also included are adjustments resulting from the periodic inventory of material and supplies.

(b) Credits shall be made to this account for amounts transferred to construction and/or to Plant Specific Operations Expense. These costs are to be cleared by adding to the cost of material and supplies a suitable loading charge.

110. Section 32.6530 is revised to read as follows:

§ 32.6530 Network operations expense.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6531 through 6535.

111. Section 32.6560 is revised to read as follows:

§ 32.6560 Depreciation and amortization expenses.

(a) This account shall include: (1) The depreciation expense of capitalized costs in Accounts 2112 through 2441, inclusive.

(2) The depreciation expense of capitalized costs included in Account 2002, Property held for future telecommunications use.

(3) The amortization of costs included in Accounts 2681, Capital leases, 2682, Leasehold improvements, and Account 2690, Intangibles.

(4) The amortization of costs included in Account 2005, Telecommunications plant adjustment, and lump-sum write-offs of amounts of plant acquisition adjustment as provided for in § 32.2005(b)(4).

(b) Subsidiary records shall be maintained so as to show that character of the amounts related to plant acquisition adjustments.

§§ 32.6561 through 32.6565 [Removed]

112. Sections 32.6561 through 32.6565 are removed.

113. Section 32.6610 is revised to read as follows:

§ 32.6610 Marketing.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6611 through 6613.

114. Section 32.6611 is revised to read as follows:

§ 32.6611 Product management and sales.

This account shall include:

(a) Costs incurred in performing administrative activities related to marketing products and services. This includes competitive analysis, product and service identification and specification, test market planning, demand forecasting, product life cycle analysis, pricing analysis, and identification and establishment of distribution channels.

(b) Costs incurred in selling products and services. This includes determination of individual customer needs, development and presentation of customer proposals, sales order preparation and handling, and preparation of sales records.

§ 32.6612 [Removed]

115. Section 32.6612 is removed.

116. Section 32.6620 is revised to read as follows:

§ 32.6620 Services.

(a) This account shall include:

(1) Costs incurred in helping customers place and complete calls, except directory assistance. This includes handling and recording; intercept; quoting rates, time and charges; and all other activities involved in the manual handling of calls.

(2) Costs incurred in providing customer number and classified listings. This includes preparing or purchasing, compiling, and disseminating those listings through directory assistance or other means.

(3) Costs incurred in establishing and servicing customer accounts. This includes:

(i) Initiating customer service orders and records;

(ii) Maintaining and billing customer accounts;

(iii) Collecting and investigating customer accounts, including collecting revenues, reporting receipts, administering collection treatment, and handling contacts with customers regarding adjustments of bills;

(iv) Collecting and reporting pay station receipts; and

(v) Instructing customers in the use of products and services.

(b) This account shall also include amounts paid by interexchange carriers or other exchange carriers to another exchange carrier for billing and collection services. Subsidiary record categories shall be maintained in order that the entity may separately report interstate and intrastate amounts. Such subsidiary record categories shall be reported as required by Part 43 of this chapter.

(c) Class A companies, except mid-sized incumbent local exchange carriers, shall maintain the following subaccounts for expenses recorded in this account: 6620.1 Wholesale, 6620.2 Retail.

(1) *6620.1 Wholesale.* This subaccount shall include costs associated with telecommunications services provided for resale to other telecommunications carriers.

(2) *6620.2 Retail.* This subaccount shall include costs associated with telecommunications services provided to subscribers who are not telecommunications carriers.

§§ 32.6621, 32.6623, and 32.6710 through 32.6712 [Removed]

117. Sections 32.6621, 32.6623, and 32.6710 through 32.6712 are removed.

118. Section 32.6720 is revised to read as follows:

§ 32.6720 General and administrative.

This account shall include costs incurred in the provision of general and administrative services as follows:

(a) Formulating corporate policy and in providing overall administration and management. Included are the pay, fees and expenses of boards of directors or similar policy boards and all board-designated officers of the company and their office staffs, e.g., secretaries and staff assistants.

(b) Developing and evaluating long-term courses of action for the future operations of the company. This includes performing corporate organization and integrated long-range planning, including management studies, options and contingency plans, and economic strategic analysis.

(c) Providing accounting and financial services. Accounting services include payroll and disbursements, property accounting, capital recovery, regulatory accounting (revenue requirements, separations, settlements and corollary cost accounting), non-customer billing, tax accounting, internal and external auditing, capital and operating budget analysis and control, and general accounting (accounting principles and procedures and journals, ledgers, and financial reports). Financial services include banking operations, cash management, benefit investment fund management (including actuarial services), securities management, debt trust administration, corporate financial planning and analysis, and internal cashier services.

(d) Maintaining relations with government, regulators, other companies and the general public. This includes:

(1) Reviewing existing or pending legislation (see also Account 7300, Nonoperating income and expense, for lobbying expenses);

(2) Preparing and presenting information for regulatory purposes, including tariff and service cost filings, and obtaining radio licenses and construction permits;

(3) Performing public relations and non-product-related corporate image advertising activities;

(4) Administering relations, including negotiating contracts, with telecommunications companies and other utilities, businesses, and industries. This excludes sales contracts (see also Account 6611, Product management and sales); and

(5) Administering investor relations.

(e) Performing personnel administration activities. This includes:

(1) Equal Employment Opportunity and Affirmative Action Programs;

(2) Employee data for forecasting, planning and reporting;

(3) General employment services;

(4) Occupational medical services;

(5) Job analysis and salary programs;

(6) Labor relations activities;

(7) Personnel development and staffing services, including counseling, career planning, promotion and transfer programs;

(8) Personnel policy development;

(9) Employee communications;

(10) Benefit administration;

(11) Employee activity programs;

(12) Employee safety programs; and

(13) Nontechnical training course development and presentation.

(f) Planning and maintaining application systems and databases for general purpose computers.

(g) Providing legal services: This includes conducting and coordinating litigation, providing guidance on regulatory and labor matters, preparing, reviewing and filing patents and contracts and interpreting legislation. Also included are court costs, filing fees, and the costs of outside counsel, depositions, transcripts and witnesses.

(h) Procuring material and supplies, including office supplies. This includes analyzing and evaluating suppliers' products, selecting appropriate suppliers, negotiating supply contracts, placing purchase orders, expediting and controlling orders placed for material, developing standards for material purchased and administering vendor or user claims.

(i) Making planned search or critical investigation aimed at discovery of new knowledge. It also includes translating research findings into a plan or design for a new product or process or for a significant improvement to an existing product or process, whether intended for sale or use. This excludes making routine alterations to existing products, processes, and other ongoing operations even though those alterations may represent improvements.

(j) Performing general administrative activities not directly charged to the user, and not provided in paragraphs (a) through (i) of this section. This includes providing general reference libraries, food services (e.g., cafeterias, lunch rooms and vending facilities), archives, general security investigation services, operating official private branch exchanges in the conduct of the business, and telecommunications and mail services. Also included are payments in settlement of accident and damage claims, insurance premiums for protection against losses and damages, direct benefit payments to or on behalf of retired and separated employees, accident and sickness disability payments, supplemental payments to employees while in governmental service, death payments, and other miscellaneous costs of a corporate nature. This account excludes the cost of office services, which are to be included in the accounts appropriate for the activities supported.

§§ 32.6721 through 32.6728 [Removed]

119. Sections 32.6721 through 32.6728 are removed.

120. Section 32.6790 is revised to read as follows:

§ 32.6790 Provision for uncollectible notes receivable.

This account shall be charged with amounts concurrently credited to Account 1170, Receivables.

121. Section 32.6999 is revised to read as follows:

§ 32.6999 General.

(a) *Structure of the other income accounts.* The Other Income Accounts are designed to reflect both operating and nonoperating income items including taxes, extraordinary items and other income and expense items not properly included elsewhere.

(b) *Other income accounts listing.*

Account title	Class A account	Class B account
Other operating income and expense:		
Other operating income and expense	7100	7100
Operating taxes:		
Operating taxes		7200
Operating investment tax credits-net	7210	.....
Operating Federal income taxes	7220	.....
Operating state and local income taxes	7230	.....
Operating other taxes	7240	.....
Provision for deferred operating income taxes—net	7250	.....
Nonoperating income and expense:		
Nonoperating income and expense	7300	7300

Account title	Class A account	Class B account
Nonoperating taxes:		
Nonoperating taxes	7400	7400
Interest and related items:		
Interest and related items	7500	7500
Extraordinary items	7600	7600
Jurisdictional differences and non-regulated income items:		
Income effect of jurisdictional ratemaking difference—net	7910	7910
Nonregulated net income	7990	7990

§ 32.7099 [Removed]

122. Section 32.7099 is removed.

123. Section 32.7100 is revised to read as follows:

§ 32.7100 Other operating income and expenses.

This account shall be used to record the results of transactions, events or circumstances during the periods which are incidental or peripheral to the major or central operations of the company. It shall be used to record all items of an operating nature such as incidental work performed for others not provided for elsewhere. Whenever practicable the inflows and outflows associated with a transaction, event or circumstances shall be matched and the result shown as a net gain or loss. This account shall include the following:

(a) Profits realized from custom work (plant construction) performed for others incident to the company's regulated telecommunications operations. This includes profits from the incidental performance of nontariffed construction activities (including associated engineering and design) for others which are similar in nature to those activities which are performed by the company in constructing its own telecommunications plant facilities. The records supporting the entries in this account for income and custom work shall be maintained with sufficient particularity to identify separately the revenue and costs associated with each undertaking.

(b) Return on investment for the use of regulated property plant and equipment to provide nonregulated products and services.

(c) All gains and losses resulting from the exchange of foreign currency. Transaction (realized) gains or losses shall be measured based on the exchange rate in effect on the transaction date. Unrealized gains or losses shall be measured based on the exchange rate in effect at the balance sheet date.

(d) Gains or losses resulting from the disposition of land or artworks.

(e) Charges or credits, as appropriate, to record the results of transactions, events or circumstances which are of an operational nature, but occur irregularly or are peripheral to the major or central operations of the company and not provided for elsewhere.

§§ 32.7110, 32.7130, 32.7140, 32.7150, and 32.7160. [Removed]

124. Sections 32.7110, 32.7130, 32.7140, 32.7150, and 32.7160 are removed.

125. Section 32.7200 is revised to read as follows:

§ 32.7200 Operating taxes.

Class B telephone companies shall use this account for operating taxes of the type and character required of Class A companies in Accounts 7210 through 7250.

126. Section 32.7210 is amended by revising paragraph (b) to read as follows:

§ 32.7210 Operating investment tax credits—net.

* * * * *

(b) This account shall be credited and Account 4320 shall be charged ratably with the amortization of each year's investment tax credits included in Account 4320 for investment services for ratemaking purposes. Such amortization shall be determined in relation to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.

127. Section 32.7240 is amended by revising paragraphs (d), (e), and (g) to read as follows:

§ 32.7240 Operating other taxes.

* * * * *

(d) Interest on tax assessments which are not paid when due shall be included in Account 7500, Interest and related items.

(e) Taxes paid by the company under tax-free covenants on indebtedness shall be charged to Account 7300, Nonoperating income and expense.

* * * * *

(g) Taxes on rented telecommunications plant which are borne by the lessee shall be credited by the owner to Account 5200, Miscellaneous revenue, and shall be charged by the lessee to the appropriate Plant Specific Operations Expense account.

§ 32.7299 [Removed]

128. Section 32.7299 is removed.

129. Section 32.7300 is revised to read as follows:

§ 32.7300 Nonoperating income and expense.

This account shall be used to record the results of transactions, events and circumstances affecting the company during a period and which are not operational in nature. This account shall include such items as nonoperating taxes, dividend income and interest income. Whenever practicable, the inflows and outflows associated with a transaction or event shall be matched and the result shown as a net gain or loss. This account shall include the following:

(a) Dividends on investments in common and preferred stock, which is the property of the company, whether such stock is owned by the company and held in its treasury, or deposited in trust including sinking or other funds, or otherwise controlled.

(b) Dividends received and receivable from affiliated companies accounted for on the equity method shall be included in Account 1410, Other noncurrent assets, as a reduction of the carrying value of the investments.

(c) Interest on securities, including notes and other evidences of indebtedness, which are the property of the company, whether such securities are owned by the company and held in its treasury, or deposited in trust including sinking or other funds, or otherwise controlled. It shall also include interest on cash bank balances, certificates of deposits, open accounts, and other analogous items.

(d) For each month the applicable amount requisite to extinguish, during the interval between the date of acquisition and date of maturity, the difference between the purchase price and the par value of securities owned or held in sinking or other funds, the income from which is includable in this account. Amounts thus credited or

charged shall be concurrently included in the accounts in which the securities are carried.

(e) Amounts charged to the telecommunications plant under construction account related to allowance for funds used during construction. (See § 32.2000(c)(2)(x).)

(f) Gains or losses resulting from:

(1) The disposition of land or artworks;

(2) The disposition of plant with traffic;

(3) The disposition of nonoperating telecommunications plant not previously used in the provision of telecommunications services.

(g) All other items of income and gains or losses from activities not specifically provided for elsewhere, including representative items such as:

(1) Fees collected in connection with the exchange of coupon bonds for registered bonds;

(2) Gains or losses realized on the sale of temporary cash investments or marketable equity securities;

(3) Net unrealized losses on investments in current marketable equity securities;

(4) Write-downs or write-offs of the book costs of investment in equity securities due to permanent impairment;

(5) Gains or losses of nonoperating nature arising from foreign currency exchange or translation;

(6) Gains or losses from the extinguishment of debt made to satisfy sinking fund requirements;

(7) Amortization of goodwill;

(8) Company's share of the earnings or losses of affiliated companies accounted for on the equity method; and

(9) The net balance of the revenue from and the expenses (including depreciation, amortization and insurance) of property, plant, and equipment, the cost of which is includable in Account 2006, Nonoperating plant.

(h) Costs that are typically given special regulatory scrutiny for ratemaking purposes. Unless specific justification to the contrary is given, such costs are presumed to be excluded from the costs of service in setting rates.

(1) Lobbying includes expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances, or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises, or for the purpose of influencing the decisions of public officials. This also includes advertising, gifts, honoraria, and political contributions. This does not include such expenditures which are directly related to communications with and appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations;

(2) Contributions for charitable, social or community welfare purposes;

(3) Membership fees and dues in social, service and recreational or athletic clubs and organizations;

(4) Penalties and fines paid on account of violations of statutes. This account shall also include penalties and fines paid on account of violations of U.S. antitrust statutes, including judgements and payments in settlement of civil and criminal suits alleging such violations; and

(5) Abandoned construction projects.

(i) Cash discounts on bills for material purchased shall not be included in this account.

§§ 32.7310, 32.7320, 32.7330, 32.7340, 32.7350, 32.7360, 32.7370, and 32.7399 [Removed].

130. Sections 32.7310, 32.7320, 32.7330, 32.7340, 32.7350, 32.7360, 32.7370, and 32.7399 are removed.

131. Section 32.7400 is revised to read as follows:

§ 32.7400 Nonoperating taxes.

This account shall include taxes arising from activities which are not a part of the central operations of the entity.

(a) This account shall be charged and Account 4330, Unamortized nonoperating investment tax credits—net, shall be credited with investment tax credits generated from qualified expenditures related to other operations which the company has elected to defer rather than recognize currently in income.

(b) This account shall be credited and Account 4330 shall be charged with the amortization of each year's investment tax credits included in such accounts relating to amortization of previously deferred investment tax credits of other property or regulated property, the amortization of which does not serve to reduce costs of service (but the unamortized balance does reduce rate base) for ratemaking purposes. Such amortization shall be determined with reference to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.

(c) This account shall be charged and Account 4070, Income taxes—accrued, shall be credited for the amount of nonoperating Federal income taxes and state and local income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged.

(d) Taxes shall be accrued each month on an estimated basis and adjustments made as more current data becomes available.

(e) Companies that adopt the flow-through method of accounting for investment tax credits shall reduce the calculated provision in this account by the entire amount of the credit realized during the year. Tax credits, other than investment tax credits, if normalized, shall be recorded consistent with the accounting for investment tax credits.

(f) No entries shall be made to this account to reflect interperiod tax allocation.

(g) Taxes (both Federal and state) shall be accrued each month on an estimated basis and adjustments made as later data becomes available.

(h) This account shall be charged and Account 4080, Other taxes—accrued, shall be credited for all nonoperating taxes, other than Federal, state and local income taxes, and payroll related taxes for the current period. Among the items includable in this account are property, gross receipts, franchise and capital stock taxes. This account shall also reflect subsequent adjustments to amounts previously charged.

(i) This account shall be charged or credited, as appropriate, with contra entries recorded to the following accounts for nonoperating tax expenses that has been deferred in accordance with § 32.22: 4110 Net Current Deferred Nonoperating Income Taxes, 4350 Net Noncurrent Deferred Nonoperating Income Taxes.

(j) Subsidiary record categories shall be maintained to distinguish between property and nonproperty related deferrals and so that the company may separately report the amounts contained herein that relate to Federal, state and local income taxes. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§§ 32.7410, 32.7420, 32.7430, 32.7440, 32.7450, and 32.7499 [Removed].

132. Sections 32.7410 32.7420, 32.7430, 32.7440, 32.7450, and 32.7499 are removed.

133. Section 32.7500 is revised to read as follows:

§ 32.7500 Interest and related items.

(a) This account shall include the current accruals of interest on all classes of funded debt the principal of which is includable in Account 4200, Long term debt and funded debt. It shall also

include the interest on funded debt the maturity of which has been extended by specific agreement. This account shall be kept so that the interest on each class of funded debt may be shown separately in the annual reports to this Commission.

(b) These accounts shall not include charges for interest on funded debt issued or assumed by the company and held by or for it, whether pledged as collateral or held in its treasury, in special deposits or in sinking or other funds.

(c) Interest expressly provided for and included in the face amount of securities issued shall be charged at the time of issuance to Account 1280, Prepayments, and cleared to this account as the term expires to which the interest applies.

(d) This account shall also include monthly amortization of balances in Account 4200, Long-term debt and funded debt.

(e) This account shall include the interest portion of each capital lease payment.

(f) This account shall include the monthly amortization of the balances in Account 1410, Other noncurrent assets.

(g) This account shall include all interest deductions not provided for elsewhere, e.g., discount, premium, and expense on notes maturing one year or less from date of issue.

(h) A list of representative items of indebtedness, the interest on which is chargeable to this account, follows:

(1) Advances from affiliated companies;

(2) Advances from nonaffiliated companies and other liabilities;

(3) Assessments for public improvements past due;

(4) Bond coupons, matured and unpaid;

(5) Claims and judgments;

(6) Customers' deposits;

(7) Funded debt mature, with respect to which a definite agreement as to extension has not been made;

(8) Notes payable on demand or maturing one year or less from date of issue;

(9) Open accounts;

(10) Tax assessments, past due; and

(11) Discount, premium, and issuance expense of notes maturing one year or less from date of issue.

§§ 32.7510, 32.7520, 32.7530, 32.7540, and 32.7599 [Removed].

134. Sections 32.7510, 32.7520, 32.7530, 32.7540, and 32.7599 are removed.

135. Section 32.7600 is revised to read as follows:

§ 32.7600 Extraordinary items.

(a) This account is intended to segregate the effects of events or transactions that are extraordinary. Extraordinary events and transactions are distinguished by both their unusual nature and by the infrequency of their occurrence, taking into account the environment in which the company operates. This account shall also include the related income tax effect of the extraordinary items.

(b) This account shall be credited and/or charged with nontypical, noncustomary and infrequently recurring gains and/or losses which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items.

(c) This account shall be charged or credited and Account 4070, Income taxes—accrued, shall be credited or charged for all current income tax effects (Federal, state and local) of extraordinary items.

(d) This account shall also be charged or credited, as appropriate, with a contra amount recorded to Account 4350, Net noncurrent deferred nonoperating income taxes or Account 4110, Net current deferred nonoperating income taxes for the income tax effects (Federal, state and local) of extraordinary items that have been deferred in accordance with § 32.22.

§§ 32.7610, 32.7620, 32.7630, and 32.7640 [Removed].

136. Sections 32.7610, 32.7620, 32.7630, and 32.7640 are removed.

137. Section 32.9000 is amended by revising the definition of *Mid-sized incumbent local exchange carrier* to read as follows:

§ 32.9000 Glossary of terms.

* * * * *

Mid-sized incumbent local exchange carrier is a carrier whose annual revenue from regulated telecommunications operations equals or exceeds the indexed revenue threshold and whose revenue when aggregated with the revenues of any local exchange carrier that it controls, is controlled by, or with which it is under common control is less than $7 billion (indexed for inflation as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index (GDP–CPI)).

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

139. Section 43.21 is amended by revising paragraph (e) introductory text and by revising references to ''Each local exchange carrier'' in paragraphs (f) through (j) to read ''Each incumbent local exchange carrier'' each place it appears.

§ 43.21 Annual reports of carriers and certain affiliates.

* * * * *

(e) Each incumbent local exchange carrier, except mid-sized incumbent local exchange carriers, as defined by § 32.9000 with annual operating revenues equal to or above the indexed revenue threshold shall file, no later than April 1 of each year:

* * * * *

PART 51—INTERCONNECTION

140. The authority citation for Part 51 continues to read as follows:

Authority: Sections 1–5, 7, 210–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. as amended, 1077; 47 U.S.C. §§ 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

141. Section 51.609 is amended by revising paragraphs (c)(1),(c)(2), (c)(3), and (d) to read as follows:

§ 51.609 Determination of avoided retail costs.

* * * * *

(c) * * *

(1) Include, as direct costs, the costs recorded in USOA accounts 6611(product management and sales), 6613 (product advertising) and 6620 (Services) (Secs. 32.6611, 32.6613 and 32.6620 of this chapter);

(2) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121–6124 (general support expenses), 6720 (corporate operations expenses), and uncollectible telecommunications revenue included in 5300 (uncollectible revenue) (Secs. 32.6121 through 32.6124, 32.6720 and 32.5300 of this chapter); and

(3) Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (Secs. 32.6112 through 32.6114, 32.6211 through 32.6560 of this chapter).

(d) Costs included in accounts 6611, 6613 and 6620 described in paragraph (c) of this section (§§ 32.6611, 32.6613 and 32.6620 of this chapter) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in

these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6112 through 6114 and 6211 through 6560 described in paragraph (c) of this section (§§ 32.6112 through 32.6114, 32.6211 through 32.6560 of this chapter) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

* * * * *

PART 54—UNIVERSAL SERVICE

142. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i) 201, 205, 214, and 254 unless otherwise noted.

Subpart D—Universal Service Support for High Cost Areas

143. Section 54.301 is amended by revising the table in paragraph (b), and paragraphs (c)(2), (c)(5), and (d)(4) to read as follows:

§ 54.301 Local switching support.

* * * * *

(b) * * *

I	
Telecommunications Plant in Service (TPIS)	Account 2001
Telecommunications Plant—Other	Accounts 2002, 2003, 2005
General Support Assets	Account 2110
Central Office Assets	Accounts 2210, 2220, 2230
Central Office-switching, Category 3 (local switching)	Account 2210, Category 3
Information Origination/termination Assets	Account 2310
Cable and Wire Facilities Assets	Account 2410
Amortizable Tangible Assets	Account 2680
Intangibles	Account 2690
II	
Rural Telephone Bank (RTB) Stock	Included in Account 1410
Materials and Supplies	Account 1220.1
Cash Working Capital	Defined in 47 CFR 65.820(d)
III	
Accumulated Depreciation	Account 3100
Accumulated Amortization	Included in Accounts 2005, 2680, 2690, 3410
Net Deferred Operating Income Taxes	Accounts 4100, 4340
Network Support Expenses	Account 6110
General Support Expenses	Account 6120
Central Office Switching, Operator Systems, and Central Office Transmission Expenses.	Accounts 6210, 6220, 6230
Information Origination/Termination Expenses	Account 6310
Cable and Wire Facilities Expenses	Account 6410
Other Property, Plant and Equipment Expenses	Account 6510
Network Operations Expenses	Account 6530
Access Expense	Account 6540
Depreciation and Amortization Expense	Account 6560
Marketing Expense	Account 6610
Services Expense	Account 6620
Corporate Operations Expense	Account 6720
Operating Taxes	Accounts 7230, 7240
Federal Investment Tax Credits	Account 7210
Provision for Deferred Operating Income Taxes-Net	Account 7250
Allowance for Funds Used During Construction	Included in Account 7300
Charitable Contributions	Included in Account 7300
Interest and Related Items	Account 7500
IV	
Other Non-Current Assets	Included in Account 1410
Deferred Maintenance and Retirements	Included in Account 1438
Deferred Charges	Included in Account 1438
Other Jurisdictional Assets and Liabilities	Accounts 1500, 4370
Customers' Deposits	Account 4040
Other Long-Term Liabilities	Included in Account 4300

(c) * * *

(2) Telecommunications Plant—Other (Accounts 2002, 2003, 2005); Rural Telephone Bank (RTB) Stock (included in Account 1410); Materials and Supplies (Account 1220.1); Cash Working Capital (Sec. 65.820(d) of this chapter); Accumulated Amortization (Included in Accounts 2005, 2680, 2690, 3410); Net Deferred Operating Income Taxes (Accounts 4100, 4340); Network Support Expenses (Account 6110); Other Property, Plant and Equipment Expenses (Account 6510); Network Operations Expenses (Account 6530); Marketing Expense (Account 6610); Services Expense (Account 6620); Operating Taxes (Accounts 7230, 7240); Federal Investment Tax Credits (Accounts 7210); Provision for Deferred Operating Income Taxes—Net (Account 7250); Interest and Related Items (Account 7500); Allowance for Funds Used During Construction (Included in Account 7300); Charitable Contributions (included in Account 7300); Other Non-current Assets (Included in Account 1410); Other Jurisdictional Assets and Liabilities (Accounts 1500, 4370); Customer Deposits (Account 4040); Other Long-term Liabilities (Included in Account 4300); and Deferred Maintenance and Retirements (Included in Account 1438) shall be allocated according to the following factor:

Account 2210 Category 3 Account 2001.

* * * * *

(5) Corporate Operations Expenses (Account 6720) shall be allocated according to the following factor:

[[Account 2210 Category 3 (Account 2210 + Account 2220 + Account 2230)]] × (Account 6210 + Account 6220 + Account 6230)] + [(Account 6530 + Account 6610 + Account 6620) × (Account 2210 Category 3 Account 2001)] (Account 6210 + Account 6220 + Account 6230 + Account 6310 + Account 6410 + Account 6530 + Account 6610 + Account 6620).

* * * * *

(d) * * *

(4) Federal income tax attributable to COE Category 3 shall be calculated using the following formula; the accounts listed shall be allocated pursuant to paragraph (c) of this section:

[Return on Investment attributable to COE Category 3—Included in Account 7300—Account 7500–Account 7210)] × [Federal Income Tax Rate (1—Federal Income Tax Rate)].

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

144. The authority citation for Part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, 225, 251(e)(1), 254, 302, 303, and 337 unless otherwise noted.

145. Section 64.901 is amended by revising paragraph (b)(1) to read as follows:

§ 64.901 Allocation of costs.

* * * * *

(b) * * *

(1) Tariffed services provided to a nonregulated activity will be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account for that service. Nontariffed services, offered pursuant to a section 252(e) agreement, provided to a nonregulated activity will be charged to the nonregulated activity at the amount set forth in the applicable interconnection agreement approved by a state commission pursuant to section 252(e) and credited to the regulated revenue account for that service.

* * * * *

146. Section 64.903 is amended by revising paragraph (a) introductory text to read as follows:

§ 64.903 Cost allocation manuals.

(a) Each incumbent local exchange carrier having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold (as defined in § 32.9000 of this chapter) except mid-sized incumbent local exchange carriers is required to file a cost allocation manual describing how it separates regulated from nonregulated costs. The manual shall contain the following information regarding the carrier's allocation of costs between regulated and nonregulated activities:

* * * * *

147. Section 64.904 is revised to read as follows:

§ 64.904 Independent audits.

(a) Each carrier required to file a cost allocation manual shall elect to either have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or have a financial audit performed by an independent auditor every two years, covering the prior two year period. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual.

(b) The attest engagement shall be an examination engagement and shall provide a written communication that expresses an opinion that the systems, processes, and procedures applied by the carrier to generate the results reported pursuant to § 43.21(e)(2) of this chapter comply with the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, § 64.901, and § 64.903 in force as of the date of the auditor's report. At least 30 days prior to beginning the attestation engagement, the independent auditors shall provide the Commission with the audit program. The attest engagement shall be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants, except as otherwise directed by the Chief, Common Carrier Bureau.

(c) The biennial financial audit shall provide a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, and § 64.901, and § 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau. The report of the independent auditor shall be filed at the time that the carrier files the annual reports required by § 43.21(e)(2) of this chapter.

148. Section 64.905 is added to read as follows:

§ 64.905 Annual certification.

A mid-sized incumbent local exchange carrier, as defined in § 32.9000 of this chapter, shall file a certification with the Commission stating that it is complying with § 64.901. The certification must be signed, under oath, by an officer of the mid-sized incumbent LEC, and filed with the Commission on an annual basis at the time that the mid-sized incumbent LEC files the annual reports required by § 43.21(e)(2) of this chapter.

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

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

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 218, 219, 220, 403.

§ 65.300 [Amended]

150. In § 65.300(a) remove the words ''in excess of 100 million'' and add, in their place, the words ''equal to or above the indexed revenue threshold as defined in § 32.9000'' wherever it exists.

§§ 65.302 through 65.304 [Amended]

151. In §§ 65.302, 65.303, 65.304, remove the words ''of 100 million or more'' and add, in their place, the words ''equal to or above the indexed revenue threshold as defined in § 32.9000'' wherever they appear.

152. Section 65.450 is amended by revising paragraphs (a), (b)(1), (b)(2) and (d) to read as follows:

§ 65.450 Net income.

(a) Net income shall consist of all revenues derived from the provision of interstate telecommunications services regulated by this Commission less expenses recognized by the Commission as necessary to the provision of these services. The calculation of expenses entering into the determination of net income shall include the interstate portion of plant specific operations (Accounts 6110 through 6441), plant nonspecific operations (Accounts 6510 through 6560), customer operations (Accounts 6610 through 6620),

corporate operations (Accounts 6720 through 6790), other operating income and expense (Account 7100), and operating taxes (Accounts 7200 through 7250), except to the extent this Commission specifically provides to the contrary.

(b) * * *

(1) Gains related to property sold to others and leased back under capital leases for use in telecommunications services shall be recorded in Account 4300 (Other long-term liabilities and deferred credits) and credited to Account 6560 (Depreciation and Amortization Expense) over the amortization period established for the capital lease;

(2) Gains or losses related to the disposition of land and other nondepreciable items recorded in Account 7100 (Other operating income and expense) shall be included in net income for ratemaking purposes, but adjusted to reflect the relative amount of time such property was used in regulated operations and included in the rate base; and

* * * * *

(d) Except for the allowance for funds used during construction, reasonable charitable deductions and interest related to customer deposits, the amounts recorded as nonoperating income and expenses and taxes (Accounts 7300 and 7400) and interest and related items (Account 7500) and extraordinary items (Account 7600) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

153. Section 65.820 is amended by revising paragraphs (a) and (c) to read as follows:

§ 65.820 Included items.

(a) Telecommunications Plant. The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service) and Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization, and Account 2003 (Telecommunications Plant Under Construction), and, to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment). Any interest cost for funds used during construction capitalized on assets recorded in these accounts shall be computed in accordance with the procedures in Sec. 32.2000(c)(2)(x) of this chapter.

* * * * *

(c) *Noncurrent assets.* The interstate portion of Class B Rural Telephone Bank stock contained in Account 1410 and the interstate portion of assets summarized in Account 1410 (Other Noncurrent Assets) and Account 1438 (Deferred Maintenance, Retirements and Deferred Charges), only to the extent that they have been specifically approved by this Commission for inclusion (Note: The interstate portion of assets summarized in Account 1410 should not include any amounts related to investments, sinking funds or unamortized debt issuance expense). Except as noted above, no amounts from accounts 1406 through 1500 shall be included.

* * * * *

154. Section 65.830 is amended by revising paragraphs (a)(3), (a)(4), and (c) to read as follows:

§ 65.830 Deducted items.

(a) * * *

(3) The interstate portion of other long-term liabilities in (Account 4300 Other long-term liabilities and deferred credits) that were derived from the expenses specified in Sec. 65.450(a).

(4) The interstate portion of other deferred credits in (Account 4300 Other long-term liabilities and deferred credits) to the extent they arise from the provision of regulated telecommunications services. This shall include deferred gains related to sale-leaseback arrangements.

(c) The interstate portion of other long-term liabilities included in (Account 4300 Other long-term liabilities and deferred credits) shall bear the same proportionate relationships as the interstate/intrastate expenses which gave rise to the liability.

PART 69—ACCESS CHARGES

155. The authority citation for Part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

156. Section 69.2 is amended by revising paragraphs (j) and (z) to read as follows:

§ 69.2 Definitions.

* * * * *

(j) *Corporate Operations Expenses* are included in General and Administrative Expenses (Account 6720);

* * * * *

(z) *Net Investment* means allowable original cost investment in Accounts 2001 through 2003, 1220 and the investments in nonaffiliated companies included in Account 1410, that has been apportioned to interstate and foreign services pursuant to the Separations Manual from which depreciation, amortization and other reserves attributable to such investment that has been apportioned to interstate and foreign services pursuant to the Separations Manual have been subtracted and to which working capital that is attributable to interstate and foreign services has been added;

* * * * *

157. Section 69.302 is amended by revising paragraph (a) to read as follows:

§ 69.302 Net investment.

(a) Investment in Accounts 2001, 1220 and Class B Rural Telephone Bank Stock booked in Account 1410 shall be apportioned among the interexchange category, billing and collection category and appropriate access elements as provided in §§ 69.303 through 69.309.

* * * * *

158. Section 69.409 is amended by revising the section heading to read as follows:

§ 69.409 Corporate operations expenses (included in Account 6720).

* * * * *

[FR Doc. 02–1212 Filed 2–1–02; 8:45 am]

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Federal Register

Wednesday,
February 6, 2002

Part II

Federal Communications Commission

47 CFR Part 32, et al.

2000 Biennial Regulatory Review Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 43, 51, 54, 64, 65, and 69

[CC Docket Nos. 00–199, 97–212, and 80–286; FCC 01–305]

2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission consolidates and streamlines Class A accounting requirements; relaxes certain aspects of the affiliate transactions rules; significantly reduces the accounting and reporting rules for mid-sized carriers; and reduces the ARMIS reporting requirements for both large and mid-sized incumbent local exchange carriers (LECs). The Commission anticipates that the rule changes adopted in the Report and Order will reduce regulatory burdens on incumbent LECs.

DATES: Effective August 6, 2002. The Commission will, however, permit carriers to implement accounting changes as of January 1, 2002.

Written comment by the public on the new and/or modified information collections are due March 8, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, TW–A325, Washington, DC 20554.

In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Peterson, Deputy Division Chief, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–1575 or Mika Savir, Accounting Safeguards Division, Common Carrier Bureau, Legal Branch, at (202) 418–0384. For additional information concerning the information collections in this document, contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted October 11, 2001 and released November 5, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 10413. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act: This Report and Order contains either a new or modified information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act

This Report and Order contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due March 8, 2002. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Type of Review: Revision of currently approved collections.

Respondents: Business or other for-profit.

OMB Control No.	Title	Number of respondents	Est. time per respondent	Total annual resposnes	Cost to respondents
3060–0370	Part 32	239	6,123.4	1,463,496	$0
3060–0384	Sections 64.904 & 64.905	12	107	1,285	1,200,000
3060–0470	Sections 64.901–64.903	10	200	2,000	0
3060–0511	ARMIS Access Report (43–04)	121	157.2	19,031	0
3060–0512	ARMIS Annual Summary Report (43–01)	121	96.5	11,680	0
3060–0734	Affiliates Transactions	20	24	480	0

Needs and Uses: In the Report and Order, the Commission is completing the second phase of its Comprehensive Accounting and ARMIS review. In the Report and Order, the Commission, among other things, reduces the number of Class A accounts in 47 CFR part 32 by 45%; reduces the current Class B accounts by 27%; revises the affiliate transaction rules; simplifies the preparation of cost allocation manuals for Class A carriers; modifies several ARMIS reporting for the large incumbent LECs; significantly streamlines ARMIS Report 43–04; significantly simplifies the reporting requirements for mid-sized incumbent LECs by eliminating the requirement that they file certain ARMIS reports; and eliminates the cost allocation manual filing requirements and the biennial attestation requirement for mid-sized LECs.

The information provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities.

Summary of Report and Order

I. Accounting Rules

A. Chart of Accounts

The Commission concludes that the number of Class A accounts can be reduced from 296 accounts to 164 accounts, and adopts the proposal in 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3, CC Docket No. 00–199, *Notice of Proposed Rulemaking*, 65 FR 67675 (11–13–2000) (*NPRM*), with the following modifications: Instead of consolidating the buried cable, submarine cable, and deep sea cable accounts, the Commission is consolidating the deep sea cable and submarine cable accounts and is retaining the buried cable accounts. In addition, the Commission is not consolidating Account 4040, Customer's deposits, with the other current liabilities accounts. The Commission is also modifying the proposal in the *NPRM* regarding the consolidation of the local network services revenues accounts. Instead of consolidating these accounts (Accounts 5001 through 5069) into Account 5000, Basic local service revenue, the Commission is combining these accounts into three accounts. Finally, the Commission retains Account 6790, Provision for uncollectible notes receivable and Account 6613, Product advertising, and consolidates the remaining customer operations expense and corporate operations expense accounts as proposed.

The Commission adopts several of the new Class A accounts proposed in the *NPRM:* circuit and packet switching subaccounts to the digital switching accounts; electronic and optical circuit equipment subaccounts to the circuit equipment accounts; and wholesale and resale subaccounts to Account 6620, Services. The Commission is not adopting the remaining proposed Class A accounts. Appendix C of the Report and Order contains the revised list of Class A accounts.

The Commission also streamlines the Class B accounts, as proposed in the *NPRM*. Appendix D of the Report and Order contains the revised list of Class B accounts.

B. Other Accounting Rule Changes

1. *Inventories.* Rule 32.1220(h) of the Commission's rules, 47 CFR 32.1220(h), requires that inventories of material and supplies be taken during each calendar year and that adjustments to this account be charged or credited to Account 6512, Provisioning expense. Section 32.2311(f) of the Commission's rules, 47 CFR 32.2311(f), requires an annual inventory of all station apparatus in stock included in this account. In the *NPRM*, the Commission sought comment on the United States Telecom Association's (USTA's) proposal to eliminate the detailed inventory requirements in the rules and instead permit companies to perform inventories based on risk assessment and on existing controls. The Commission concludes that companies should have the latitude to determine the appropriate inventory validation methodology based on risk assessment. Surrogate measures such as inventory cycle counts and statistical sampling measures may be more cost effective for a carrier than a complete physical inventory. The Commission therefore revises §§ 32.1220(h) and 32.2311(f) to eliminate the annual inventory requirement.

2. *Contributions.* In the *NPRM*, the Commission sought comment on adopting, for federal accounting purposes, Statement of Financial Accounting Standards No. 116 (SFAS–116), ''Accounting for Contributions Received and Contributions Made.'' SFAS–116 requires companies to record in the current period a liability and related expense for unconditional pledges to make contributions in future years. Prior to adoption of SFAS–116, companies would record such pledges annually when the contributions were made. In 1994, shortly after FASB adopted SFAS–116, the Common Carrier Bureau (Bureau) informed carriers not to adopt SFAS–116 for federal accounting purposes. The Commission's primary concern was the effect such a rule could have on the carriers' rates. The adoption of SFAS–116 would allow carriers to record increased expenses in a given year to reflect contributions pledged for future years. Adopting SFAS–116 would establish an accounting rule that would be consistent with generally accepted accounting principles (GAAP). The Commission's rules require financial records to be kept in accordance with GAAP, to the extent permitted by the system of accounts. The Commission adopts SFAS–116 for federal accounting purposes and directs the Bureau to monitor the carriers' accounting treatment of contributions to determine whether implementation of SFAS–116 has a significant impact on rates.

3. *Section 252(e) Agreements.* In the *NPRM,* the Commission sought comment on USTA's proposal that the Commission clarify that section 252(e) agreements are treated the same as tariffed services in part 64 cost allocation rules. The Commission adopts the proposal. Accordingly, to the extent a carrier provides a non-tariffed service to its nonregulated operations pursuant to a section 252(e) agreement, that service will be recorded to nonregulated operations at the amount of that service as set forth in an interconnection agreement approved by a state commission pursuant to section 252(e).

4. *Affiliate Transactions Rules.* In Implementation of the Telecommunications Act of 1996: Accounting Safeguards under the Telecommunications Act of 1996, CC Docket No. 96–150, *Report and Order*, 62 FR 02918 (1–21–1997) (*Accounting Safeguards Order*), the Commission modified the affiliate transactions rules to provide greater protection against subsidization of competitive activities by subscribers to regulated telecommunication activities. The Commission amended the affiliate transactions rules for assets and services provided by a carrier to its affiliate and services received by a carrier from its affiliate. Under these rules, such transactions are to be valued at publicly available rates, if possible. The publicly available rates, in order of precedence, are (1) an existing tariff rate, (2) (for services only) a publicly filed agreement or statements of generally available agreements, or (3) a qualified prevailing price valuation. If there is no tariff price for the asset, and the transfer does not qualify for prevailing price treatment, the carrier must compare the asset's net book cost to its fair market value and value it at the higher of the two if the transfer is from the (regulated) carrier, and at the lower of the two if the transfer is to the (regulated) carrier. Carriers must make a good faith determination of the asset's fair market value.

The Commission revises the affiliate transactions rules to eliminate the requirement that carriers make a fair market value comparison for assets when the total annual value of that asset is less than $500,000. In Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1, CC Docket No. 99–253, *Report and Order*, 65 FR 16328 (3–28–2000) (*Phase 1 Report and Order*), the Commission eliminated the requirement that carriers make a good faith determination of fair market value for services when the total annual value of that service is less than $500,000. Below that threshold, the administrative cost and effort of making such a

determination would outweigh the regulatory benefits of a good faith determination of fair market value. In such cases, the service should be recorded at fully distributed cost.

In the *NPRM*, the Commission proposed a conforming exemption for assets. Under the Commission's proposal, carriers would not be required to perform the net book cost/fair market value comparison for asset transfers totaling less than $500,000 per year. For assets within this exception, carriers would use net book cost instead of fair market value. This exception would be on a product-by-product basis similar to the services-by-services basis adopted in the *Phase 1 Report and Order*. The exception applies ''going forward,'' so that the net book cost/fair market value comparison would be required once the total amount of transfers (i.e., total net book cost) for a given product line in a given year exceeds $500,000. The threshold will be applied to the aggregate transactions, for a given affiliate. Carriers, therefore, will not be required to perform the net book cost/fair market value comparison for the first $500,000 of asset transfers, on a product-by-product basis, per year, per affiliate. In such cases, the asset should be recorded at net book cost. Carriers (except average schedule companies) will reflect these transactions in their cost allocation manuals (CAMs) as well as ARMIS reports, if ARMIS filing is required.

In the *NPRM*, the Commission sought comment on giving carriers the flexibility to use the higher or lower of cost or market valuation as either a floor or ceiling. For certain transactions carriers must compare the cost of the service or asset to market value. If the carrier is the recipient of the asset or service, it must be recorded on the carrier's books at the lower of cost or market. If the carrier is the provider, it must be recorded at the higher of cost or market. The Commission proposed giving carriers flexibility in valuing these transactions by allowing the higher or lower of cost or market valuation to operate as either a floor or ceiling, depending on the direction of the transaction. This proposal would permit the regulated carrier to either pay less or charge more to the nonregulated affiliate for the service or asset. The Commission recognizes that adopting a ceiling and floor for recording affiliate transactions could potentially have an anti-competitive effect. The Commission observes that it would be unlikely that a transaction would have such an effect, particularly if the transaction is *de minimis* and is *not* priced below incremental cost. The Commission therefore adopts the proposal in the *NPRM* and allows the higher or lower of cost or market valuation to operate as either a floor or ceiling, depending on the direction of the transaction. Such transaction must comply with the Communications Act, Commission rules and orders, and must not be otherwise anti-competitive.

In the *NPRM*, the Commission sought comment on USTA's proposal to revise the prevailing price definition. The prevailing price describes a price at which a company offers an asset or service to the general public. To qualify for prevailing price treatment, greater than 50 percent of sales of the subject asset or service must be to third parties. USTA proposed that the Commission revise § 32.27(d) to decrease the threshold from greater than 50 percent to 25 percent for use of prevailing price in valuing affiliate transactions. The Commission concludes that a lower threshold would be consistent with a more competitive environment, and adopts the proposal.

In the *NPRM*, the Commission sought comment on USTA's proposal to expand the current exception to the estimated fair market value rule to include ''all services provided by a carrier or its affiliate(s) where the service is provided solely to members of the carrier's corporate family.'' Under the Commission's current affiliate transactions rules, if a transaction cannot be valued at publicly available rates, it must be valued based on a comparison of cost and fair market value. If a comparison is used, the carrier must make a good faith determination of fair market value. If the regulated company purchases the asset or service from a nonregulated affiliate, the carrier must record the transaction at the lower of cost or market value. On the other hand, if the carrier sells the asset or service to a nonregulated affiliate, the carrier must record the transaction at the higher of cost or market. The Commission adopted this valuation rule in the *Accounting Safeguards Order* to ensure that the transactions between the carriers and their nonregulated affiliates take place on an ''arm's length'' basis, guarding against cross-subsidization of competitive services by subscribers to regulated services.

The exception USTA seeks to expand provides that when an incumbent carrier purchases services from an affiliate that exists solely to provide services to members of the carrier's corporate family, the carrier may record the services at fully distributed cost rather than applying the cost or market rule. When the Commission adopted this exception in the *Accounting Safeguards Order*, it explained that the narrow exception to the general rule was justified because an affiliate that provides services solely to the incumbent carrier's corporate family is established to take advantage of economies of scale and scope. The benefits of such economies of scale and scope are reflected in the affiliate's costs and are ultimately transferred to ratepayers through transactions with the incumbent carrier for such services valued at fully distributed costs. Requiring incumbent carriers to perform fair market valuations for such transactions would increase the cost to ratepayers while providing limited benefit.

The Commission does not adopt the proposal to expand the scope of the exception to the valuation rule. If the exception is applied based on an individual service being offered solely to the corporate family, while other services of the affiliate are subject to market valuation studies because they are offered to third parties, the risk of improper cross-subsidization increases. This risk of cost shifting between third party services and the incumbent carrier's services does not exist when the exception applies only to affiliates offering service within the corporate family.

5. *Section 32.5280(c) Subsidiary Record Requirement*. In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate the § 32.5280(c) subsidiary record requirement. This rule requires carriers to maintain subsidiary record categories for each nonregulated revenue item recorded in Account 5280, Nonregulated operating revenue. The Commission simplifies the manner in which incumbent LECs record their nonregulated revenues, but does not eliminate § 32.5280(c) altogether. The Commission concludes that incumbent LECs do not need to break out each nonregulated revenue item; instead they may group their nonregulated revenues into two groups: 1 subsidiary record for all the revenues from regulated services treated as nonregulated for federal accounting purposes pursuant to Commission order and the second for all other nonregulated revenues.

6. *Accounts 1437 and 4361*. In the *NPRM*, the Commission sought comment on USTA's proposal to simplify deferred tax accounting by allowing carriers to book Account 1437, Deferred tax regulatory asset net of Account 4361, Deferred tax regulatory liability. The Commission concludes that netting Accounts 1437 and 4361 would simplify deferred tax accounting.

The Commission revises §§ 32.1437 and 32.4361 accordingly to reflect this change. The Commission retains the tax on tax gross up requirement in Part 32.

7. *Expense Limits.* Section 32.2000(a)(4) of the Commission's rules, 47 CFR 32.2000(a)(4), requires that the cost of individual items of equipment with a cost of $2000 or less or having a life of less than one year, classifiable in specified accounts, shall be charged to the applicable expense accounts rather than capitalized. The expense limit reduces the cost of maintaining property records for the acquisition, depreciation, and retirement of a multitude of low-cost, high-volume assets. This expense limit applies to equipment classifiable in Account 2112, Motor vehicles; Account 2113, Aircraft; Account 2114, Tools and other work equipment; Account 2122, Furniture; Account 2123, Office equipment; and Account 2124, General purpose computers, except for personal computers falling within Account 2124. Personal computers classifiable to Account 2124, with a total cost for all components of $500 or less, are charged to the applicable Plant Specific Operations Expense accounts.

The Commission concludes that the tools and test equipment located in the central office should be included in the $2000 limit because these assets are virtually the same as the tools and test equipment located in the general support function. Moreover, tools and test equipment are generally individual units rather than components of a larger unit. The Commission revises the expense limit rules to include the central office tools and test equipment.

The Commission concludes that it should not increase the expense limit to $2000 for personal computers. Personal computers should be subject to a special limit because of the nature of these assets. Individual personal computers are made up of relatively low cost components, such as the monitor, keyboard, and CPU, that should be looked at as a single unit for purposes of applying the expense limit. Moreover, although relatively low cost individually, personal computers are part of larger networks within each company and represent substantial investments. These investments should be capitalized. Accordingly, the Commission does not revise the rules regarding personal computers.

8. *Incidental Activities.* The Commission adopts the proposal in the *NPRM* to eliminate the ''treated traditionally'' requirement from incidental activities. Under § 32.4999(l) of the Commission's rules, 47 CFR 32.4999(l), revenues from minor nontariffed activities that are an outgrowth of the carrier's regulated activities may be recorded as regulated revenues under certain conditions. These activities, known as ''incidental activities,'' must: (1) Be an outgrowth of regulated operations; (2) have been treated traditionally as regulated; (3) be a non-line-of business activity; and (4) result in revenues that, in the aggregate, represent less than one percent of total revenues for three consecutive years. Accounting for incidental activities as regulated revenues obviates the need to make detailed cost allocations to remove the costs of the nonregulated activity from regulated costs. Carriers must list their incidental activities in their CAM. They may not add new incidental activities because of the ''treated traditionally'' criterion. Eliminating the ''treated traditionally'' criterion would permit carriers to add to their incidental activities, provided that the remaining three criteria were satisfied. The Commission finds that the three remaining criteria provide sufficient safeguards to prevent misuse of the incidental activities exception.

9. *Allocation of Costs at Class B Level.* Section 64.903 of the Commission's rules, 47 CFR 64.903, requires incumbent LECs with annual operating revenues from regulated telecommunications operations equal to or above a designated indexed revenue threshold, to file cost allocation manuals annually setting forth the procedures that they use to allocate costs between regulated and nonregulated services. In the *NPRM*, the Commission sought comment on USTA's proposal that all carriers have the option to allocate part 64 costs at a Class B level. The Commission does not adopt the proposal and concludes that it is necessary to continue to require Class A carriers to allocate costs at the Class A level for the Class A accounts needed for the administration of the universal service high-cost support mechanism, listed in Appendix E of the Report and Order.

10. *Section 32.16 Requirement for Implementing New Accounting Standards.* In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate the § 32.16 requirement for notification and approval to implement new accounting standards prescribed by the Financial Accounting Standards Board (FASB). Section 32.16 of the Commission's rules, 47 CFR 32.16, requires carriers to revise their records and accounts to reflect new accounting standards prescribed by FASB. This section provides that Commission approval of a change in an accounting standard shall automatically take effect 90 days after a carrier notifies the Commission of its intention to follow a new standard and files a revenue requirement study for the current year analyzing the effects of the accounting standards changes. The Commission concludes that accounting standard changes often raise questions regarding exogenous treatment under price cap rules and that when they do, cost data must be available to resolve such issues. Additionally, mere compliance with GAAP does not ensure compliance with the Commission's rules. The Commission finds that the prior review period ensures uniformity in LEC accounting practices and allows the Commission to assess the implications of GAAP changes for LEC revenue requirements. The Commission retains the requirement for carriers to notify the Commission of their intentions to adopt a FASB change and how the carrier intends to implement this change. The Commission eliminates, however, the requirement to provide a revenue requirement study.

11. *Charges to Plant Accounts.* Section 32.2003(b) of the Commission's rules, 47 CFR 32.2003(b), is an exception to the general rule that construction costs are recorded in Construction Work-in-Progress accounts until the construction project is completed. It allows carriers to charge directly to the appropriate plant accounts the cost of any construction project that is estimated to be completed and ready for service within two months from the date on which the project was begun. In addition, this section allows carriers to charge directly to the plant accounts the cost of any construction project for which the gross additions to the plant are estimated to amount to less than $100,000. The purpose of this exception is to allow carriers to record short-term and small-cost construction projects directly to the plant accounts without having to first record these costs in the Construction Work-in-Progress accounts. In the *NPRM,* the Commission sought comment on USTA's proposal to permit carriers to record construction projects in the relevant account rather than a work-in-progress account. The Commission does not adopt USTA's proposal. Allowing carriers to set their own materiality levels for deciding when construction costs and assets should be capitalized would give carriers an incentive to capitalize large dollar amounts of uncompleted construction. The Commission's current rules ensure that carriers have an opportunity to earn the authorized rate of return on the interstate portion of all investment they

make in the telephone network, while reducing the amount recovered from ratepayers for assets under construction during the period in which they are under construction. The revenue requirement offset method effectively limits the amount that current ratepayers pay for assets prior to their placement into service. Moreover, allowing carriers to establish their own materiality level for capitalizing plant work in progress accounting, as proposed, would eliminate the uniformity and consistency in reporting that Part 32 strives to achieve. Consistency and uniformity in carriers' books of accounts should be maintained so that the Commission can readily compare their regulatory operating results.

12. *Continuing Property Records.* In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate detailed requirements for property record additions, retirements, and recordkeeping. The property records consist of continuing property records (CPR) and all supplemental records necessary to provide the property record details required by the Commission. CPR records provide data for cost allocations studies used in state regulatory proceedings. In addition, these records provide material-only costs for accounting for transfers, reallocations, and adjustments of plant. State regulators rely heavily on the CPR records in their local ratemaking processes. For these reasons, the Commission does not adopt USTA's proposal.

13. *Cost Allocation Forecasts.* The Commission's cost allocation rules require that costs be allocated between regulated and nonregulated activities. Carriers are required to assign costs directly to regulated and nonregulated activities, whenever possible. Costs that cannot be directly assigned are known as ''shared'' or ''common costs'' and are allocated between regulated and nonregulated use based on a hierarchy of principles. Section 64.901(b)(4) of the Commission's rules, 47 CFR 64.901(b)(4), requires that carriers allocate the costs of central office equipment and outside plant investment between regulated and nonregulated activities based on a forecast of the relative regulated and nonregulated usage during a three calendar year period beginning with the current calendar year. The policy consideration underlying this rule recognizes that investment decisions are made in anticipation of future use. In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate the forecast use rule. The Commission concludes that eliminating the forecast use rule for allocating joint investments between the carrier's regulated operations and nonregulated ''start up'' operations could result in the over-allocation of nonregulated costs to the LECs' regulated activities. Moreover, to the extent there is an overallocation of costs to the regulated books, that overallocation will flow through to the states through separations. As a consequence, ratepayers would be bearing a portion of the costs of deploying networks used to provide nonregulated activities in the future. The Commission finds that the three-year peak forecast method is a reasonable approach to allocating joint and common costs.

14. *Classification of Companies.* Section 32.11 of the Commission's rules, 47 CFR 32.11, divides companies into Class A and Class B for accounting purposes. This rule does not state that the accounting rules apply only to incumbent LECs. Currently, the Commission applies these requirements to incumbent LECs only, because they are the dominant carriers in their markets. In the *NPRM*, the Commission sought comment on whether § 32.11 should be amended so that its requirements explicitly pertain only to incumbent LECs. The Commission adopts the proposal and amends § 32.11 to specifically apply to incumbent LECs and any other companies that the Commission designates by order. Now that new carriers have entered the local exchange market, the Commission is conforming the rules to today's marketplace and replacing the term ''companies'' with ''incumbent LEC.''

II. ARMIS Reporting Requirements

A. *Consolidating ARMIS Reports.* In the *NPRM*, the Commission sought comment on USTA's proposal to eliminate most of ARMIS reporting. In particular, USTA proposed to combine the ARMIS 43–01, 43–02, 43–03, and 43–04 into one report, and have carriers report only at the aggregated operating company level. The Commission concludes that eliminating state-by-state ARMIS information would destroy the utility of ARMIS to states that wish to compare cost information of the incumbent LEC in their state to that incumbent LEC's costs in other states. The Commission does not adopt USTA's proposal.

B. *ARMIS Report 43–01 (Annual Summary Report).* The ARMIS 43–01 Annual Summary Report summarizes the carriers' accounting and cost allocation data prescribed in parts 32, 36, 64, 65, and 69 of the Commission's rules. It consists of Table I, an aggregated and comprehensive view of the carriers' financial and cost allocation data and Table II, a summary of demand in minutes of use and billable access lines. All incumbent LECs with annual operating revenues for the preceding year equal to or above the indexed revenue threshold file the 43–01 Report on a study area basis.

Table I summarizes the carrier's costs and revenues as reported in the part 32 accounts (43–02 USOA Report), and shows the allocation of costs between regulated and nonregulated activities (43–03 Joint Cost Report), the separation of regulated costs between state and interstate jurisdictions, and the interstate costs used to support access elements (43–04 Separations and Access Report). The Commission does not adopt the proposal in the *NPRM* to eliminate the filing of Tables I and II. With respect to Table II, the Commission adopts the proposal to eliminate the Common Line Minutes of Use (rows 2010, 2020, 2030, and 2040). The remaining eight rows (2050, 2060, 2090, 2100, 2110, 2120, 2140, and 2150) will remain in Table II. Rows 2100, Residence Lifeline Access Lines and 2110, Residence Non-Lifeline Access Lines are needed by the Commission to track support amounts the Universal Service Administrative Company (USAC) pays to qualifying companies. In addition, all of these eight rows are needed by the Commission to verify data received in tariff filings.

C. *ARMIS Report 43–02 (USOA Report).* The ARMIS 43–02 Report provides the annual operating results of the carriers' telecommunications operations for every account in Part 32. All incumbent LECs with annual operating revenues for the preceding year equal to or above the indexed revenue threshold file the 43–02 Report on an operating company basis. The 43–02 Report collects information about the carrier's ownership (Table C Series), balance sheet (Table B Series), and income statement accounts (Table I Series). Information collected in Tables B and I provides data about the carrier's financial accounts, including overall investment and expense levels, affiliate transactions, property valuations, and depreciation rates. The Commission does not adopt the proposal in the *NPRM* to automatically generate Table I–1 of the ARMIS 43–02 Report. In addition, the Commission does not adopt the proposal in the *NPRM* to add rows to ARMIS Report 43–02, tables for the reporting of metallic and non-metallic cable investment and expense.

D. *ARMIS Report 43–03 (Joint Cost Report).* The ARMIS 43–03 Report contains the allocation of the carriers'

revenues, expenses, and investments between regulated and nonregulated activities. All incumbent LECs with annual operating revenues for the preceding year equal to or above the indexed revenue threshold file the 43–03 Report on a study area basis. In the *NPRM*, the Commission proposed to reduce the number of columns currently reported on the 43–03 Report by eliminating the distinction between ''SNFA and Intra-co. Adjustments'' and ''Other Adjustments'' and combining these columns into one column entitled ''Adjustments.'' The Commission finds no significant regulatory need to retain the ''SNFA and Intra-co. Adjustments'' column and therefore adopts the proposal. The Commission also makes a conforming change to the 43–01 Report.

E. *ARMIS Report 43–04 (Separations and Access Report).* The Commission revises the ARMIS 43–04 (Separations and Access) Report to reduce the data required to be reported during the interim freeze of certain jurisdictional cost categories and allocation factors prescribed in part 36 of the Commission's rules. Carriers will file this revised ARMIS 43–04 Report on April 1, 2002, and on an annual basis thereafter for the duration of the freeze. The Commission adopts the streamlined ARMIS 43–04 Table I–Separations and Access Table, attached as Appendix G of the Report and Order. This revised ARMIS 43–04 will be filed on April 1, 2002, and on an annual basis thereafter, for the duration of the separations freeze.

F. *ARMIS 43–07 (Infrastructure Report).* The ARMIS 43–07 Report collects data about the carrier's switching and transmission equipment, call set up time, and cost of total plant in service. This report is prescribed for every mandatory price cap carrier. The report is filed on a study area and holding company level. The report captures trends in telephone industry infrastructure development under price cap regulation. Policymakers at the federal and state levels use this information, which is critical data not available through other public sources. The information collected in ARMIS 43–07 provides the Commission with information about the infrastructure—capacity, and operating characteristics of the vast majority of the nation's wireline network—basic infrastructure information on carriers that provide service to 93 percent of the Nation's customers.

Table I—Switching Equipment. In the *NPRM*, the Commission proposed to eliminate the collection of outdated information and to collect information on newer technologies. In Table I (Switching Equipment), the Commission proposed to eliminate all reporting requirements for electromechanical switches (rows 0130–0141). For the year 2000, the total for all reporting companies of electromechanical switches was zero. The Commission concludes that there is little value in requiring carriers to continue to report that they have no electromechanical switches. Therefore, the Commission adopts the proposal in the *NPRM* and eliminates all reporting requirements for electromechanical switches (rows 0130–0141).

The Commission also proposed to eliminate reporting requirements for analog stored-program-control (ASPC) and digital stored-program-control (DSPC) switches except for the total number of switches and lines served (retain rows 0150, 0160, 0170 and 0180; eliminate rows 0151–0155, 0161, 0171–0175, and 0181). The Commission finds that there is no regulatory need for carriers to report percentages and eliminates rows 0151, 0153, 0155, 0161, 0171, 0173, 0175, and 0181. For the year 2000, the total reported in row 154 (ASPC Tandems) was two. The Commission finds that there is little value in requiring carriers to continue to report such a minimal quantity, and therefore eliminates row 0154. The Commission also concludes that there is also no need to require carriers to report row 0152 (ASPC Local Switches), which is substantially the same as the Total ASPC switches in row 0150; and therefore eliminates row 0152. Similarly, because row 0170 is substantially the sum of row 0172 plus row 0174, the Commission eliminates rows 0172 and 0174.

The Commission notes that for the year 2000 virtually all the reporting carriers' access lines had equal access and touch-tone capability. The Commission concludes that there is little value in continuing to require these carriers to report the data regarding touch-tone capability and equal access, and eliminates all such reporting requirements (rows 0190–0221).

With respect to reporting of information related to Signaling System 7 (SS7) and integrated services digital network (ISDN) capabilities, the Commission concludes that there is no need for carriers to report percentages, as any interested party can easily calculate them. Therefore, the Commission is eliminating rows 0231, 0233, 0235, 0237, 0241, 0247, 0251, 0257, 0271, 0281, 0291, and 0301.

In addition, the Commission notes that most switches equipped with SS7–394 capability are also equipped with SS7–317 capability; therefore, the data reported in the interLATA and intraLATA rows for switches and tandems in this section are almost identical. Having carriers report information in both the row for SS7–394 capability and the row for SS7–317 capability appears to be superfluous. Therefore, the Commission is eliminating rows 0234, 0236, 0246, and 0256. The Commission is renaming row 0230 ''Total switches equipped with SS7.'' The Commission is renaming row 0240 ''Local switches equipped with SS7'' and row 0250 ''Tandems equipped with SS7.'' The Commission concludes that there is no need to continue reporting the number of lines with SS7 service because that is essentially the same as row 0120 and eliminates row 0232.

Table II—Transmission Facilities. In the first section of Table II, ''Sheath Kilometers,'' carriers report data on transmission facilities within their operating areas. Carriers use either analog or digital technology on copper wire, coaxial cable, fiber, radio, and other media. In the *NPRM*, the Commission proposed to change the title ''Sheath Kilometers'' to ''Loop Sheath Kilometers'' and to narrow the collection of data to only local loop facilities connecting customers to their serving offices. The Commission concludes that this information would be more useful for policymakers and interested parties if it were narrowed to local loop facilities connecting customers to their service offices. Therefore, the Commission changes the title to ''Loop Sheath Kilometers'' and limits the collection of data to local loop facilities.

In the second section of Table II, ''Interoffice Working Facilities,'' total circuit links are reported for baseband, analog carrier, and digital carrier. The Commission sought comment on whether to eliminate the reporting requirements that further distinguish baseband, analog, and digital (rows 0331, 0332, 0333, 0350, 0351, 0352, 0360, 0361, 0362, 0363). The Commission concludes that these data are often reported in an inconsistent manner by the carriers, and therefore are not reliable for benchmarking purposes. The Commission eliminates these rows.

In the *NPRM*, the Commission proposed to eliminate reporting of fiber strands terminated at the customer premises at the DS–0 rate (row 0481) and fiber strands terminated at the customer premises at the DS–2 rate (row 0483) from the fourth section of Table II, ''Other Transmission Facility Data.'' The Commission concludes that

virtually no incumbent LEC reports the termination of DS–2 level services at the customer premises, and therefore row 0483 does not provide useful information and should be eliminated. The Commission also eliminates row 0481 (DS–0 rate) because DS–0 level services are generally bundled into DS–1 size packages, and by capturing the required information at the DS–1 level, the Commission does not need to collect the information at the DS–0 level. Row 0482 (DS–1) will be renamed, because fiber is terminated at customer premises at the DS–3 level or greater, and referring to fiber terminations at the DS–1 level is inaccurate.

The Commission also sought comment on adding information on hybrid fiber-copper loop interface locations, number of customers served from these interface locations, xDSL customer terminations associated with hybrid fiber-copper loops, and xDSL customer terminations associated with non-hybrid loops. Such information is not presently collected through any federal reporting program. The Commission finds that the addition of these rows to ARMIS would help satisfy an immediate and pressing need to assess the penetration of fiber in the local loop and gauge the development of broadband infrastructure. Hybrid architectures will likely become increasingly important in providing broadband services and are directly relevant to current criticisms by new entrants that the new architectures are systematically diminishing their ability to provide competing DSL service to end-user retail customers. The Commission concludes that there is a present federal regulatory need, at least for the near term, to collect such data to evaluate the effects of our public policy decisions and to consider whether more market-oriented approaches are appropriate. Therefore, the Commission is adding the following rows to ARMIS: ''Hybrid Fiber/Metallic Loop Interface Locations,'' ''Switched Access Lines Served from Interface Locations,'' ''Total xDSL Terminated at Customer Premises,'' and ''xDSL Terminated at Customer Premises via Hybrid Fiber/Metallic Interface Locations.''

Table III—ILEC Call Set-up Time. In Table III, information is provided about incumbent LEC call set-up time for calls delivered by the incumbent LEC to interexchange carriers. The Commission concludes that this information was important when carriers used different signaling systems, but now that SS7 is predominant, there is little difference among LECs. Therefore, the Commission eliminates Table III.

Table IV—Additions and Book Costs. In Table IV, carriers report data concerning total access lines in service, access line gain, and total gross capital expenditures. This information provides data on carriers' actions to maintain and upgrade the network. The data in this table are at the study-area level. Similar data in the ARMIS 43–02 Report are available at either the operating-company or company-study-area (state) level, but are not directly comparable to these data. The Commission eliminates the filing of this table because similar data are available in other ARMIS reports or can be generated by reference to other ARMIS reports.

G. *ARMIS 43–08 (Operating Data Report).* The ARMIS 43–08 Report collects data about the carrier's outside plant, access lines in service by technology and by customer, number of telephone calls, and billed access minutes.

Table I.A—Outside Plant Statistics—Cable and Wire Facilities. The Commission sought comment on whether to eliminate the reporting requirements in Table 1.A (Outside Plant Statistics—Cable and Wire Facilities), that distinguish among aerial, underground, buried, submarine, deep sea, and intrabuilding cable plant (columns d–o). The Commission concludes that columns d through i, n, and o are useful and should not be eliminated. Columns j, k, l, and m, however, can be eliminated because little, if any, data are reported for these categories. Therefore, the Commission is eliminating columns j, k, l, and m.

Table I.B—Outside Plant Statistics—Other. The Commission proposed to eliminate the reporting of information on satellite channels and video circuits for carriers' radio relay and microwave systems (columns be, bj, bm). Due to changes in technology, data collected in these areas no longer are relevant to the Commission's policy analysis on various issues. Therefore, the Commission is eliminating these three columns.

Table II—Switched Access Lines in Service by Technology. The Commission proposed to eliminate the distinction between analog and digital lines, and require carriers to report the total of main access lines, PBX and Centrex units, and Centrex extensions (retain columns cc, cd, and ce on a total basis; and eliminate columns cf, cg, and ch). The Commission concludes that this information would be more useful if provided on a total basis, instead of disaggregated by analog and digital. Due to changes in technology, data collected in some of these areas no longer provides relevant information. Therefore, the Commission is adopting the proposal in the *NPRM*, and eliminating the distinction between analog and digital by eliminating columns cf, cg, and ch.

Table III—Access Lines in Service by Customer. The Commission proposed to narrow the information collection to total number of Business Access Lines (Single-Line and Multi-Line) and Residential Access Lines (Lifeline/Non-Lifeline and Primary/Non-Primary). The Commission also sought comment on whether Special Access Lines (Analog and Digital) (columns dk and dl) provide accurate information about the carriers' provision of special access lines and whether there is a need for clarification of this reporting requirement. The Commission concludes that extensive structural changes to Table III are warranted. The Commission eliminates the column for Mobile Access Lines, because little, if any, data are reported for this category. The revised table will also contain new columns matching the revised data requirements. Columns ''Single Line Business Access Lines'' and ''Multiline Business Access Lines'' will be under the ''Business Switched Access Lines'' heading. Columns ''Lifeline Access Lines,'' ''Non-Lifeline Primary Access Lines,'' and ''Non-Lifeline Non-Primary Access Lines'' will be under the ''Residential Switched Access Lines'' heading. A column ''Local Private Lines'' is added. Finally, the Commission concludes that the instructions and definitions for columns dk and dl are sufficiently clear and that there is no need to revise or clarify them.

III. Relief for Mid-Sized Carriers

A mid-sized carrier is defined as a carrier whose operating revenue equals or exceeds the indexed revenue threshold, and whose revenue when aggregated with the revenues of any LEC that it controls, is controlled by, or with which it is under common control is less than $7 billion. Previously, the Commission permitted mid-sized carriers to file financial ARMIS reports at a Class B level of detail and allowed these LECs to submit CAMs based on Class B accounts and to obtain an attestation every two years in lieu of an annual financial audit. *See* 1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements, *Report and Order in CC Docket 98–81, Order on Reconsideration in CC Docket No. 96–150, and Fourth Memorandum Opinion and Order in AAD File No. 98–43*, 64 FR 50002 (9–15–1999). In the *NPRM*, the Commission proposed to eliminate mandatory

annual CAM filings and biennial CAM attestation engagements for mid-sized carriers. The Commission adopts this proposal. Mid-sized carriers no longer will be required to annually file a CAM, they, like all other carriers, must be prepared to produce documentation of how they separate regulated from nonregulated costs to the Common Carrier Bureau, upon request. The Commission also adopts the proposal in the *NPRM* to eliminate the requirement that CAMs of mid-sized carriers be subject to an attest audit every two years. Instead of requiring mid-sized carriers to incur the expense of a biennial attestation engagement, they will file a certification with the Commission stating that they are complying with § 64.901 of the Commission's rules. The certification must be signed, under oath, by an officer of the incumbent LEC, and filed with the Commission on an annual basis.

In the *NPRM*, the Commission proposed eliminating the ARMIS 43–02, 43–03, and 43–04 reporting requirements for mid-sized carriers. The Commission adopts this proposal. The Commission concludes that the mid-sized carriers will not be required to file the ARMIS 43–02, 43–03, or 43–04 Reports, for 2002 data. Mid-sized carriers will, however, file these ARMIS reports on April 1, 2002, for 2001 data.

The mid-sized carriers will continue to file the ARMIS 43–01 and 43–08 Reports. The Commission notes that in addition to information contained in ARMIS Reports 43–01 and 43–08, other accounting information from mid-sized carriers is used to develop inputs for the universal service model. While mid-sized carriers no longer are required to report certain information in ARMIS, the Commission expects those companies will maintain sufficient information to be able to produce the data, listed in Appendix E of the Report and Order, upon request. In addition, mid-sized incumbent LECs should continue to maintain subsidiary record categories to provide the data currently provided in the Class A accounts, which are necessary to calculate just and reasonable pole, duct, conduit, and right-of-way attachment rates pursuant to section 224 of the Communications Act. These carriers must report this information, necessary for the Commission and interested parties to calculate and verify attachment rates, in ARMIS, so that the information is publicly available and verifiable.

The Commission indexes the $7 billion threshold that divides the mid-sized carriers and the larger Class A carriers. The Commission concludes it would be analytically consistent with § 402(c) to henceforth index for inflation the revenue threshold that separates the larger Class A carriers and the mid-sized carriers.

Waivers for Roseville and CenturyTel. Due to the significant changes adopted in this Report and Order to the Chart of Accounts and the reporting requirements for mid-sized carriers, the Commission is waiving the ARMIS reporting requirements and CAM attestation requirements for Roseville and CenturyTel for the years 2000 and 2001. These two mid-sized companies have yet to file ARMIS reports for 2000. Without a waiver, these companies would be required to prepare ARMIS reports for the years 2000 and 2001 based on the old chart of accounts. The ARMIS reports filed on April 1, 2003 (i.e., for year 2002) will be based on the new chart of accounts adopted in this report and order. Similarly, the Commission is also waiving the requirements for a CAM attestation for these mid-sized incumbent LECs. The attestation cannot take place until the ARMIS reports are prepared. The Commission cannot, therefore, require a CAM attestation until after the ARMIS reports are filed and a CAM attestation will no longer be required of mid-sized companies under the rules adopted in the Report and Order.

Regulatory Flexibility Analysis

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3, CC Docket No. 00–199, *Notice of Proposed Rulemaking* 65 FR 67675 (11–13–2000) (*NPRM*) and ''Commission Seeks Further Comment in Phase 2 of the Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers,'' *Public Notice*, 66 FR 33938 (6–26–2001) (*June 8 Public Notice*) seeking further comment in this proceeding. The Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) of any possible significant economic impact on small entities by the adoption of rules in the *Report and Order.*

Need for, and Objectives of, this Report and Order. Under our rules, there are two classes of incumbent LECs for accounting purposes: Class A and Class B. Carriers with annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold, currently $117 million, are classified as Class A; those falling below that threshold are considered Class B. Class A carriers (operating companies of SBC, Qwest, Verizon, and BellSouth) have been required to maintain 296 Class A accounts, which provide more detailed records of investment, expense, and revenue than the 113 Class B accounts that Class B carriers are required to maintain. The more generalized level of accounting required under Class B was established to accommodate smaller carriers. In the *Report and Order*, the Commission streamlines the Class A and Class B accounts and ARMIS reporting requirements for incumbent LECs, and further reduces the accounting and reporting requirements for mid-sized incumbent LECs. In addition, this *Report and Order* eliminates the certain inventory requirements; allows carriers to adopt SFAS–116 for federal accounting purposes; eliminates the requirement for a fair market value comparison for asset transfers under $500,000; eliminates the ''treated traditionally'' requirement from ''incidental activities'; modifies the expense limit rules to include central office tools and test equipment in the expense limit; and amends section 32.11 of the Commission's rules to expressly limit the rule to incumbent LECs. Finally, the Commission modifies the ARMIS reporting requirements to eliminate out-of-date requirements and to add reporting for new technologies. These rule changes generally reduce the accounting and reporting requirements for all incumbent LECs.

Summary of Significant Issues Raised by Commenters. No comments were received in response to the IRFA in the *NPRM* or the IRFA in the *June 8 Public Notice*. Several commenters, in the initial comments in this proceeding, suggested completely eliminating ARMIS reporting for mid-sized LECs.

Description and Estimate of the Number of Small Entities to which the Rules Will Apply. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. To estimate the number of small entities that may be affected by the proposed rules, the Commission first considers the statutory definition of ''small entity'' under the RFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term

''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

The Commission has included small incumbent LECs in this present RFA analysis. A ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Wireline carriers (incumbent LECs). According to Trends in Telephone Service, there were 1,335 incumbent local exchange carriers filing the FCC Form 499-A on April 1, 2000. Of these carriers, 1,037 had, in combination with affiliates, 1,500 or fewer employees and 298 had, in combination with affiliates, more than 1,500 employees. Some of these carriers may not be independently owned or operated, but we are unable at this time to estimate with greater precision the number of wireline carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,037 wireline small entities that may be affected by the rules adopted in the *Report and Order.*

The changes to the accounting and reporting requirements in this *Report and Order*, are for the most part, reductions in the Commission's accounting and reporting requirements. These rule changes could affect all incumbent local exchange carriers. Some of these companies may be considered ''small entities'' under the SBA definition. Therefore, it is possible that some of the 1,037 small entity telephone companies may be affected by the rule changes. The increased ARMIS reporting requirements will only affect the Bell Operating Companies, none of which are small entities. There are several new subaccounts adopted in this *Report and Order* for Class A carriers, although the total number of accounts is substantially reduced. These new subaccounts are Class A subaccounts, and will be maintained by the Bell Operating Companies only.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. This *Report and Order* generally reduces accounting and reporting requirements for all incumbent local exchange companies. These rule changes will result in fewer accounting and reporting requirements for all incumbent local exchange carriers, including small entities. This *Report and Order* has several new accounting and ARMIS reporting requirements that apply to the Bell Operating Companies only. For instance, the *Report and Order* adds several Class A subaccounts; however, these will be maintained by the largest incumbent LECs (i.e., Bell Operating Companies) only. Small entities will not have any additional accounting or ARMIS reporting requirements.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

This *Report and Order* significantly reduces accounting and reporting requirements for the smaller (i.e., ''mid-sized'') incumbent LECs, which may include small entities. Specifically, the *Report and Order* eliminates the cost allocation manual filing requirements and biennial attestation requirement for mid-sized LECs. In addition, the *Report and Order* eliminates the requirement that mid-sized LECs file ARMIS 43–02, 43–03, and 43–04 Reports. Generally, the rule changes adopted herein result in fewer accounting and reporting requirements for all incumbent LECs (except for several new accounting and ARMIS reporting requirements that apply to the Bell Operating Companies only). Several commenters suggested completely eliminating ARMIS reporting for mid-sized carriers. The Commission rejected that alternative primarily due to the need to obtain information used to compute non-rural carrier universal service high-cost support. The Commission retains the requirement that mid-sized carriers file the ARMIS 43–01and 43–08 Reports. Data in these reports are used to develop inputs to the high cost model for universal service purposes and develop inputs to models used to determine forward-looking economic costs in UNE ratemaking proceedings.

Report to Congress. The Commission's Consumer Information Bureau, Reference Information Center shall include a copy of this *Report and Order* and Final Regulatory Flexibility Analysis in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order,* including the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

Pursuant to sections 1, 4, 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 201–205, 215, and 218–220, parts 32, 43, 51, 54, 64, 65, and 69 of the Commission's rules, 47 CFR Parts 32, 43, 51, 54, 64, 65, and 69, are amended as described previously.

Pursuant to section 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. 220)(g), changes to part 32, System of Accounts, adopted in the Report and Order shall take effect August 6, 2002, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. Carriers may implement part 32 accounting changes as of January 1, 2002.

The proceeding in CC Docket No. 97–212 is terminated.

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 215, and 218–220, that FCC Report 43–04, the Separations and Access Report is revised, as set forth in the rule changes, for filings due April 1, 2002.

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 215, and 218–220, that revisions to FCC Report 43–01, the Annual Summary Report; FCC Report 43–02, the USOA Report; FCC Report

43–03, the Joint Cost Report; FCC Report 43–07, the Infrastructure Report; and 43–08, the Operating Data Report as set forth in the Report and Order, shall be for filings due April 1, 2003.

Pursuant to the authority contained in § 0.291 of the Commission's rules, 47 CFR 0.291, that the Common Carrier Bureau is delegated authority to implement all changes to ARMIS reporting as set forth.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the two Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 32, 43, 51, 54, 64, 65, and 69

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends parts 32, 43, 51, 54, 64, 65, and 69 of title 47 of the CFR as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), and 154(j) and 220 as amended, unless otherwise noted.

2.–3. Section 32.11 is revised to read as follows:

§ 32.11 Classification of companies.

(a) For purposes of this section, the term ''company'' or ''companies'' means incumbent local exchange carrier(s) as defined in section 251(h) of the Communications Act, and any other carriers that the Commission designates by Order.

(b) For accounting purposes, companies are divided into classes as follows:

(1) *Class A.* Companies having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold.

(2) *Class B.* Companies having annual revenues from regulated telecommunications operations that are less than the indexed revenue threshold.

(c) Class A companies, except mid-sized incumbent local exchange carriers, as defined by § 32.9000, shall keep all the accounts of this system of accounts which are applicable to their affairs and are designated as Class A accounts. Class A companies, which include mid-sized incumbent local exchange carriers, shall keep Basic Property Records in compliance with the requirements of §§ 32.2000(e) and (f).

(d) Class B companies and mid-sized incumbent local exchange carriers, as defined by § 32.9000, shall keep all accounts of this system of accounts which are applicable to their affairs and are designated as Class B accounts. Mid-sized incumbent local exchange carriers shall also maintain subsidiary record categories necessary to provide the pole attachment data currently provided in the Class A accounts. Class B companies shall keep Continuing Property Records in compliance with the requirements of §§ 32.2000(e)(7)(i)(A) and 32.2000(f).

(e) Class B companies and mid-sized incumbent local exchange carriers, as defined by § 32.9000 of this part, that desire more detailed accounting may adopt the accounts prescribed for Class A companies upon the submission of a written notification to the Commission.

(f) The classification of a company shall be determined at the start of the calendar year following the first time its annual operating revenue from regulated telecommunications operations equals, exceeds, or falls below the indexed revenue threshold.

§ 32.13 [Amended]

4. Section 32.13 is amended by removing paragraph (a)(1) and redesignating paragraphs (a)(2) and (a)(3) as (a)(1) and (a)(2).

5. Section 32.14 is amended by revising paragraph (e) to read as follows:

§ 32.14 Regulated accounts.

* * * * *

(e) All costs and revenues related to the offering of regulated products and services which result from arrangements for joint participation or apportionment between two or more telephone companies (e.g., joint operating agreements, settlement agreements, cost-pooling agreements) shall be recorded within the detailed accounts. Under joint operating agreements, the creditor will initially charge the entire expenses to the appropriate primary accounts. The proportion of such expenses borne by the debtor shall be credited by the creditor and charged by the debtor to the account initially charged. Any allowances for return on property used will be accounted for as provided in Account 5200, Miscellaneous revenue.

* * * * *

6. Section 32.16 is amended by revising paragraph (a) to read as follows:

§ 32.16 Changes in accounting standard.

(a) The company's records and accounts shall be adjusted to apply new accounting standards prescribed by the Financial Accounting Standards Board or successor authoritative accounting standard-setting groups, in a manner consistent with generally accepted accounting principles. The change in an accounting standard will automatically take effect 90 days after the company informs this Commission of its intention to follow the new standard, unless the Commission notifies the company to the contrary. Any change adopted shall be disclosed in annual reports required by § 43.21(f) of this chapter in the year of adoption.

* * * * *

7. Section 32.24 is amended by revising paragraph (b) to read as follows:

§ 32.24 Compensated absences.

* * * * *

(b) With respect to the liability that exists for compensated absences which is not yet recorded on the books as of the effective date of this part, the liability shall be recorded in Account 4130. Other current liabilities, with a corresponding entry to Account 1438, Deferred maintenance, retirements and other deferred charges. This deferred charge shall be amortized on a straight-line basis over a period of ten years.

* * * * *

8. Section 32.27 is revised to read as follows:

§ 32.27 Transactions with affiliates.

(a) Unless otherwise approved by the Chief, Common Carrier Bureau, transactions with affiliates involving asset transfers into or out of the regulated accounts shall be recorded by the carrier in its regulated accounts as provided in paragraphs (b) through (f) of this section.

(b) Assets sold or transferred between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed assets sold or transferred between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other assets sold by or transferred from a carrier to its affiliate, the assets shall be recorded at no less than the higher of fair market value and net book cost. For all other assets sold by or transferred to a carrier from its affiliate, the assets shall be

recorded at no more than the lower of fair market value and net book cost.

(1) *Floor.* When assets are sold by or transferred from a carrier to an affiliate, the higher of fair market value and net book cost establishes a floor, below which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, Commission rules and orders, and is not otherwise anti-competitive.

(2) *Ceiling.* When assets are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and net book cost establishes a ceiling, above which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, Commission rules and orders, and is not otherwise anti-competitive.

(3) *Threshold.* For purposes of this section carriers are required to make a good faith determination of fair market value for an asset when the total aggregate annual value of the asset(s) reaches or exceeds $500,000, per affiliate. When a carrier reaches or exceeds the $500,000 threshold for a particular asset for the first time, the carrier must perform the market valuation and value the transaction on a going-forward basis in accordance with the affiliate transactions rules on a going-forward basis. When the total aggregate annual value of the asset(s) does not reach or exceed $500,000, the asset(s) shall be recorded at net book cost.

(c) Services provided between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a carrier and its affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other services sold by or transferred from a carrier to its affiliate, the services shall be recorded at no less than the higher of fair market value and fully distributed cost. For all other services sold by or transferred to a carrier from its affiliate, the services shall be recorded at no more than the lower of fair market value and fully distributed cost.

(1) *Floor.* When services are sold by or transferred from a carrier to an affiliate, the higher of fair market value and fully distributed cost establishes a floor, below which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, Commission rules and orders, and is not otherwise anti-competitive.

(2) *Ceiling.* When services are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded. Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, Commission rules and orders, and is not otherwise anti-competitive.

(3) *Threshold.* For purposes of this section, carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds $500,000, per affiliate. When a carrier reaches or exceeds the $500,000 threshold for a particular service for the first time, the carrier must perform the market valuation and value the transaction in accordance with the affiliate transactions rules on a going-forward basis. All services received by a carrier from its affiliate(s) that exist solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost.

(d) In order to qualify for prevailing price valuation in paragraphs (b) and (c) of this section, sales of a particular asset or service to third parties must encompass greater than 25 percent of the total quantity of such product or service sold by an entity. Carriers shall apply this 25 percent threshold on an asset-by-asset and service-by-service basis, rather than on a product-line or service-line basis. In the case of transactions for assets and services subject to section 272, a BOC may record such transactions at prevailing price regardless of whether the 25 percent threshold has been satisfied.

(e) Income taxes shall be allocated among the regulated activities of the carrier, its nonregulated divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by the carrier and other members of the affiliated group, the income tax expense to be recorded by the carrier shall be the same as would result if determined for the carrier separately for all time periods, except that the tax effect of carry-back and carry-forward operating losses, investment tax credits, or other tax credits generated by operations of the carrier shall be recorded by the carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group.

(f) Companies that employ average schedules in lieu of actual costs are exempt from the provisions of this section. For other organizations, the principles set forth in this section shall apply equally to corporations, proprietorships, partnerships and other forms of business organizations.

9. Section 32.101 is revised to read as follows:

§ 32.101 Structure of the balance sheet accounts.

The Balance Sheet accounts shall be maintained as follows:

(a) Account 1120, Cash and equivalents, through Account 1500, Other jurisdictional assets—net, shall include assets other than regulated-fixed assets.

(b) Account 2001, Telecommunications plant in service, through Account 2007, Goodwill, shall include the regulated-fixed assets.

(c) Account 3100, Accumulated depreciation through Account 3410, Accumulated amortization—capitalized leases, shall include the asset reserves except that reserves related to certain asset accounts will be included in the asset account. (See §§ 32.2005, 32.2682 and 32.2690.)

(d) Account 4000, Current accounts and notes payable, through Account 4550, Retained earnings, shall include all liabilities and stockholders equity.

10. Section 32.103 is revised as follows:

§ 32.103 Balance sheet accounts for other than regulated-fixed assets to be maintained.

Balance sheet accounts to be maintained by Class A and Class B telephone companies for other than regulated-fixed assets are indicated as follows:

BALANCE SHEET ACCOUNTS

Account title	Class A account	Class B account
Current assets		
Cash and equivalents	1120	1120
Receivables	1170	1170
Allowance for doubtful accounts	1171	1171
Supplies:		
Material and supplies	1220	1220
Prepayments	1280	1280
Other current assets	1350	1350
Noncurrent assets		
Investments:		
Nonregulated investments	1406	1406
Other noncurrent assets	1410	1410
Deferred charges:		
Deferred maintenance, retirements and other deferred charges	1438	1438
Other:		
Other jurisdictional assets-net	1500	1500

11. Section 32.1120 is revised to read as follows:

§ 32.1120 Cash and equivalents.

(a) This account shall include the amount of current funds available for use on demand in the hands of financial officers and agents, deposited in banks or other financial institutions and also funds in transit for which agents have received credit.

(b) This account shall include the amount of cash on special deposit, other than in sinking and other special funds provided for elsewhere, to pay dividends, interest, and other debts, when such payments are due one year or less from the date of deposit; the amount of cash deposited to insure the performance of contracts to be performed within one year from date of the deposit; and other cash deposits of a special nature not provided for elsewhere. This account shall include the amount of cash deposited with trustees to be held until mortgaged property sold, destroyed, or otherwise disposed of is replaced, and also cash realized from the sale of the company's securities and deposited with trustees to be held until invested in physical property of the company or for disbursement when the purposes for which the securities were sold are accomplished.

(c) Cash on special deposit to be held for more than one year from the date of deposit shall be included in Account 1410, Other noncurrent assets.

(d) This account shall include the amount of cash advanced to officers, agents, employees, and others as petty cash or working funds from which expenditures are to be made and accounted for.

(e) This account shall include the cost of current securities acquired for the purpose of temporarily investing cash, such as time drafts receivable and time loans, bankers' acceptances, United States Treasury certificates, marketable securities, and other similar investments of a temporary character.

(f) Accumulated changes in the net unrealized losses of current marketable equity securities shall be included in the determination of net income in the period in which they occur in Account 7300, Other Nonoperating Income and Expense.

(g) Subsidiary record categories shall be maintained in order that the entity may separately report the amounts of temporary investments that relate to affiliates and nonaffiliates. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§§ 32.1130, 32.1140, 32.1150, and 32.1160 [Removed]

12. Sections 32.1130 32.1140, 32.1150, and 32.1160 are removed.

13. Section 32.1170 is added to read as follows:

§ 32.1170 Receivables.

(a) This account shall include all amounts due from customers for services rendered or billed and from agents and collectors authorized to make collections from customers. This account shall also include all amounts due from customers or agents for products sold. This account shall be kept in such manner as will enable the company to make the following analysis:

(1) Amounts due from customers who are receiving telecommunications service.

(2) Amounts due from customers who are not receiving service and whose accounts are in process of collection.

(b) Collections in excess of amounts charged to this account may be credited to and carried in this account until applied against charges for services rendered or until refunded.

(c) Cost of demand or time notes, bills and drafts receivable, or other similar evidences (except interest coupons) of money receivable on demand or within a time not exceeding one year from date of issue.

(d) Amount of interest accrued to the date of the balance sheet on bonds, notes, and other commercial paper owned, on loans made, and the amount of dividends receivable on stocks owned.

(e) This account shall not include dividends or other returns on securities issued or assumed by the company and held by or for it, whether pledged as collateral, or held in its treasury, in special deposits, or in sinking and other funds.

(f) Dividends received and receivable from affiliated companies accounted for on the equity method shall be included in Account 1410, Other noncurrent assets, as a reduction of the carrying value of the investment.

(g) This account shall include all amounts currently due, and not provided for in (a) through (g) of this section such as those for traffic settlements, divisions of revenue, material and supplies, matured rents, and interest receivable under monthly settlements on short-term loans, advances, and open accounts. If any of these items are not to be paid currently, they shall be transferred to Account 1410, Other noncurrent assets.

(h) Subsidiary record categories shall be maintained in order that the entity may separately report the amounts contained herein that relate to affiliates and nonaffiliates. Such subsidiary

record categories shall be reported as required by part 43 of this chapter.

14. Section 32.1171 is added to read as follows:

§ 32.1171 Allowance for doubtful accounts.

(a) This account shall be credited with amounts charged to Accounts 5300, Uncollectible revenue, and 6790, Provision for uncollectible notes receivable to provide for uncollectible amounts related to accounts receivable and notes receivable included in Account 1170, Receivables. There shall also be credited to this account amounts collected which previously had been written off through charges to this account and credits to Account 1170. There shall be charged to this account any amounts covered thereby which have been found to be impracticable of collection.

(b) If no such allowance is maintained, uncollectible amounts shall be charged directly to Account 5300, Uncollectible revenue or directly to Account 6790, Provision for uncollectible notes receivable, as appropriate.

(c) Subsidiary record categories shall be maintained in order that the entity may separately report the amounts contained herein that relate to affiliates and nonaffiliates. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§§ 32.1180, 32.1181, 32.1190, 32.1200, 32.1201, and 32.1210 [Removed]

15. Sections 32.1180 32.1181, 32.1190, 32.1200, 32.1201, and 32.1210 are removed.

16. Section 32.1220 is amended by revising paragraphs (g) and (h) to read as follows:

§ 32.1220 Inventories.

* * * * *

(g) Interest paid on material bills, the payments of which are delayed, shall be charged to Account 7500, Interest and related items.

(h) Inventories of material and supplies shall be taken periodically or frequently enough for reporting purposes, as appropriate, in accordance with generally accepted accounting principles. The adjustments to this account shall be charged or credited to Account 6512, Provisioning expense.

* * * * *

17. Section 32.1280 is revised to read as follows:

§ 32.1280 Prepayments.

This account shall include:

(a) The amounts of rents paid in advance of the period in which they are chargeable to income, except amounts chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the rents are paid, this account shall be credited monthly and the appropriate account charged.

(b) The balance of all taxes, other than amounts chargeable to telecommunication plant under construction and minor amounts which may be charged to the final accounts, paid in advance and which are chargeable to income within one year. As the term expires for which the taxes are paid, this account shall be credited monthly and the appropriate account charged.

(c) The amount of insurance premiums paid in advance of the period in which they are chargeable to income, except premiums chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the premiums are paid, this account shall be credited monthly and the appropriate account charged.

(d) The cost of preparing, printing, binding, and delivering directories and the cost of soliciting advertisements for directories, except minor amounts which may be charged directly to Account 6620, Services. Amounts in this account shall be cleared to Account 6620 by monthly charges representing that portion of the expenses applicable to each month.

(e) Other prepayments not included in paragraphs (a) through (d) of this section except for minor amounts which may be charged directly to the final accounts. As the term expires for which the payments apply, this account shall be credited monthly and the appropriate account charged.

§§ 32.1290, 32.1300, 32.1310, 32.1320, and 32.1330 [Removed]

18. Sections 32.1290 32.1300, 32.1310, 32.1320, and 32.1330 are removed.

19. Section 32.1350 is revised to read as follows:

§ 32.1350 Other current assets.

This account shall include the amount of all current assets which are not includable in Accounts 1120 through 1280.

§§ 32.1401 and 32.1402 [Removed]

20. Sections 32.1401 and 32.1402 are removed.

§ 32.1406 [Amended].

21. Section 32.1406 is amended by removing paragraph (b) and designating paragraph (a) as an undesignated paragraph.

§§ 32.1407 and 1408 [Removed]

22. Sections 32.1407 and 32.1408 are removed.

23. Section 32.1410 is revised to read as follows:

§ 32.1410 Other noncurrent assets.

(a) This account shall include the acquisition cost of the company's investment in equity or other securities issued or assumed by affiliated companies, including securities held in special funds (sinking funds). The carrying value of the investment (securities) accounted for on the equity method shall be adjusted to recognize the company's share of the earnings or losses and dividends received or receivable of the affiliated company from the date of acquisition. (Note also Account 1170, Receivables, and Account 7300, Nonoperating income and expense.)

(b) This account shall include the acquisition cost of the Company's investment in securities issued or assumed by nonaffiliated companies and individuals, and also its investment advances to such parties and special deposits of cash for more than one year from date of deposit.

(c) Declines in value of investments, including those accounted for under the cost method, shall be charged to Account 4540, Other capital, if temporary and as a current period loss if permanent. Detail records shall be maintained to reflect unrealized losses for each investment.

(d) This account shall also include advances represented by book accounts only with respect to which it is agreed or intended that they shall be either settled by issuance of capital stock or debt; or shall not be subject to current cost settlement.

(e) Amounts due from affiliated and nonaffiliated companies which are subject to current settlement shall be included in Account 1170, Receivables.

(f) This account shall include the total unamortized balance of debt issuance expense for all classes of outstanding long-term debt. Amounts included in this account shall be amortized monthly and charged to account 7500, Interest and related items.

(g) Debt Issuance expense includes all expenses in connection with the issuance and sale of evidence of debt, such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; costs of engraving and printing bonds, certificates of indebtedness, and other commercial paper; fees paid trustees;

specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen; fees and expenses of listing on exchanges, and other like costs. A subsidiary record shall be kept of each issue outstanding.

(h) This account shall include the amount of cash and other assets which are held by trustees or by the company's treasurer in a distinct fund, for the purpose of redeeming outstanding obligations. Interest or other income arising from funds carried in this account shall generally be charged to this account. A subsidiary record shall be kept for each sinking fund which shall designate the obligation in support of which the fund was created.

(i) This account shall include the amount of all noncurrent assets which are not includable in paragraphs (a) through (h) of this section.

(j) A subsidiary record shall be kept identifying separately common stocks, preferred stocks, long-term debt, advances to affiliates, and investment advances. A subsidiary record shall also be kept identifying special deposits of cash for more than one year from the date of deposit. Further, the company's record shall identify the securities pledged as collateral for any of the company's long-term debt or short-term loans or to secure performance of contracts.

(k) Subsidiary record categories shall be maintained in order that the entity may separately report the amounts contained herein that relate to the equity method and the cost method. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§ 32.1437 [Removed]

24. Section 32.1437 is removed.

25. Section 32.1438 is amended by revising paragraph (a) to read as follows:

§ 32.1438 Deferred maintenance, retirements and other deferred charges.

(a) This account shall include such items as:

(1) The unprovided-for loss in service value of telecommunications plant for extraordinary nonrecurring retirement not considered in depreciation and the cost of extensive replacements of plant normally chargeable to the current period Plant Specific Operations Expense accounts. These charges shall be included in this account only upon direction or approval from this Commission. However, the company's application to this Commission for such approval shall give full particulars concerning the property retired, the extensive replacements, the amount chargeable to operating expenses and the period over which in its judgment the amount of such charges should be distributed.

(2) Unaudited amounts and other debit balances in suspense that cannot be cleared and disposed of until additional information is received; the amount, pending determination of loss, of funds on deposit with banks which have failed; revenue, expense, and income items held in suspense; amounts paid for options pending final disposition.

(3) Cost of preliminary surveys, plans, investigation, etc., made for construction projects under contemplation. If the projects are carried out, the preliminary costs shall be included in the cost of the plant constructed. If the projects are abandoned, the preliminary costs shall be charged to Account 7300, Nonoperating income and expense.

(4) Cost of evaluations, inventories, and appraisals taken in connection with the acquisition or sale of property. If the property is subsequently acquired, the preliminary costs shall be accounted for as a part of the cost of acquisition, or if it is sold, such costs shall be deducted from the sale price in accounting for the property sold. If purchases or sales are abandoned, the preliminary costs included herein (including options paid, if any) shall be charged to Account 7300.

* * * * *

§ 32.1439 [Removed]

26. Section 32.1439 is removed.

27. Section 32.2000 is amended by revising paragraphs (a)(2), (a)(4), (b)(2)(i), (b)(2)(iii), (b)(2)(iv), (c)(2)(x), (c)(2)(xiii), (d)(2)(i), (d)(4), (d)(5), (f)(3)(i), (g)(3), (g)(5), (h)(3), and (j) as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

(a) * * *

(2) The telecommunications plant accounts shall not include the cost or other value of telecommunications plant contributed to the company. Contributions in the form of money or its equivalent toward the construction of telecommunications plant shall be credited to the accounts charged with the cost of such construction. Amounts of non-recurring reimbursements based on the cost of plant or equipment furnished in rendering service to a customer shall be credited to the accounts charged with the cost of the plant or equipment. Amounts received for construction which are ultimately to be repaid wholly or in part, shall be credited to Account 4300, Other long-term liabilities and deferred credits; when final determination has been made as to the amount to be returned, any unrefunded amounts shall be credited to the accounts charged with the cost of such construction. Amounts received for the construction of plant, the ownership of which rests with or will revert to others, shall be credited to the accounts charged with the cost of such construction. (Note also Account 7100, Other operating income and expense.)

* * * * *

(4) The cost of the individual items of equipment, classifiable to Accounts 2112, Motor vehicles; 2113, Aircraft; 2114, Tools and other work equipment; 2122, Furniture; 2123, Office equipment; 2124, General purpose computers, costing $2,000 or less or having a life of less than one year shall be charged to the applicable expense accounts, except for personal computers falling within Account 2124. Personal computers classifiable to Account 2124, with a total cost for all components of $500 or less, shall be charged to the applicable Plant Specific Operations Expense accounts. The cost of tools and test equipment located in the central office, classifiable to central office asset accounts 2210–2232 costing $2,000 or less or having a life of less than one year shall be charged to the applicable Plant Specific Operations Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

(b) * * *

(2) * * *

(i) The amount of money paid (or current money value of any consideration other than money exchanged) for the property (together with preliminary expenses incurred in connection the acquisition) shall be charged to Account 1438, Deferred maintenance, retirements, and other deferred charges.

* * * * *

(iii) Accumulated Depreciation and amortization balances related to plant acquired shall be credited to Account 3100, Accumulated depreciation, or Account 3200, Accumulated depreciation—held for future telecommunications use, or Account 3410, Accumulated amortization—capitalized leases and debited to Account 1438. Accumulated amortization balances related to plant acquired which ultimately is recorded in Accounts 2005, Telecommunications plant adjustment, Account 2682,

Leasehold improvements, or Account 2690, Intangibles shall be credited to these asset accounts, and debited to Account 1438.

(iv) Any amount remaining in Account 1438, applicable to the plant acquired, shall, upon completion of the entries provided in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, be debited or credited, as applicable, to Account 2007, Goodwill, or to Account 2005, Telecommunications plant adjustment, as appropriate.

* * * * *

(c) * * *

(2) * * *

(x) Allowance for funds used during construction (''AFUDC'') provides for the cost of financing the construction of telecommunications plant. AFUDC shall be charged to Account 2003, Telecommunications plant under construction, and credited to Account 7300, Nonoperating income and expense. The rate for calculating AFUDC shall be determined as follows: If financing plans associate a specific new borrowing with an asset, the rate on that borrowing may be used for the asset; if no specific new borrowing is associated with an asset or if the average accumulated expenditures for the asset exceed the amounts of specific new borrowing associated with it, the capitalization rate to be applied to such excess shall be the weighted average of the rates applicable to other borrowings of the enterprise. The amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the company in that period.

* * * * *

(xiii) ''Indirect construction costs'' shall include indirect costs such as general engineering, supervision and support. Such costs, in addition to direct supervision, shall include indirect plant operations and engineering supervision up to, but not including, supervision by executive officers whose pay and expenses are chargeable to Account 6720, General and administrative. The records supporting the entries for indirect construction costs shall be kept so as to show the nature of the expenditures, the individual jobs and accounts charged, and the bases of the distribution. The amounts charged to each plant account for indirect costs shall be readily determinable. The instructions contained herein shall not be interpreted as permitting the addition to plant of amounts to cover indirect costs based on arbitrary allocations.

* * * * *

(d) * * *

(2) * * *

(i) *Retirement units:* This group includes major items of property, a representative list of which shall be prescribed by this Commission. In lieu of the retirement units prescribed with respect to a particular account, a company may, after obtaining specific approval by this Commission, establish and maintain its own list of retirement units for a portion or all of the plant in any such account. For items included on the retirement units list, the original cost of any such items retired shall be credited to the plant account and charged to Account 3100 Accumulated Depreciation, whether or not replaced. The original cost of retirement units installed in place of property retired shall be charged to the applicable telecommunications plant account.

* * * * *

(4) The accounting for the retirement of property, plant and equipment shall be as provided above except that amounts in Account 2111, Land, and amounts for works of art recorded in Account 2122, Furniture, shall be treated at disposition as a gain or loss and shall be credited or debited to Account 7100, Other operating income and expense, as applicable. If land or artwork is retained by the company and held for sale, the cost shall be charged to Account 2006, Nonoperating plant.

(5) When the telecommunications plant is sold together with traffic associated therewith, the original cost of the property shall be credited to the applicable plant accounts and the estimated amounts carried with respect thereto in the accumulated depreciation and amortization accounts shall be charged to such accumulated accounts. The difference, if any, between the net amount of such debit and credit items and the consideration received (less commissions and other expenses of making the sale) for the property shall be included in Account 7300, Nonoperating income and expense. The accounting for depreciable telecommunications plant sold without the traffic associated therewith shall be in accordance with the accounting provided in § 32.3100(c).

* * * * *

(f) * * *

(3) * * *

(i) *Unit identification.* Cost shall be identified and maintained by specific location for property record units contained within certain regulated plant accounts or account groupings such as Land, Buildings, Central Office Assets, Motor Vehicles, garage work equipment included in Account 2114, Tools and other work equipment, and Furniture. In addition, units involved in any unusual or special type of construction shall be recorded by their specific location costs (note also § 32.2000(f)(3)(ii)(B)).

* * * * *

(g) * * *

(3) *Acquired depreciable plant.* When acquired depreciable plant carried in Account 1438, Deferred maintenance, retirements and other deferred charges, is distributed to the appropriate plant accounts, adjusting entries shall be made covering the depreciation charges applicable to such plant for the period during which it was carried in Account 1438.

* * * * *

(5) Upon direction or approval from this Commission, the company shall credit Account 3100, Accumulated depreciation, and charge Account 1438, Deferred maintenance, retirements and other deferred charges, with the unprovided-for loss in service value. Such amounts shall be distributed from Account 1438 to Account 6560, Depreciation and amortization expense over such period as this Commission may direct or approve.

(h) * * *

(3) Amortization charges shall be made monthly to the appropriate amortization expense accounts and corresponding credits shall be made to accounts 2005, 2682, 2690, and 3410, as appropriate. Monthly charges shall be computed by the application of one-twelfth to the annual amortization amount.

* * * * *

(j) Plant Accounts to be Maintained by Class A and Class B telephone companies as indicated:

Account title	Class A account	Class B account
Regulated plant		
Property, plant and equipment:		
Telecommunications plant in service	[1] 2001	[1] 2001
Property held for future telecommunications use	2002	2002

Account title	Class A account	Class B account
Telecommunications plant under construction-short term	2003	2003
Telecommunications plant adjustment	2005	2005
Nonoperating plant	2006	2006
Goodwill	2007	2007
Telecommunications plant in service (TPIS)		
TPIS—General support assets:		
Land and support assets		2110
Land	2111	
Motor vehicles	2112	
Aircraft	2113	
Tools and other work equipment	2114	
Buildings	2121	
Furniture	2122	
Office equipment	2123	
General purpose computers	2124	
TPIS—Central Office assets:		
Central Office—switching		2210
Non-digital switching	2211	
Digital electronic switching	2212	
Operator systems	2220	2220
Central Office—transmission		2230
Radio systems	2231	
Circuit equipment	2232	
TPIS—Information origination/termination assets:		
Information origination termination		2310
Station apparatus	2311	
Customer premises wiring	2321	
Large private branch exchanges	2341	
Public telephone terminal equipment	2351	
Other terminal equipment	2362	
TPIS—Cable and wire facilities assets:		
Cable and wire facilities		2410
Poles	2411	
Aerial cable	2421	
Underground cable	2422	
Buried cable	2423	
Submarine and deep sea cable	2424	
Intrabuilding network cable	2426	
Aerial wire	2431	
Conduit systems	2441	
TPIS—Amortizable assets:		
Amortizable tangible assets		2680
Capital leases	2681	
Leasehold improvements	2682	
Intangibles	2690	2690

[1] Balance sheet summary account only.

28. Section 32.2003 is amended by revising paragraph (c) to read as follows:

§ 32.2003 Telecommunications plant under construction.

* * * * *

(c) If a construction project has been suspended for six months or more, the cost of the project included in this account may remain in this account so long as the carrier excludes the original cost and associated depreciation from its ratebase and ratemaking considerations and reports those amounts in reports filed with the Commission pursuant to §§ 43.21(e)(1) and 43.21(e)(2) of this chapter. If a project is abandoned, the cost included in this account shall be charged to Account 7300, Nonoperating income and expense.

* * * * *

29. Section 32.2005 is amended by revising paragraph (b) to read as follows:

§ 32.2005 Telecommunications plant adjustment.

* * * * *

(b) The amounts recorded in this account with respect to each property acquisition (except land and artworks) shall be disposed of, written off, or provision shall be made for the amortization thereof, as follows:

(1) Debit amounts may be charged in whole or in part, or amortized over a reasonable period through charges to Account 7300, Nonoperating income and expense, without further direction or approval by this Commission. When specifically approved by this Commission, or when the provisions of paragraph (b)(3) of this section apply, debit amounts shall be amortized to Account 6560, Depreciation and amortization expense.

(2) Credit amounts shall be disposed of in such manner as this Commission may approve or direct, except for credit amounts referred to in paragraph (b)(4) of this section.

(3) The amortization associated with the costs recorded in the Telecommunications plant adjustment account will be charged or credited, as appropriate, directly to this asset account, leaving a balance representing the unamortized cost.

(4) Within one year from the date of inclusion in this account of a debit or credit amount with respect to a current

acquisition, the company may dispose of the total amount from an acquisition of telephone plant by a lump-sum charge or credit, as appropriate, to Account 6560 without further approval of this Commission, provided that such amount does not exceed $100,000 and that the plant was not acquired from an affiliated company.

30. Section 32.2007 is amended by revising paragraph (a) to read as follows:

§ 32.2007 Goodwill.

(a) This account shall include any portion of the plant purchase price that cannot be assigned to specifically identifiable property acquired and such amount should be identified as ''goodwill''. Such amounts included in this account shall be amortized to Account 7300, Nonoperating income and expense, on a straight line basis over the remaining life of the acquired plant, not to exceed 40 years.

* * * * *

31. Section 32.2111 is amended by revising paragraphs (f) and (g) to read as follows:

§ 32.2111 Land.

* * * * *

(f) Installments of assessments for public improvement, including interest, if any, which are deferred without option to the company shall be included in this account only as they become due and payable. Interest on assessments which are not paid when due shall be included in Account 7500, Interest and related items.

(g) When land is purchased for immediate use in a construction project, its cost shall be included in Account 2003, Telecommunications plant under construction, until such time as the project involved is completed and ready for service.

* * * * *

§ 32.2123 [Amended]

32. Section 32.2123 is amended by removing paragraph (b) and designating paragraph (a) as an undesignated paragraph.

33. Section 32.2210 is revised to read as follows:

§ 32.2210 Central office—switching.

This account shall be used by Class B companies to record the original cost of switching assets of the type and character required of Class A companies in Accounts 2211 through 2212.

34. Section 32.2211 is amended by revising the section heading and paragraph (a) to read as follows:

§ 32.2211 Non-digital switching.

(a) This account shall include:

(1) Original cost of stored program control analog circuit-switching and associated equipment.

(2) Cost of remote analog electronic circuit switches.

(3) Original cost of non-electronic circuit-switching equipment such as Step-by-Step, Crossbar, and Other Electro-Mechanical Switching.

* * * * *

35. Section 32.2212 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (e), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 32.2212 Digital electronic switching.

(a) This account shall include the original cost of stored program control digital switches and their associated equipment. Included in this account are digital switches which utilize either dedicated or non-dedicated circuits. This account shall also include the cost of remote digital electronic switches. The investment in digital electronic switching equipment shall be maintained in the following subaccounts: 2212.1 Circuit and 2212.2 Packet.

(b) This subaccount 2212.1 Circuit shall include the original cost of digital electronic switching equipment used to provide circuit switching. Circuit switching is a method of routing traffic through a switching center, from local users or from other switching centers, whereby a connection is established between the calling and called stations until the connection is released by the called or calling station.

(c) This subaccount 2212.2 Packet shall include the original cost of digital electronic switching equipment used to provide packet switching. Packet switching is the process of routing and transferring information by means of addressed packets so that a channel is occupied during the transmission of the packet only, and upon completion of the transmission the channel is made available for the transfer of other traffic.

(d) Digital electronic switching equipment used to provide both circuit and packet switching shall be recorded in the subaccounts 2212.1 Circuit and 2212.2 Packet based upon its predominant use.

* * * * *

§ 32.2215 [Removed]

36. Section 32.2215 is removed.

37. Section 32.2231 is revised to read as follows:

§ 32.2231 Radio systems.

(a) This account shall include the original cost of ownership of radio transmitters and receivers. This account shall include the original cost of ownership interest in satellites (including land-side spares), other spare parts, material and supplies. It shall include launch insurance and other satellite launch costs. This account shall also include the original cost of earth stations and spare parts, material or supplies therefor.

(b) This account shall also include the original cost of radio equipment used to provide radio communication channels. Radio equipment is that equipment which is used for the generation, amplification, propagation, reception, modulation, and demodulation of radio waves in free space over which communication channels can be provided. This account shall also include the associated carrier and auxiliary equipment and patch bay equipment which is an integral part of the radio equipment. Such equipment may be located in central office building, terminal room, or repeater stations or may be mounted on towers, masts, or other supports.

38. Section 32.2232 is amended by revising paragraphs (a) and (b), redesignating paragraphs (b) and (c) as (e) and (f), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 32.2232 Circuit equipment.

(a) This account shall include the original cost of equipment which is used to reduce the number of physical pairs otherwise required to serve a given number of subscribers by utilizing carrier systems, concentration stages or combinations of both. It shall include equipment that provides for simultaneous use of a number of interoffice channels on a single transmission path. This account shall also include equipment which is used for the amplification, modulation, regeneration, circuit patching, balancing or control of signals transmitted over interoffice communications transmission channels. This account shall include equipment which utilizes the message path to carry signaling information or which utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels. This account shall also include the original cost of associated material used in the construction of such plant. Circuit equipment may be located in central offices, in manholes, on poles, in cabinets or huts, or at other company locations. The investment in circuit equipment shall be maintained in the following subaccounts: 2232.1 Electronic and 2232.2 Optical.

(b) This subaccount 2232.1 Electronic shall include the original cost of electronic circuit equipment.

(c) This subaccount 2232.2 Optical shall include the original cost of optical circuit equipment.

(d) Circuit equipment that converts electronic signals to optical signals or optical signals to electronic signals shall be categorized as electronic.

* * * * *

39. Section 32.2311 is amended by revising paragraph (f) to read as follows:

§ 32.2311 Station apparatus.

* * * * *

(f) Periodic asset verification, as prescribed by generally accepted accounting principles, shall be taken of all station apparatus in stock that are included in this account. The number of such station apparatus items as determined by this verification together with the number of all other station apparatus items included in this account, shall be compared with the corresponding number of station apparatus items as shown by the respective control records. The original cost of any unreconciled differences thereby disclosed shall be adjusted through Account 3100, Accumulated Depreciation. Appropriate verifications shall be made at suitable intervals and necessary adjustments between this account and Account 3100 shall be made for all station apparatus included in this account.

* * * * *

40. Section 32.2424 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 32.2424 Submarine & deep sea cable.

(a) This account shall include the original cost of submarine cable and deep sea cable and other material used in the construction of such plant. Subsidiary record categories, as defined below, are to be maintained for nonmetallic submarine and deep sea cable and metallic submarine and deep sea cable.

* * * * *

§ 32.2425 [Removed]

41. Section 32.2425 is removed.

42. Section 32.2682 is amended by revising paragraph (c) to read as follows:

§ 32.2682 Leasehold improvements.

* * * * *

(c) Amounts contained in this account shall be amortized over the term of the related lease. The amortization associated with the costs recorded in the Leasehold improvement account will be credited directly to this asset account, leaving a balance representing the unamortized cost.

43. Section 32.2690 is revised to read as follows:

§ 32.2690 Intangibles.

(a) This account shall include the cost of organizing and incorporating the company, the original cost of government franchises, the original cost of patent rights, and other intangible property having a life of more than one year and used in connection with the company's telecommunications operations.

(b) Class A companies, except mid-sized incumbent local exchange carriers, shall maintain subsidiary records for general purpose computer software and for network software. Subsidiary records for this account shall also include a description of each class of all other tangible property.

(c) The cost of other intangible assets, not including software, having a life of one year or less shall be charged directly to Account 6560, Depreciation and Amortization Expense. Such intangibles acquired at small cost may also be charged to Account 6560, irrespective of their term of life. The cost of software having a life of one year or less shall be charged directly to the applicable expense account with which the software is associated.

(d) The amortization associated with the costs recorded in the Intangibles account will be credited directly to this asset account, leaving a balance representing the unamortized cost.

(e) This account shall not include any discounts on securities issued, nor shall it include costs incident to negotiating loans, selling bonds or other evidences of debt, or expenses in connection with the authorization, issuance, sale or resale of capital stock.

(f) When charges are made to this account for expenses incurred in mergers, consolidations, or reorganizations, amounts previously included in this account on the books of the various companies concerned shall not be carried over.

(g) Franchise taxes payable annually or more frequently shall be charged to Account 7240, Operating other taxes.

(h) This account shall not include the cost of plant, material and supplies, or equipment furnished to municipalities or other governmental authorities when given other than as initial consideration for franchises or similar rights. (Note also Account 6720, General & administrative).

(i) This account shall not include the original cost of easements, rights of way, and similar rights in land having a term of more than one year. Such amounts shall be recorded in Account 2111, Land, or in the appropriate outside plant account (see Accounts 2411 through 2441), or in the appropriate central office account (see Accounts 2211 through 2232).

44. Section 32.3000 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 32.3000 Instructions for balance sheet accounts—Depreciation and amortization.

(a) * * *

(2) Subsidiary records shall be maintained for Accounts 2005, 2682, 2690, and 3410 in accordance with § 32.2000(h)(4).

(b) Depreciation and Amortization Accounts to be Maintained by Class A and Class B telephone companies, as indicated:

Account title	Class A account	Class B account
Depreciation and amortization:		
Accumulated depreciation	3100	3100
Accumulated depreciation—Held for future telecommunications use	3200	3200
Accumulated depreciation—Nonoperating	3300	3300
Accumulated amortization—Capitalized leases	3410	3410

45. Section 32.3100 is amended by revising paragraphs (b) and (d) to read as follows:

§ 32.3100 Accumulated depreciation.

* * * * *

(b) This account shall be credited with depreciation amounts concurrently charged to Account 6560, Depreciation and amortization expenses. (Note also Account 3300, Accumulated Depreciation—Nonoperating.)

* * * * *

(d) This account shall be credited with amounts charged to Account 1438, Deferred maintenance, retirements, and other deferred charges, as provided in § 32.2000(g)(4). This account shall be credited with amounts charged to Account 6560 with respect to other than relatively minor losses in service values suffered through terminations of service when charges for such terminations are made to recover the losses.

46. Section 32.3200 is amended by revising paragraph (b) to read as follows:

§ 32.3200 Accumulated depreciation—held for future telecommunications use.

* * * * *

(b) This account shall be credited with amounts concurrently charged to Account 6560, Depreciation and amortization expenses.

47. Section 32.3300 is amended by revising paragraph (b) and (c) to read as follows:

§ 32.3300 Accumulated depreciation—nonoperating.

* * * * *

(b) This account shall be credited with amortization and depreciation amounts concurrently charged to Account 7300, Nonoperating income and expense.

(c) When nonoperating plant not previously used in telecommunications service is disposed of, this account shall be charged with the amount previously credited hereto with respect to such property and the book cost of the property so retired less the amount chargeable to this account and less the value of the salvage recovered or the proceeds from the sale of the property shall be included in Account 7300, Nonoperating income and expense. In case the property had been used in telecommunications service previous to its inclusion in Account 2006, Nonoperating Plant, the amount accrued for depreciation thereon after its retirement from telecommunications service shall be charged to this account and credited to Account 3100, Accumulated depreciation, and the accounting for its retirement from Account 2006 shall be in accordance with that applicable to telecommunications plant retired.

§ 32.3400 [Removed]

48. Section 32.3400 is removed.

49. Section 32.3410 is amended by revising paragraph (b) and (c) to read as follows:

§ 32.3410 Accumulated amortization—capital leases.

* * * * *

(b) This account shall be credited with amounts for the amortization of capital leases concurrently charged to Account 6560, Depreciation and amortization expenses. (Note also Account 3300, Accumulated Depreciation— Nonoperating.)

(c) When any item carried in Account 2681 is sold, is relinquished, or is otherwise retired from service, this account shall be charged with the cost of the retired item. Remaining amounts associated with the item shall be debited to Account 7100, Other operating income and expenses, or Account 7300, Nonoperating income and expense, as appropriate.

§§ 32.3420, 32.3500 and 32.3600 [Removed]

50. Sections 32.3420, 32.3500 and 32.3600 are removed.

51. Section 32.4000 is redesignated as § 32.3999 and redesignated § 32.3999 is revised to read as follows:

§ 32.3999 Instructions for balance sheet accounts—liabilities and stockholders' equity.

LIABILITIES AND STOCKHOLDERS' EQUITY ACCOUNTS TO BE MAINTAINED BY CLASS A AND CLASS B TELEPHONE COMPANIES

Account title	Class A account	Class B account
Current liabilities:		
Current accounts and notes payable	4000	4000
Customer's Deposits	4040	4040
Income taxes—accrued	4070	4070
Other taxes—accrued	4080	4080
Net Current Deferred Nonoperating Income Taxes	4100	4100
Net Current Deferred Nonoperating Income Taxes	4110	4110
Other current liabilities	4130	4130
Long-term debt:		
Long Term debt and Funded debt	4200	4200
Other liabilities and deferred credits:		
Other liabilities and deferred credits	4300	4300
Unamortized operating investment tax credits—net	4320	4320
Unamortized nonoperating investment tax credits—net	4330	4330
Net noncurrent deferred operating income taxes	4340	4340
Net deferred tax liability adjustments	4341	4341
Net noncurrent deferred nonoperating income taxes	4350	4350
Deferred tax regulatory adjustments—net	4361	4361
Other jurisdictional liabilities and deferred credits—net	4370	4370
Stockholder's equity:		
Capital stock	4510	4510
Additional paid-in capital	4520	4520
Treasury stock	4530	4530
Other capital	4540	4540
Retained earnings	4550	4550

52. Section 32.4000 is added to read as follows:

§ 32.4000 Current accounts and notes payable.

(a) This account shall include:(1) All amounts currently due to others for recurring trade obligations, and not provided for in other accounts, such as those for traffic settlements, material and supplies, repairs to telecommunications plant, matured rents, and interest payable under

monthly settlements on short-term loans, advances, and open accounts. It shall also include amounts of taxes payable that have been withheld from employees' salaries.

(2) Accounts payable arising from sharing of revenues.

(3) The face amount of notes, drafts, and other evidences of indebtedness issued or assumed by the company (except interest coupons) which are payable on demand or not more than one year or less from date of issue.

(b) If any part of an obligation, otherwise includable in this account matures more than one year from date of issue, it shall be included in Account 4200, Long term debt and funded debt, or other appropriate account.

(c) The records supporting the entries to this account shall be kept so that the company can furnish complete details as to each note, when it is issued, the consideration received, and when it is payable.

(d) Subsidiary record categories shall be maintained for this account in order that the company may separately report the amounts contained herein that relate to nonaffiliates and affiliates. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§§ 32.4010, 32.4020, and 32.4030 [Removed]

53. Sections 32.4010, 32.4020, and 32.4030 are removed.

54. In § 32.4040, paragraph (b) is revised to read as follows:

§ 32.4040 Customer's deposits.

* * * * *

(b) Advance payments made by prospective customers prior to the establishment of service shall be credited to Account 4130, Other current liabilities.

§§ 32.4050 and 32.4060 [Removed]

55. Sections 32.4050 and 32.4060 are removed.

56. Section 32.4070 is revised to read as follows:

§ 32.4070 Income taxes—accrued.

(a) This account shall be credited or charged and the following accounts shall be charged or credited with the offsetting amount of current year income taxes (Federal, state and local) accrued during the period or adjustments to prior accruals: 7220 Operating Federal Income Taxes, 7230 Operating State and Local Income Taxes, 7400 Nonoperating Taxes, 7600 Extraordinary Items.

(b) If significant, current year income taxes paid in advance shall be reclassified to Account 1280, Prepayments.

57. Section 32.4080 is revised to read as follows:

§ 32.4080 Other taxes—accrued.

(a) This account shall be credited or charged and Account 7240, Operating Other Taxes, or 7400, Nonoperating Taxes, or, for payroll related costs, the appropriate expense accounts shall be charged or credited for all taxes, other than Federal, State and local income taxes, accrued or adjusted for previous accruals during the period. Among the taxes includable in this account are property, gross receipts, franchise, capital stock, social security and unemployment taxes.

(b) Taxes paid in advance of the period in which they are chargeable to income shall be included in the prepaid taxes Account 1280, Prepayments, or 1410, Other Noncurrent Assets, as appropriate.

58. Section 32.4110 is amended by revising paragraphs (c) and (f) to read as follows:

§ 32.4110 Net current deferred nonoperating income taxes.

* * * * *

(c) This account shall be debited or credited with the amount being credited or debited to Account 7400, Nonoperating taxes, in accordance with that account's description and § 32.22.

* * * * *

(f) This account shall be debited or credited with the amount being credited and debited to Account 7600, Extraordinary Items.

* * * * *

§ 32.4120 [Removed]

59. Section 32.4120 is removed.

60. Section 32.4130 is revised to read as follows:

§ 32.4130 Other current liabilities.

This account shall include:

(a) The amount of advance billing creditable to revenue accounts in future months; also advance payments made by prospective customers prior to the establishment of service. Amounts included in this account shall be credited to the appropriate revenue accounts in the months in which the service is rendered or cleared from this account as refunds are made.

(b) The amount (including any obligations for premiums) of long-term debt matured and unpaid without any specific agreement for extension of maturity, including unpresented bonds drawn for redemption through the operation of sinking and redemption fund agreements.

(c) The current portion of obligations applicable to property obtained under capital leases.

(d) The amount of wages, compensated absences, interest on indebtedness of the company, dividends on capital stock, and rents accrued to the date for which the balance sheet is made, but not payable until after that date. Accruals shall be maintained so as to show separately the amount and nature of the items accrued to the date of the balance sheet.

(e) Matured rents, dividends, interest payable under monthly settlements on short-term loans, advances, and open accounts shall be included in Account 4000.

(f) All other liabilities of current character which are not included in Account 4000 through 4110.

61. Section 32.4200 is added to read as follows:

§ 32.4200 Long term debt and funded debt.

(a) This account shall include:

(1) The total face amount of unmatured debt maturing more than one year from date of issue, issued by the company and not retired, and the total face amount of similar unmatured debt of other companies, the payment of which has been assumed by the company, including funded debt the maturity of which has been extended by specific agreement. This account shall also include such items as mortgage bonds, collateral trust bonds, income bonds, convertible debt, debt securities with detachable warrants and other similar obligations maturing more than one year from date of issue.

(2) The premium associated with all classes of long-term debt. Premium, as applied to securities issued or assumed by the company, means the excess of the current money value received at their sale over the sum of their book or face amount and interest or dividends accrued at the date of the sale.

(3) The discount associated with all classes of long-term debt. Discount, as applied to securities issued or assumed by the company, means the excess of the book or face amount of the securities plus interest or dividends accrued at the date of the sale over the current money value of the consideration received at their sale.

(4) The face amount of debt reacquired prior to maturity that has not been retired. Gain or loss shall be recognized at the time of reacquisition by credits or charges to Account 7300, Nonoperating income and expense, except that material gains or losses shall be treated as extraordinary. (See Account 7600, Extraordinary items.)

(5) The noncurrent portion of obligations applicable to property obtained under capital leases. Amounts subject to current settlement shall be included in Account 4130, Other current liabilities.

(6) The amount of advance from affiliated companies. Amounts due affiliated companies which are subject to current settlement shall be included in Account 4000.

(7) Investment advances, including those represented by notes.

(8) Long-term debt not provided for elsewhere.

(b) Subsidiary records shall be maintained for each issue. The subsidiary records shall identify the premium or discount attributable to each issue.

(c) Premiums and discounts on long-term debt recorded in this account shall be amortized monthly by the interest method and charged or credited, as appropriate, to Account 7500, Interest and related items.

(d) Debt securities with detachable warrants shall be accounted for in accordance with generally accepted accounting principles.

(e) Securities maturing in one year or less, including securities maturing serially, shall be included in Account 4130, Other current liabilities.

§§ 32.4210, 32.4220, 32.4230, 32.4240, 32.4250, 32.4260, and 32.4270 [Removed]

62. Sections 32.4210, 32.4230, 32.4240, 32.4250, 32.4260, and 32.4270 are removed.

63. Section 32.4300 is added to read as follows:

§ 32.4300 Other long-term liabilities and deferred credits.

(a) This account shall include amounts accrued to provide for such items as unfunded pensions (if actuarially determined), death benefits, deferred compensation costs and other long-term liabilities not provided for elsewhere. Subsidiary records shall be maintained to identify the nature of these items.

(b) This account shall include the amount of all deferred credits not provided for elsewhere, such as amounts awaiting adjustment between accounts; and revenue, expense, and income items in suspense.

§ 32.4310 [Removed]

64. Section 32.4310 is removed.

65. Section 32.4330 is revised to read as follows:

§ 32.4330 Unamortized nonoperating investment tax credits—net.

(a) This account shall be credited and Account 7400, Nonoperating Taxes, shall be debited with investment tax credits generated from qualified expenditures related to other operations which the company has elected to defer rather than recognize currently in income.

(b) This account shall be debited and Account 7400 credited with a proportionate amount determined in relation to the useful book life of the property to which the tax credit relates.

66. Section 32.4341 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 32.4341 Net deferred tax liability adjustments.

(a) This account shall include the portion of deferred income tax charges and credits pertaining to Account 32.4361, Deferred tax regulatory adjustments—net.

(b) * * *

(2) Reclassification attributable to changes in tax rates (Federal, state and local). As tax rates increase or decrease, the offsetting debit or credit will be recorded in Account 4361 as required by paragraph (a) of this section.

* * * * *

67. Section 32.4350 is amended by revising paragraphs (b) and (e) to read as follows:

§ 32.4350 Net noncurrent deferred nonoperating income taxes.

* * * * *

(b) This account shall be credited or debited, as appropriate, and Account 7400, Nonoperating Taxes, shall reflect the offset for the tax effect of revenues from other operations and extraordinary items and nonoperating expenses which have been included in the determination of taxable income, but which will not be included in the determination of book income or for the tax effect of nonoperating expenses and extraordinary items and nonoperating income which have been included in the determination of book income prior to the inclusion in the determination of taxable income.

* * * * *

(e) This account shall be charged or credited with the contra amount recorded to Account 7600, Extraordinary items, in accordance with § 32.22.

* * * * *

§ 32.4360 [Removed]

68. Section 32.4360 is removed.

69. Section 32.4361 is revised to read as follows:

§ 32.4361 Deferred tax regulatory adjustments—net.

(a) This account shall include amounts of probable future revenue for the recovery of future increases in taxes payable and amounts of probable future revenue reductions attributable to future decreases in taxes payable. As reductions or reversals occur, amounts recorded in this account shall be reduced or increased, with a contra entry being made to Account 4341, Net deferred tax liability adjustments.

(b) This account shall also be adjusted for the impact of prospective tax rate changes on the deferred tax liability for those temporary differences underlying its existing balance.

70. Section 32.4540 is revised to read as follows:

§ 32.4540 Other capital.

This account shall include amounts which are credits arising from the donation by stockholders of the company's capital stock, capital recorded upon the reorganization or recapitalization of the company and temporary declines in the value of marketable securities held for investment purposes. (See also Account 1410, Other noncurrent assets).

71. Section 32.4999 is amended by revising paragraphs (c), (d), (e), (g)(2), (h), (i)(1), and (n), removing paragraphs (f)(2) and (g)(3), redesignating paragraph (f)(1) as (f), and by redesignating paragraph (g)(4) as (g)(3) to read as follows:

§ 32.4999 General.

* * * * *

(c) *Commissions.* Commissions paid to others or employees in place of compensation or salaries for services rendered, such as public telephone commissions, shall be charged to Account 6620 Services, and not to the revenue accounts. Other commissions shall be charged to the appropriate expense accounts.

(d) *Revenue recognition.* Credits shall be made to the appropriate revenue accounts when such revenue is actually earned. When the billing cycle encompasses more than one accounting period, adjustments are necessary to properly recognize the revenue applicable to the current accounting period under report. Revenues recorded under the terms of two-tier contracts or other variable payment plans should be deferred, if necessary, and recognized ratably with expenses over the terms of the related contract. Any amounts deferred shall be credited to Account 4300, Other long-term liabilities and deferred credits.

(e) *Contractual arrangements.* Charges and credits resulting from activities associated with the provisions of regulated telecommunications services shall be recorded in a manner consistent

with the nature of the underlying contractual arrangements. The charges and credits resulting from expense sharing or apportionment arrangements associated with the provision of regulated telecommunications services shall be recorded in the detailed regulated accounts. Charges and credits resulting from revenue settlement agreements or other revenue pooling arrangements associated with the provision of regulated telecommunications services shall be included in the appropriate revenue accounts. Those charges and credits resulting from contractual revenue pooling and/or sharing agreements shall be recorded in each prescribed revenue account and prescribed subsidiary record categories thereof to the extent that each is separately identifiable in the settlement process. It is not intended that settlement amounts be allocated or generally spread to the individual revenue accounts where they are not separately identifiable in the settlement process. When the settlement amounts are not identifiable by a revenue account they shall be recorded in Account 5060, Other basic area revenue, 5105, Long distance message revenue, or 5200, Miscellaneous revenue, as appropriate.

* * * * *

(g) * * *

(2) The revenue section of this system of accounts shall be comprised of six major groups—Local Network Services Revenues, Network Access Services Revenues, Long Distance Network Services Revenues, Miscellaneous Revenues, Nonregulated revenues, and Uncollectible Revenues, which shall be considered as a revenue group for the purposes of the construction of the system.

* * * * *

(h) *Local Network Services revenues.* Local Network Services revenues (Accounts 5001 through 5060) shall include revenues derived from the provision of service and equipment entirely within the basic service area. That area is defined as the normal boundaries for local calling plus Extended Area Service (EAS) boundaries as they apply to that service. It includes revenues derived from both local private network service and local public network services as well as from customer premises facilities services. Local revenues include associated charges such as one-time service connection or termination charges and secondary features such as call waiting.

(i) *Network Access revenues.* (1) Network Access revenues (Accounts 5081–5083) shall include revenues derived from the provision of exchange access services to an interexchange carrier or to an end user of telecommunications services beyond the exchange carrier's network.

* * * * *

(n) Revenue accounts to be maintained.

Account title	Class A account	Class B account
Local network services revenues:		
Basic local service revenue	.....	5000
Basic area revenue	5001	.....
Private line revenue	5040	.....
Other basic area revenue	5060	.....
Network access service revenues:		
End user revenue	5081	5081
Switched access revenue	5082	5082
Special access revenue	5083	5083
Long distance network services revenues:		
Long distance message revenue	5105	5105
Miscellaneous revenues:		
Miscellaneous revenue	5200	5200
Nonregulated revenues:		
Nonregulated operating revenue	5280	5280
Uncollectible revenues:		
Uncollectible revenue	5300	5300

72. Section 32.5000 is revised to read as follows:

§ 32.5000 Basic local service revenue.

Class B telephone companies shall use this account for revenues of the type and character required of Class A companies in Accounts 5001 through 5060.

73. Section 32.5001 is revised to read as follows:

§ 32.5001 Basic area revenue.

(a) This account shall include revenue derived from the provision of the following:

(1) Basic area message services such as flat rate services and measured services. Included is revenue derived from non-optional extended area services. Also included is revenue derived from the billed or guaranteed portion of semi-public services.

(2) Optional extended area service.

(3) Cellular mobile telecommunications systems connected to the public switched network placed between mobile units and other stations within the mobile service area.

(4) General radio telecommunications systems connected to the public switched network placed between mobile units and other stations within the mobile service area, as well as revenue from mobile radio paging, mobile dispatching, and signaling services.

(b) Revenue derived from charges for nonpublished number or additional and boldfaced listings in the alphabetical section of the company's telephone directories shall be included in Account 5200, Miscellaneous revenue.

(c) Revenue from private mobile telephone services which do not have access to the public switched network shall be included in Account 5200, Miscellaneous revenue.

§ 32.5004 [Removed]

74. Section 32.5004 is removed.

75. Section 32.5040 is amended by revising the section heading to read as follows:

§ 32.5040 Private line revenue.

* * * * *

§ 32.5050 [Removed]

76. Section 32.5050 is removed.

77. Section 32.5060 is revised to read as follows:

§ 32.5060 Other basic area revenue.

This account shall include:

(a) Revenue from the provision of secondary features which are integrated with the telecommunications network such as call forwarding, call waiting and touch-tone line service. Also included is revenue derived from the provision of public announcement and other record message services, directory assistance and other call completion services (excluding operator assisted basic long distance calls), as well as revenue derived from central office related service connection and termination charges, and other non-premise customer specific charges associated with public network services. This account shall also include local revenue not provided for in other accounts.

(b) Charges and credits resulting from contractual revenue pooling and/or sharing agreements for tariffed local network services only when they are not separately identifiable by local network services revenue accounts in the settlement process. (See also § 32.4999(e)). To the extent that the charges and credits resulting from a settlement process can be identified by Local Network Services Revenue account they shall be recorded in the applicable account.

(c) Revenue derived from tariffed information origination/termination plant. Included is revenue derived from the provision under leasing arrangements of tariffed customer premises equipment (CPE), terminal equipment, station apparatus and large private branch exchanges as well as tariffed nonrecurring charges related solely to station apparatus. Also included are all tariffed charges for customer premises activities and facilities not related solely to station apparatus.

§§ 32.5069 and 32.5080 [Removed]

78. Sections 32.5069 and 32.5080 are removed.

79. Section 32.5081 is revised to read as follows:

§ 32.5081 End user revenue.

(a) This account shall contain federally and state tariffed monthly flat rate charge assessed upon end users.

(b) Subsidiary record categories shall be maintained in order that the company may separately report amounts related to federal and state tariffed charges.

80. Section 32.5082 is revised to read as follows:

§ 32.5082 Switched access revenue.

(a) This account shall consist of federally and state tariffed charges assessed to interexchange carriers for access to local exchange facilities.

(b) Subsidiary record categories shall be maintained in order that the company may separately report the amounts contained herein that relate to limited pay telephone, carrier common line, line termination, local switching, intercept, information, common transport and dedicated transport. The subsidiary records shall also separately show the federal and state tariffed charges. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

81. Section 32.5083 is revised to read as follows:

§ 32.5083 Special access revenue.

(a) This account shall include all federally and state tariffed charges assessed for other than end user or switched access charges referred to in Account 5081, End user revenue, and Account 5082, Switched access revenue.

(b) Subsidiary record categories shall be maintained in order that the company may separately report the amounts contained herein that relate to recurring charges, nonrecurring charges and surcharges. The subsidiary records shall also separately show the federal and state tariffed charges. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§ 32.5084 [Removed]

82. Section 32.5084 is removed.

83. Section 32.5100 is revised to read as follows:

§ 32.5100 Long distance message revenue.

This account shall include revenue derived from message services that terminate beyond the basic service area of the originating wire center and are individually priced. This includes those message services which utilize the public long distance switching network and the basic subscriber access line. It also includes those long distance calls placed from mobile and public telephones, as well as any charges for operator assistance or special billing directly related to the completion of a specific call. This account shall also include revenue derived from individually priced message services offered under calling plans (discounted long distance) which do not utilize dedicated access lines, as well as those priced at the basic long distance rates where a discounted toll charge is on a per message basis. Any revenue derived from monthly or one-time charges for obtaining calling plan services shall be included in this account. This account includes revenue derived from the following services:

(a) Long distance services which permit unidirectional calls to a subscriber from specified services areas (multipoint-to-point service). These calls require the use of dedicated access lines connecting a subscriber's premises and a designated central office. These dedicated access lines are generally separate from those required for the subscriber to place outward calls. The call is billed to the subscriber even though it is generally initiated by the subscriber's customer or correspondent.

(b) Long distance services which permit the subscriber to place telephone calls from one location to other specified service areas (point-to-multipoint service). These calls are completed without operator assistance and require the use of a dedicated access line. The dedicated access line is generally separate from those required for inward message services and cannot be used to place calls within the basic service area or calls outside the selected service areas. Outward calls are screened and blocked to determine whether the calls are within an authorized service area.

(c) Services extending beyond the basic service area that involve dedicated circuits, private switching arrangements, and/or predefined transmission paths, whether virtual or physical, which provide communications between specific locations (e.g., point-to-point communications). Service connection charges, termination charges, rearrangements and changes, etc., shall be included in this account. Revenue derived from associated administrative and operational support services shall also be included in this account.

(1) Narrow-band analog private network circuits and facilities furnished exclusively for record forms of communications, such as teletypewriter, teletypesetter, telewriter, ticker, Morse, signaling, remote metering, and supervisory services.

(2) Private network circuits and facilities (including multipurpose wide-band) which provide voice grade services for the transmission of analog signals. It includes revenue from services such as voice, data and telephoto communication, as well as remote metering, supervisory control, miscellaneous signaling and channels furnished for the purpose of extending customer—provided communications systems. It includes revenue from the provision of facilities between customer premises and a serving office, a carrier distribution point, or an extension distribution channel.

(3) Private network circuits and facilities furnished for audio program transmission purposes, such as radio broadcasting, sound recording (wired music) and loud speaker services. It includes revenue from the provision of facilities for the transmission of analog signals between customer premises and a serving office, a carrier distribution point, or an extension distribution channel furnished in connection with such services. It also includes revenue from facilities furnished to carry the audio portion of a television program if furnished under separate audio rates. If the rate for television program services includes both the picture and sound portion of the transmission, the revenue shall also be included in this account.

(4) Private network circuits and facilities furnished for television program transmission purposes, such as commercial broadcast and educational or private television services. It includes revenue from the provision of facilities for the transmission of analog signals between customer premises and a serving office, a carrier distribution point, or an extension distribution channel furnished in connection with such services. It also includes revenue from both the picture and sound portions of transmission for television program service when provided under a combined rate schedule.

(5) The provision of circuits and facilities for the transmission of digital signals only.

(6) The provision of common user channels and switching capabilities used for the transmission of telecommunication signals between three (3) or more points in the network. Also included is revenue derived from the provision of basic switching and transfer arrangements used to connect private line channels.

(7) Charges and credits resulting from contractual revenue pooling and/or sharing agreements for tariffed long distance public network services and for tariffed long distance private network services.

§§ 32.5110 through, 32.5112, 32.5120 through 32.5126, 32.5128 and 32.5129, 32.5160, and 32.5169 [Removed]

84. Sections 32.5110 through 32.5112, 32.5120 through 32.5126, 32.5128 and 32.5129, 32.5160, and 32.5169 are removed.

85. Section 32.5200 is revised to read as follows:

§ 32.5200 Miscellaneous revenue.

This account shall include revenue derived from the following:

(a) Alphabetical and classified sections of directories including fees paid by other entities for the right to publish the company's directories. It includes the classified section of the directories, the sale of new telephone directories whether they are the company's own directories or directories purchased from others. It also includes revenue from the sale of specially bound telephone directories and special telephone directory covers; amounts charged for additional and boldface listings, marginal displays, inserts, and other advertisements in the alphabetical of the company's telephone directories; and charges for unlisted and non-published telephone numbers.

(b) Rental or subrental to others of telecommunications plant furnished apart from telecommunications services rendered by the company (This revenue includes taxes when borne by the lessee). It includes revenue from the rent of such items as space in conduit, pole line space for attachments, and any allowance for return on property used in joint operations and shared facilities agreements. The expense of maintaining and operating the rented property, including depreciation and insurance, shall be included in the appropriate operating expense accounts. Taxes applicable to the rented property shall be included by the owner of the rented property in appropriate tax accounts. When land or buildings are rented on an incidental basis for non-telecommunications use, the rental and expenses are included in Account 7300, Nonoperating income and expense.

(c) Services rendered to other companies under a license agreement, general services contract, or other arrangement providing for the furnishing of general accounting, financial, legal, patent, and other general services associated with the provision of regulated telecommunications services.

(d) The provision, either under tariff or through contractual arrangements, of special billing information to customers in the form of magnetic tapes, cards or statements. Special billing information provides detail in a format and/or at a level of detail not normally provided in the standard billing rendered for the regulated telephone services utilized by the customer.

(e) The performance of customer operations services for others incident to the company's regulated telecommunications operations which are not provided for elsewhere. (See also §§ 32.14(e) and 32.4999(e)).

(f) Contract services (plant maintenance) performed for others incident to the company's regulated telecommunications operations. This includes revenue from the incidental performance of nontariffed operating and maintenance activities for others which are similar in nature to those activities which are performed by the company in operating and maintaining its own telecommunications plant facilities. The records supporting the entries in this account shall be maintained with sufficient particularity to identify the revenue and associated Plant Specific Operations Expenses related to each undertaking. This account does not include revenue related to the performance of operation or maintenance activities under a joint operating agreement.

(g) The provision of billing and collection services to other telecommunications companies. This includes amounts charged for services such as message recording, billing, collection, billing analysis, and billing information services, whether rendered under tariff or contractual arrangements.

(h) Charges and credits resulting from contractual revenue pooling and/or sharing agreements for activities included in the miscellaneous revenue accounts only when they are not identifiable by miscellaneous revenue account in the settlement process. (See also § 32.4999(e)). The extent that the charges and credits resulting from a settlement process can be identified by miscellaneous revenue accounts they shall be recorded in the applicable account.

(i) The provision of transport and termination of local telecommunications traffic pursuant to section 251(c) and part 51 of this chapter.

(k) The provision of unbundled network elements pursuant to section 251(c) of the Communications Act and part 51 of this chapter.

(l) This account shall also include other incidental regulated revenue such as:

(1) Collection overages (collection shortages shall be charged to Account 6620, Services.)

(2) Unclaimed refunds for telecommunications services when not subject to escheats;

(3) Charges (penalties) imposed by the company for customer checks returned for non-payment;

(4) Discounts allowed customers for prompt payment;

(5) Late-payment charges;

(6) Revenue from private mobile telephone services which do not have access to the public switched network; and

(7) Other incidental revenue not provided for elsewhere in other Revenue accounts.

(m) Any definitely known amounts of losses of revenue collections due to fire

or theft, at customers' coin-box stations, at public or semipublic telephone stations, in the possession of collectors en route to collection offices, on hand at collection offices, and between collection offices and banks shall be charged to Account 6720, General and Administrative.

§§ 32.5230, 32.5240, 32.5250, 32.5260 through 32.5264, 32.5269, and 32.5270 [Removed]

86. Sections 32.5230, 32.5240, 32.5250, 32.5260 through 32.6264, 32.5269, and 32.5270 are removed.

87. Section 32.5280 is amended by revising paragraph (c) to read as follows:

§ 32.5280 Nonregulated operating revenue.

* * * * *

(c) Separate subsidiary record categories shall be maintained for two groups of nonregulated revenue as follows: one subsidiary record for all revenues derived from regulated services treated as nonregulated for federal accounting purposes pursuant to Commission order and the second for all other revenues derived from a nonregulated activity as set forth in paragraph (a) of this section.

88. Section 32.5300 is revised to read as follows:

§ 32.5300 Uncollectible revenue.

This account shall be charged with amounts concurrently credited to Account 1170, Receivables.

§§ 32.5301 and 32.5302 [Removed]

89. Sections 32.5301 and 32.5302 are removed.

90. Section 32.5999 is amended by removing paragraph (a)(3), redesignating (a)(4) as (a)(3), and revising paragraphs (b)(4), (c), and (g) as follows:

§ 32.5999 General.

* * * * *

(b) * * *

(4) In addition to the activities specified in paragraph (b)(3) of this section, the appropriate Plant Specific Operations Expense accounts shall include the cost of personnel whose principal job is the operation of plant equipment, such as general purpose computer operators, aircraft pilots, chauffeurs and shuttle bus drivers. However, when the operation of equipment is performed as part of other identifiable functions (such as the use of office equipment, capital tools or motor vehicles) the operators' cost shall be charged to accounts appropriate for those functions. (For costs of operator services personnel, see Account 6620, Services, and for costs of test board personnel see Account 6533.)

(c) *Plant nonspecific operations expense.* The Plant Nonspecific Operations Expense accounts shall include expenses related to property held for future telecommunications use, provisioning expenses, network operations expenses, and depreciation and amortization expenses. Accounts in this group (except for Account 6540, Access expense, and Account 6560, Depreciation and amortization expense) shall include the costs of performing activities described in narratives for individual accounts. These costs shall also include the costs of supervision and office support of these activities.

* * * * *

(g) Expense accounts to be maintained.

Account title	Class A account	Class B account
Income statement accounts		
Plant specific operations expense:		
Network support expense		6110
Motor vehicle expense	6112	
Aircraft expense	6113	
Tools and other work equipment expense	6114	
General support expenses		6120
Land and building expenses	6121	
Furniture and artworks expense	6122	
Office equipment expense	6123	
General purpose computers expense	6124	
Central office switching expense		6210
Non-digital switching expense	6211	
Digital electronic switching expense	6212	
Operators system expense	6220	6220
Central office transmission expenses		6230
Radio systems expense	6231	
Circuit equipment expense	6232	
Information origination/termination expense		6310
Station apparatus expense	6311	
Large private branch exchange expense	6341	
Public telephone terminal equipment expense	6351	
Other terminal equipment expense	6362	
Cable and wire facilities expenses		6410
Poles expense	6411	
Aerial cable expense	6421	
Underground cable expense	6422	
Buried cable expense	6423	
Submarine and deep sea cable expense	6424	
Intrabuilding network cable expense	6426	
Aerial wire expense	6431	
Conduit systems expense	6441	
Plant nonspecific operations expense:		
Other property plant and equipment expenses		6510
Property held for future Telecommunications use expense	6511	
Provisioning expense	6512	
Network operations expenses		6530
Power expense	6531	
Network administration expense	6532	

Account title	Class A account	Class B account
Testing expense	6533	.....
Plant operations administration expense	6534	.....
Engineering expense	6535	.....
Access expense	6540	6540
Depreciation and amortization expenses	6560	6560
Customer operations expense:		
Marketing	.....	6610
Product management and sales	6611	
Product advertising	6613	
Services	6620	6620
Corporate operations expense:		
General and administrative	6720	6720
Provision for uncollectible notes receivable	6790	6790

91. Section 32.6110 is revised to read as follows:

§ 32.6110 Network support expenses.

(a) Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6112 through 6114.

(b) Credits shall be made to this account by Class B companies for amounts transferred to Construction and/or other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

92. Section 32.6112 is amended by revising paragraph (b) to read as follows:

§ 32.6112 Motor vehicle expense.

* * * * *

(b) Credits shall be made to this account for amounts transferred to Construction and/or to other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

93. Section 32.6113 is amended by revising paragraph (b) to read as follows:

§ 32.6113 Aircraft expense.

* * * * *

(b) Credits shall be made to this account for amounts transferred to Construction and/or to other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

94. Section 32.6114 is amended by revising paragraph (b) to read as follows:

§ 32.6114 Tools and other work equipment expense.

* * * * *

(b) Credits shall be made to this account for amounts related to special purpose vehicles and other work equipment transferred to Construction and/or to other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours.

95. Section 32.6120 is revised to read as follows:

§ 32.6120 General support expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6121 through 6124.

96. Section 32.6124 is revised to read as follows:

§ 32.6124 General purpose computers expense.

This account shall include the costs of personnel whose principal job is the physical operation of general purpose computers and the maintenance of operating systems. This excludes the cost of preparation of input data or the use of outputs which are chargeable to the accounts appropriate for the activities being performed. Also excluded are costs incurred in planning and maintaining application systems and databases for general purpose computers. (See also § 32.6720, General and administrative.) Separately metered electricity for general purpose computers shall also be included in this account.

97. Section 32.6210 is revised to read as follows:

§ 32.6210 Central office switching expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6211 through 6212.

98. Section 32.6211 is revised to read as follows:

§ 32.6211 Non-digital switching expense.

This account shall include expenses associated with non-digital electronic switching and electro-mechanical switching.

99. Section 32.6212 is revised to read as follows:

§ 32.6212 Digital electronic switching expense.

(a) This account shall include expenses associated with digital electronic switching. Digital electronic switching expenses shall be maintained in the following subaccounts: 6212.1 Circuit, 6212.2 Packet.

(b) This subaccount 6212.1 Circuit shall include expenses associated with digital electronic switching equipment used to provide circuit switching.

(c) This subaccount 6212.2 Packet shall include expenses associated with digital electronic switching equipment used to provide packet switching.

§ 32.6215 [Removed]

100. Section 32.6215 is removed.

101. Section 32.6230 is revised to read as follows:

§ 32.6230 Central office transmission expense.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6231 and 6232.

§ 32.6231 [Amended]

102. Section 32.6231 is amended by removing paragraph (b) and designating paragraph (a) as an undesignated paragraph.

103. Section 32.6232 is revised to read as follows:

§ 32.6232 Circuit equipment expense.

(a) This account shall include expenses associated with circuit equipment. Circuit equipment expenses shall be maintained in the following subaccounts: 6232.1 Electronic, 6232.2 Optical.

(b) This subaccount 6232.1 Electronic shall include expenses associated with electronic circuit equipment.

(c) This subaccount 6232.2 Optical shall include expenses associated with optical circuit equipment.

104. Section 32.6310 is revised to read as follows:

§ 32.6310 Information origination/termination expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A telephone companies in Accounts 6311 through 6362.

105. Section 32.6410 is revised to read as follows:

§ 32.6410 Cable and wire facilities expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6411 through 6441.

106. Section 32.6424 is revised to read as follows:

§ 32.6424 Submarine and deep sea cable expense.

(a) This account shall include expenses associated with submarine and deep sea cable.

(b) Subsidiary record categories shall be maintained as provided in § 32.2424.

§ 32.6425 [Removed]

107. Section 32.6425 is removed.

108. Section 32.6510 is revised to read as follows:

§ 32.6510 Other property, plant and equipment expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6511 and 6512.

109. Section 32.6512 is revised to read as follows:

§ 32.6512 Provisioning expense.

(a) This account shall include costs incurred in provisioning material and supplies, including office supplies. This includes receiving and stocking, filling requisitions from stock, monitoring and replenishing stock levels, delivery of material, storage, loading or unloading and administering the reuse or refurbishment of material. Also included are adjustments resulting from the periodic inventory of material and supplies.

(b) Credits shall be made to this account for amounts transferred to construction and/or to Plant Specific Operations Expense. These costs are to be cleared by adding to the cost of material and supplies a suitable loading charge.

110. Section 32.6530 is revised to read as follows:

§ 32.6530 Network operations expense.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6531 through 6535.

111. Section 32.6560 is revised to read as follows:

§ 32.6560 Depreciation and amortization expenses.

(a) This account shall include: (1) The depreciation expense of capitalized costs in Accounts 2112 through 2441, inclusive.

(2) The depreciation expense of capitalized costs included in Account 2002, Property held for future telecommunications use.

(3) The amortization of costs included in Accounts 2681, Capital leases, 2682, Leasehold improvements, and Account 2690, Intangibles.

(4) The amortization of costs included in Account 2005, Telecommunications plant adjustment, and lump-sum write-offs of amounts of plant acquisition adjustment as provided for in § 32.2005(b)(4).

(b) Subsidiary records shall be maintained so as to show that character of the amounts related to plant acquisition adjustments.

§§ 32.6561 through 32.6565 [Removed]

112. Sections 32.6561 through 32.6565 are removed.

113. Section 32.6610 is revised to read as follows:

§ 32.6610 Marketing.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6611 through 6613.

114. Section 32.6611 is revised to read as follows:

§ 32.6611 Product management and sales.

This account shall include:

(a) Costs incurred in performing administrative activities related to marketing products and services. This includes competitive analysis, product and service identification and specification, test market planning, demand forecasting, product life cycle analysis, pricing analysis, and identification and establishment of distribution channels.

(b) Costs incurred in selling products and services. This includes determination of individual customer needs, development and presentation of customer proposals, sales order preparation and handling, and preparation of sales records.

§ 32.6612 [Removed]

115. Section 32.6612 is removed.

116. Section 32.6620 is revised to read as follows:

§ 32.6620 Services.

(a) This account shall include:

(1) Costs incurred in helping customers place and complete calls, except directory assistance. This includes handling and recording; intercept; quoting rates, time and charges; and all other activities involved in the manual handling of calls.

(2) Costs incurred in providing customer number and classified listings. This includes preparing or purchasing, compiling, and disseminating those listings through directory assistance or other means.

(3) Costs incurred in establishing and servicing customer accounts. This includes:

(i) Initiating customer service orders and records;

(ii) Maintaining and billing customer accounts;

(iii) Collecting and investigating customer accounts, including collecting revenues, reporting receipts, administering collection treatment, and handling contacts with customers regarding adjustments of bills;

(iv) Collecting and reporting pay station receipts; and

(v) Instructing customers in the use of products and services.

(b) This account shall also include amounts paid by interexchange carriers or other exchange carriers to another exchange carrier for billing and collection services. Subsidiary record categories shall be maintained in order that the entity may separately report interstate and intrastate amounts. Such subsidiary record categories shall be reported as required by Part 43 of this chapter.

(c) Class A companies, except mid-sized incumbent local exchange carriers, shall maintain the following subaccounts for expenses recorded in this account: 6620.1 Wholesale, 6620.2 Retail.

(1) *6620.1 Wholesale.* This subaccount shall include costs associated with telecommunications services provided for resale to other telecommunications carriers.

(2) *6620.2 Retail.* This subaccount shall include costs associated with telecommunications services provided to subscribers who are not telecommunications carriers.

§§ 32.6621, 32.6623, and 32.6710 through 32.6712 [Removed]

117. Sections 32.6621, 32.6623, and 32.6710 through 32.6712 are removed.

118. Section 32.6720 is revised to read as follows:

§ 32.6720 General and administrative.

This account shall include costs incurred in the provision of general and administrative services as follows:

(a) Formulating corporate policy and in providing overall administration and management. Included are the pay, fees and expenses of boards of directors or similar policy boards and all board-designated officers of the company and their office staffs, e.g., secretaries and staff assistants.

(b) Developing and evaluating long-term courses of action for the future operations of the company. This includes performing corporate organization and integrated long-range planning, including management studies, options and contingency plans, and economic strategic analysis.

(c) Providing accounting and financial services. Accounting services include payroll and disbursements, property accounting, capital recovery, regulatory accounting (revenue requirements, separations, settlements and corollary cost accounting), non-customer billing, tax accounting, internal and external auditing, capital and operating budget analysis and control, and general accounting (accounting principles and procedures and journals, ledgers, and financial reports). Financial services include banking operations, cash management, benefit investment fund management (including actuarial services), securities management, debt trust administration, corporate financial planning and analysis, and internal cashier services.

(d) Maintaining relations with government, regulators, other companies and the general public. This includes:

(1) Reviewing existing or pending legislation (see also Account 7300, Nonoperating income and expense, for lobbying expenses);

(2) Preparing and presenting information for regulatory purposes, including tariff and service cost filings, and obtaining radio licenses and construction permits;

(3) Performing public relations and non-product-related corporate image advertising activities;

(4) Administering relations, including negotiating contracts, with telecommunications companies and other utilities, businesses, and industries. This excludes sales contracts (see also Account 6611, Product management and sales); and

(5) Administering investor relations.

(e) Performing personnel administration activities. This includes:

(1) Equal Employment Opportunity and Affirmative Action Programs;

(2) Employee data for forecasting, planning and reporting;

(3) General employment services;

(4) Occupational medical services;

(5) Job analysis and salary programs;

(6) Labor relations activities;

(7) Personnel development and staffing services, including counseling, career planning, promotion and transfer programs;

(8) Personnel policy development;

(9) Employee communications;

(10) Benefit administration;

(11) Employee activity programs;

(12) Employee safety programs; and

(13) Nontechnical training course development and presentation.

(f) Planning and maintaining application systems and databases for general purpose computers.

(g) Providing legal services: This includes conducting and coordinating litigation, providing guidance on regulatory and labor matters, preparing, reviewing and filing patents and contracts and interpreting legislation. Also included are court costs, filing fees, and the costs of outside counsel, depositions, transcripts and witnesses.

(h) Procuring material and supplies, including office supplies. This includes analyzing and evaluating suppliers' products, selecting appropriate suppliers, negotiating supply contracts, placing purchase orders, expediting and controlling orders placed for material, developing standards for material purchased and administering vendor or user claims.

(i) Making planned search or critical investigation aimed at discovery of new knowledge. It also includes translating research findings into a plan or design for a new product or process or for a significant improvement to an existing product or process, whether intended for sale or use. This excludes making routine alterations to existing products, processes, and other ongoing operations even though those alterations may represent improvements.

(j) Performing general administrative activities not directly charged to the user, and not provided in paragraphs (a) through (i) of this section. This includes providing general reference libraries, food services (e.g., cafeterias, lunch rooms and vending facilities), archives, general security investigation services, operating official private branch exchanges in the conduct of the business, and telecommunications and mail services. Also included are payments in settlement of accident and damage claims, insurance premiums for protection against losses and damages, direct benefit payments to or on behalf of retired and separated employees, accident and sickness disability payments, supplemental payments to employees while in governmental service, death payments, and other miscellaneous costs of a corporate nature. This account excludes the cost of office services, which are to be included in the accounts appropriate for the activities supported.

§§ 32.6721 through 32.6728 [Removed]

119. Sections 32.6721 through 32.6728 are removed.

120. Section 32.6790 is revised to read as follows:

§ 32.6790 Provision for uncollectible notes receivable.

This account shall be charged with amounts concurrently credited to Account 1170, Receivables.

121. Section 32.6999 is revised to read as follows:

§ 32.6999 General.

(a) *Structure of the other income accounts.* The Other Income Accounts are designed to reflect both operating and nonoperating income items including taxes, extraordinary items and other income and expense items not properly included elsewhere.

(b) *Other income accounts listing.*

Account title	Class A account	Class B account
Other operating income and expense:		
Other operating income and expense	7100	7100
Operating taxes:		
Operating taxes		7200
Operating investment tax credits-net	7210	.....
Operating Federal income taxes	7220	.....
Operating state and local income taxes	7230	.....
Operating other taxes	7240	.....
Provision for deferred operating income taxes—net	7250	.....
Nonoperating income and expense:		
Nonoperating income and expense	7300	7300

Account title	Class A account	Class B account
Nonoperating taxes:		
Nonoperating taxes	7400	7400
Interest and related items:		
Interest and related items	7500	7500
Extraordinary items	7600	7600
Jurisdictional differences and non-regulated income items:		
Income effect of jurisdictional ratemaking difference—net	7910	7910
Nonregulated net income	7990	7990

§ 32.7099 [Removed]

122. Section 32.7099 is removed.

123. Section 32.7100 is revised to read as follows:

§ 32.7100 Other operating income and expenses.

This account shall be used to record the results of transactions, events or circumstances during the periods which are incidental or peripheral to the major or central operations of the company. It shall be used to record all items of an operating nature such as incidental work performed for others not provided for elsewhere. Whenever practicable the inflows and outflows associated with a transaction, event or circumstances shall be matched and the result shown as a net gain or loss. This account shall include the following:

(a) Profits realized from custom work (plant construction) performed for others incident to the company's regulated telecommunications operations. This includes profits from the incidental performance of nontariffed construction activities (including associated engineering and design) for others which are similar in nature to those activities which are performed by the company in constructing its own telecommunications plant facilities. The records supporting the entries in this account for income and custom work shall be maintained with sufficient particularity to identify separately the revenue and costs associated with each undertaking.

(b) Return on investment for the use of regulated property plant and equipment to provide nonregulated products and services.

(c) All gains and losses resulting from the exchange of foreign currency. Transaction (realized) gains or losses shall be measured based on the exchange rate in effect on the transaction date. Unrealized gains or losses shall be measured based on the exchange rate in effect at the balance sheet date.

(d) Gains or losses resulting from the disposition of land or artworks.

(e) Charges or credits, as appropriate, to record the results of transactions, events or circumstances which are of an operational nature, but occur irregularly or are peripheral to the major or central operations of the company and not provided for elsewhere.

§§ 32.7110, 32.7130, 32.7140, 32.7150, and 32.7160. [Removed]

124. Sections 32.7110, 32.7130, 32.7140, 32.7150, and 32.7160 are removed.

125. Section 32.7200 is revised to read as follows:

§ 32.7200 Operating taxes.

Class B telephone companies shall use this account for operating taxes of the type and character required of Class A companies in Accounts 7210 through 7250.

126. Section 32.7210 is amended by revising paragraph (b) to read as follows:

§ 32.7210 Operating investment tax credits—net.

* * * * *

(b) This account shall be credited and Account 4320 shall be charged ratably with the amortization of each year's investment tax credits included in Account 4320 for investment services for ratemaking purposes. Such amortization shall be determined in relation to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.

127. Section 32.7240 is amended by revising paragraphs (d), (e), and (g) to read as follows:

§ 32.7240 Operating other taxes.

* * * * *

(d) Interest on tax assessments which are not paid when due shall be included in Account 7500, Interest and related items.

(e) Taxes paid by the company under tax-free covenants on indebtedness shall be charged to Account 7300, Nonoperating income and expense.

* * * * *

(g) Taxes on rented telecommunications plant which are borne by the lessee shall be credited by the owner to Account 5200, Miscellaneous revenue, and shall be charged by the lessee to the appropriate Plant Specific Operations Expense account.

§ 32.7299 [Removed]

128. Section 32.7299 is removed.

129. Section 32.7300 is revised to read as follows:

§ 32.7300 Nonoperating income and expense.

This account shall be used to record the results of transactions, events and circumstances affecting the company during a period and which are not operational in nature. This account shall include such items as nonoperating taxes, dividend income and interest income. Whenever practicable, the inflows and outflows associated with a transaction or event shall be matched and the result shown as a net gain or loss. This account shall include the following:

(a) Dividends on investments in common and preferred stock, which is the property of the company, whether such stock is owned by the company and held in its treasury, or deposited in trust including sinking or other funds, or otherwise controlled.

(b) Dividends received and receivable from affiliated companies accounted for on the equity method shall be included in Account 1410, Other noncurrent assets, as a reduction of the carrying value of the investments.

(c) Interest on securities, including notes and other evidences of indebtedness, which are the property of the company, whether such securities are owned by the company and held in its treasury, or deposited in trust including sinking or other funds, or otherwise controlled. It shall also include interest on cash bank balances, certificates of deposits, open accounts, and other analogous items.

(d) For each month the applicable amount requisite to extinguish, during the interval between the date of acquisition and date of maturity, the difference between the purchase price and the par value of securities owned or held in sinking or other funds, the income from which is includable in this account. Amounts thus credited or

charged shall be concurrently included in the accounts in which the securities are carried.

(e) Amounts charged to the telecommunications plant under construction account related to allowance for funds used during construction. (See § 32.2000(c)(2)(x).)

(f) Gains or losses resulting from:

(1) The disposition of land or artworks;

(2) The disposition of plant with traffic;

(3) The disposition of nonoperating telecommunications plant not previously used in the provision of telecommunications services.

(g) All other items of income and gains or losses from activities not specifically provided for elsewhere, including representative items such as:

(1) Fees collected in connection with the exchange of coupon bonds for registered bonds;

(2) Gains or losses realized on the sale of temporary cash investments or marketable equity securities;

(3) Net unrealized losses on investments in current marketable equity securities;

(4) Write-downs or write-offs of the book costs of investment in equity securities due to permanent impairment;

(5) Gains or losses of nonoperating nature arising from foreign currency exchange or translation;

(6) Gains or losses from the extinguishment of debt made to satisfy sinking fund requirements;

(7) Amortization of goodwill;

(8) Company's share of the earnings or losses of affiliated companies accounted for on the equity method; and

(9) The net balance of the revenue from and the expenses (including depreciation, amortization and insurance) of property, plant, and equipment, the cost of which is includable in Account 2006, Nonoperating plant.

(h) Costs that are typically given special regulatory scrutiny for ratemaking purposes. Unless specific justification to the contrary is given, such costs are presumed to be excluded from the costs of service in setting rates.

(1) Lobbying includes expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances, or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises, or for the purpose of influencing the decisions of public officials. This also includes advertising, gifts, honoraria, and political contributions. This does not include such expenditures which are directly related to communications with and appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations;

(2) Contributions for charitable, social or community welfare purposes;

(3) Membership fees and dues in social, service and recreational or athletic clubs and organizations;

(4) Penalties and fines paid on account of violations of statutes. This account shall also include penalties and fines paid on account of violations of U.S. antitrust statutes, including judgements and payments in settlement of civil and criminal suits alleging such violations; and

(5) Abandoned construction projects.

(i) Cash discounts on bills for material purchased shall not be included in this account.

§§ 32.7310, 32.7320, 32.7330, 32.7340, 32.7350, 32.7360, 32.7370, and 32.7399 [Removed].

130. Sections 32.7310, 32.7320, 32.7330, 32.7340, 32.7350, 32.7360, 32.7370, and 32.7399 are removed.

131. Section 32.7400 is revised to read as follows:

§ 32.7400 Nonoperating taxes.

This account shall include taxes arising from activities which are not a part of the central operations of the entity.

(a) This account shall be charged and Account 4330, Unamortized nonoperating investment tax credits—net, shall be credited with investment tax credits generated from qualified expenditures related to other operations which the company has elected to defer rather than recognize currently in income.

(b) This account shall be credited and Account 4330 shall be charged with the amortization of each year's investment tax credits included in such accounts relating to amortization of previously deferred investment tax credits of other property or regulated property, the amortization of which does not serve to reduce costs of service (but the unamortized balance does reduce rate base) for ratemaking purposes. Such amortization shall be determined with reference to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.

(c) This account shall be charged and Account 4070, Income taxes—accrued, shall be credited for the amount of nonoperating Federal income taxes and state and local income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged.

(d) Taxes shall be accrued each month on an estimated basis and adjustments made as more current data becomes available.

(e) Companies that adopt the flow-through method of accounting for investment tax credits shall reduce the calculated provision in this account by the entire amount of the credit realized during the year. Tax credits, other than investment tax credits, if normalized, shall be recorded consistent with the accounting for investment tax credits.

(f) No entries shall be made to this account to reflect interperiod tax allocation.

(g) Taxes (both Federal and state) shall be accrued each month on an estimated basis and adjustments made as later data becomes available.

(h) This account shall be charged and Account 4080, Other taxes—accrued, shall be credited for all nonoperating taxes, other than Federal, state and local income taxes, and payroll related taxes for the current period. Among the items includable in this account are property, gross receipts, franchise and capital stock taxes. This account shall also reflect subsequent adjustments to amounts previously charged.

(i) This account shall be charged or credited, as appropriate, with contra entries recorded to the following accounts for nonoperating tax expenses that has been deferred in accordance with § 32.22: 4110 Net Current Deferred Nonoperating Income Taxes, 4350 Net Noncurrent Deferred Nonoperating Income Taxes.

(j) Subsidiary record categories shall be maintained to distinguish between property and nonproperty related deferrals and so that the company may separately report the amounts contained herein that relate to Federal, state and local income taxes. Such subsidiary record categories shall be reported as required by part 43 of this chapter.

§§ 32.7410, 32.7420, 32.7430, 32.7440, 32.7450, and 32.7499 [Removed].

132. Sections 32.7410 32.7420, 32.7430, 32.7440, 32.7450, and 32.7499 are removed.

133. Section 32.7500 is revised to read as follows:

§ 32.7500 Interest and related items.

(a) This account shall include the current accruals of interest on all classes of funded debt the principal of which is includable in Account 4200, Long term debt and funded debt. It shall also

include the interest on funded debt the maturity of which has been extended by specific agreement. This account shall be kept so that the interest on each class of funded debt may be shown separately in the annual reports to this Commission.

(b) These accounts shall not include charges for interest on funded debt issued or assumed by the company and held by or for it, whether pledged as collateral or held in its treasury, in special deposits or in sinking or other funds.

(c) Interest expressly provided for and included in the face amount of securities issued shall be charged at the time of issuance to Account 1280, Prepayments, and cleared to this account as the term expires to which the interest applies.

(d) This account shall also include monthly amortization of balances in Account 4200, Long-term debt and funded debt.

(e) This account shall include the interest portion of each capital lease payment.

(f) This account shall include the monthly amortization of the balances in Account 1410, Other noncurrent assets.

(g) This account shall include all interest deductions not provided for elsewhere, e.g., discount, premium, and expense on notes maturing one year or less from date of issue.

(h) A list of representative items of indebtedness, the interest on which is chargeable to this account, follows:

(1) Advances from affiliated companies;

(2) Advances from nonaffiliated companies and other liabilities;

(3) Assessments for public improvements past due;

(4) Bond coupons, matured and unpaid;

(5) Claims and judgments;

(6) Customers' deposits;

(7) Funded debt mature, with respect to which a definite agreement as to extension has not been made;

(8) Notes payable on demand or maturing one year or less from date of issue;

(9) Open accounts;

(10) Tax assessments, past due; and

(11) Discount, premium, and issuance expense of notes maturing one year or less from date of issue.

§§ 32.7510, 32.7520, 32.7530, 32.7540, and 32.7599 [Removed].

134. Sections 32.7510, 32.7520, 32.7530, 32.7540, and 32.7599 are removed.

135. Section 32.7600 is revised to read as follows:

§ 32.7600 Extraordinary items.

(a) This account is intended to segregate the effects of events or transactions that are extraordinary. Extraordinary events and transactions are distinguished by both their unusual nature and by the infrequency of their occurrence, taking into account the environment in which the company operates. This account shall also include the related income tax effect of the extraordinary items.

(b) This account shall be credited and/or charged with nontypical, noncustomary and infrequently recurring gains and/or losses which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items.

(c) This account shall be charged or credited and Account 4070, Income taxes—accrued, shall be credited or charged for all current income tax effects (Federal, state and local) of extraordinary items.

(d) This account shall also be charged or credited, as appropriate, with a contra amount recorded to Account 4350, Net noncurrent deferred nonoperating income taxes or Account 4110, Net current deferred nonoperating income taxes for the income tax effects (Federal, state and local) of extraordinary items that have been deferred in accordance with § 32.22.

§§ 32.7610, 32.7620, 32.7630, and 32.7640 [Removed].

136. Sections 32.7610, 32.7620, 32.7630, and 32.7640 are removed.

137. Section 32.9000 is amended by revising the definition of *Mid-sized incumbent local exchange carrier* to read as follows:

§ 32.9000 Glossary of terms.

* * * * *

Mid-sized incumbent local exchange carrier is a carrier whose annual revenue from regulated telecommunications operations equals or exceeds the indexed revenue threshold and whose revenue when aggregated with the revenues of any local exchange carrier that it controls, is controlled by, or with which it is under common control is less than $7 billion (indexed for inflation as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index (GDP–CPI)).

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

139. Section 43.21 is amended by revising paragraph (e) introductory text and by revising references to ''Each local exchange carrier'' in paragraphs (f) through (j) to read ''Each incumbent local exchange carrier'' each place it appears.

§ 43.21 Annual reports of carriers and certain affiliates.

* * * * *

(e) Each incumbent local exchange carrier, except mid-sized incumbent local exchange carriers, as defined by § 32.9000 with annual operating revenues equal to or above the indexed revenue threshold shall file, no later than April 1 of each year:

* * * * *

PART 51—INTERCONNECTION

140. The authority citation for Part 51 continues to read as follows:

Authority: Sections 1–5, 7, 210–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. as amended, 1077; 47 U.S.C. §§ 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

141. Section 51.609 is amended by revising paragraphs (c)(1),(c)(2), (c)(3), and (d) to read as follows:

§ 51.609 Determination of avoided retail costs.

* * * * *

(c) * * *

(1) Include, as direct costs, the costs recorded in USOA accounts 6611(product management and sales), 6613 (product advertising) and 6620 (Services) (Secs. 32.6611, 32.6613 and 32.6620 of this chapter);

(2) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121–6124 (general support expenses), 6720 (corporate operations expenses), and uncollectible telecommunications revenue included in 5300 (uncollectible revenue) (Secs. 32.6121 through 32.6124, 32.6720 and 32.5300 of this chapter); and

(3) Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (Secs. 32.6112 through 32.6114, 32.6211 through 32.6560 of this chapter).

(d) Costs included in accounts 6611, 6613 and 6620 described in paragraph (c) of this section (§§ 32.6611, 32.6613 and 32.6620 of this chapter) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in

these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6112 through 6114 and 6211 through 6560 described in paragraph (c) of this section (§§ 32.6112 through 32.6114, 32.6211 through 32.6560 of this chapter) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

* * * * *

PART 54—UNIVERSAL SERVICE

142. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i) 201, 205, 214, and 254 unless otherwise noted.

Subpart D—Universal Service Support for High Cost Areas

143. Section 54.301 is amended by revising the table in paragraph (b), and paragraphs (c)(2), (c)(5), and (d)(4) to read as follows:

§ 54.301 Local switching support.

* * * * *

(b) * * *

I	
Telecommunications Plant in Service (TPIS)	Account 2001
Telecommunications Plant—Other	Accounts 2002, 2003, 2005
General Support Assets	Account 2110
Central Office Assets	Accounts 2210, 2220, 2230
Central Office-switching, Category 3 (local switching)	Account 2210, Category 3
Information Origination/termination Assets	Account 2310
Cable and Wire Facilities Assets	Account 2410
Amortizable Tangible Assets	Account 2680
Intangibles	Account 2690
II	
Rural Telephone Bank (RTB) Stock	Included in Account 1410
Materials and Supplies	Account 1220.1
Cash Working Capital	Defined in 47 CFR 65.820(d)
III	
Accumulated Depreciation	Account 3100
Accumulated Amortization	Included in Accounts 2005, 2680, 2690, 3410
Net Deferred Operating Income Taxes	Accounts 4100, 4340
Network Support Expenses	Account 6110
General Support Expenses	Account 6120
Central Office Switching, Operator Systems, and Central Office Transmission Expenses.	Accounts 6210, 6220, 6230
Information Origination/Termination Expenses	Account 6310
Cable and Wire Facilities Expenses	Account 6410
Other Property, Plant and Equipment Expenses	Account 6510
Network Operations Expenses	Account 6530
Access Expense	Account 6540
Depreciation and Amortization Expense	Account 6560
Marketing Expense	Account 6610
Services Expense	Account 6620
Corporate Operations Expense	Account 6720
Operating Taxes	Accounts 7230, 7240
Federal Investment Tax Credits	Account 7210
Provision for Deferred Operating Income Taxes-Net	Account 7250
Allowance for Funds Used During Construction	Included in Account 7300
Charitable Contributions	Included in Account 7300
Interest and Related Items	Account 7500
IV	
Other Non-Current Assets	Included in Account 1410
Deferred Maintenance and Retirements	Included in Account 1438
Deferred Charges	Included in Account 1438
Other Jurisdictional Assets and Liabilities	Accounts 1500, 4370
Customers' Deposits	Account 4040
Other Long-Term Liabilities	Included in Account 4300

(c) * * *

(2) Telecommunications Plant—Other (Accounts 2002, 2003, 2005); Rural Telephone Bank (RTB) Stock (included in Account 1410); Materials and Supplies (Account 1220.1); Cash Working Capital (Sec. 65.820(d) of this chapter); Accumulated Amortization (Included in Accounts 2005, 2680, 2690, 3410); Net Deferred Operating Income Taxes (Accounts 4100, 4340); Network Support Expenses (Account 6110); Other Property, Plant and Equipment Expenses (Account 6510); Network Operations Expenses (Account 6530); Marketing Expense (Account 6610); Services Expense (Account 6620); Operating Taxes (Accounts 7230, 7240); Federal Investment Tax Credits (Accounts 7210); Provision for Deferred Operating Income Taxes—Net (Account 7250); Interest and Related Items (Account 7500); Allowance for Funds Used During Construction (Included in Account 7300); Charitable Contributions (included in Account 7300); Other Non-current Assets (Included in Account 1410); Other Jurisdictional Assets and Liabilities (Accounts 1500, 4370); Customer Deposits (Account 4040); Other Long-term Liabilities (Included in Account 4300); and Deferred Maintenance and Retirements (Included in Account 1438) shall be allocated according to the following factor:

Account 2210 Category 3 Account 2001.

* * * * *

(5) Corporate Operations Expenses (Account 6720) shall be allocated according to the following factor:

[[Account 2210 Category 3 (Account 2210 + Account 2220 + Account 2230)]] × (Account 6210 + Account 6220 + Account 6230)] + [(Account 6530 + Account 6610 + Account 6620) × (Account 2210 Category 3 Account 2001)] (Account 6210 + Account 6220 + Account 6230 + Account 6310 + Account 6410 + Account 6530 + Account 6610 + Account 6620).

* * * * *

(d) * * *

(4) Federal income tax attributable to COE Category 3 shall be calculated using the following formula; the accounts listed shall be allocated pursuant to paragraph (c) of this section:

[Return on Investment attributable to COE Category 3—Included in Account 7300—Account 7500–Account 7210)] × [Federal Income Tax Rate (1—Federal Income Tax Rate)].

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

144. The authority citation for Part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, 225, 251(e)(1), 254, 302, 303, and 337 unless otherwise noted.

145. Section 64.901 is amended by revising paragraph (b)(1) to read as follows:

§ 64.901 Allocation of costs.

* * * * *

(b) * * *

(1) Tariffed services provided to a nonregulated activity will be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account for that service. Nontariffed services, offered pursuant to a section 252(e) agreement, provided to a nonregulated activity will be charged to the nonregulated activity at the amount set forth in the applicable interconnection agreement approved by a state commission pursuant to section 252(e) and credited to the regulated revenue account for that service.

* * * * *

146. Section 64.903 is amended by revising paragraph (a) introductory text to read as follows:

§ 64.903 Cost allocation manuals.

(a) Each incumbent local exchange carrier having annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold (as defined in § 32.9000 of this chapter) except mid-sized incumbent local exchange carriers is required to file a cost allocation manual describing how it separates regulated from nonregulated costs. The manual shall contain the following information regarding the carrier's allocation of costs between regulated and nonregulated activities:

* * * * *

147. Section 64.904 is revised to read as follows:

§ 64.904 Independent audits.

(a) Each carrier required to file a cost allocation manual shall elect to either have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or have a financial audit performed by an independent auditor every two years, covering the prior two year period. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual.

(b) The attest engagement shall be an examination engagement and shall provide a written communication that expresses an opinion that the systems, processes, and procedures applied by the carrier to generate the results reported pursuant to § 43.21(e)(2) of this chapter comply with the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, § 64.901, and § 64.903 in force as of the date of the auditor's report. At least 30 days prior to beginning the attestation engagement, the independent auditors shall provide the Commission with the audit program. The attest engagement shall be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants, except as otherwise directed by the Chief, Common Carrier Bureau.

(c) The biennial financial audit shall provide a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, and § 64.901, and § 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau. The report of the independent auditor shall be filed at the time that the carrier files the annual reports required by § 43.21(e)(2) of this chapter.

148. Section 64.905 is added to read as follows:

§ 64.905 Annual certification.

A mid-sized incumbent local exchange carrier, as defined in § 32.9000 of this chapter, shall file a certification with the Commission stating that it is complying with § 64.901. The certification must be signed, under oath, by an officer of the mid-sized incumbent LEC, and filed with the Commission on an annual basis at the time that the mid-sized incumbent LEC files the annual reports required by § 43.21(e)(2) of this chapter.

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

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

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 218, 219, 220, 403.

§ 65.300 [Amended]

150. In § 65.300(a) remove the words ''in excess of 100 million'' and add, in their place, the words ''equal to or above the indexed revenue threshold as defined in § 32.9000'' wherever it exists.

§§ 65.302 through 65.304 [Amended]

151. In §§ 65.302, 65.303, 65.304, remove the words ''of 100 million or more'' and add, in their place, the words ''equal to or above the indexed revenue threshold as defined in § 32.9000'' wherever they appear.

152. Section 65.450 is amended by revising paragraphs (a), (b)(1), (b)(2) and (d) to read as follows:

§ 65.450 Net income.

(a) Net income shall consist of all revenues derived from the provision of interstate telecommunications services regulated by this Commission less expenses recognized by the Commission as necessary to the provision of these services. The calculation of expenses entering into the determination of net income shall include the interstate portion of plant specific operations (Accounts 6110 through 6441), plant nonspecific operations (Accounts 6510 through 6560), customer operations (Accounts 6610 through 6620),

corporate operations (Accounts 6720 through 6790), other operating income and expense (Account 7100), and operating taxes (Accounts 7200 through 7250), except to the extent this Commission specifically provides to the contrary.

(b) * * *

(1) Gains related to property sold to others and leased back under capital leases for use in telecommunications services shall be recorded in Account 4300 (Other long-term liabilities and deferred credits) and credited to Account 6560 (Depreciation and Amortization Expense) over the amortization period established for the capital lease;

(2) Gains or losses related to the disposition of land and other nondepreciable items recorded in Account 7100 (Other operating income and expense) shall be included in net income for ratemaking purposes, but adjusted to reflect the relative amount of time such property was used in regulated operations and included in the rate base; and

* * * * *

(d) Except for the allowance for funds used during construction, reasonable charitable deductions and interest related to customer deposits, the amounts recorded as nonoperating income and expenses and taxes (Accounts 7300 and 7400) and interest and related items (Account 7500) and extraordinary items (Account 7600) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

153. Section 65.820 is amended by revising paragraphs (a) and (c) to read as follows:

§ 65.820 Included items.

(a) Telecommunications Plant. The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service) and Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization, and Account 2003 (Telecommunications Plant Under Construction), and, to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment). Any interest cost for funds used during construction capitalized on assets recorded in these accounts shall be computed in accordance with the procedures in Sec. 32.2000(c)(2)(x) of this chapter.

* * * * *

(c) *Noncurrent assets.* The interstate portion of Class B Rural Telephone Bank stock contained in Account 1410 and the interstate portion of assets summarized in Account 1410 (Other Noncurrent Assets) and Account 1438 (Deferred Maintenance, Retirements and Deferred Charges), only to the extent that they have been specifically approved by this Commission for inclusion (Note: The interstate portion of assets summarized in Account 1410 should not include any amounts related to investments, sinking funds or unamortized debt issuance expense). Except as noted above, no amounts from accounts 1406 through 1500 shall be included.

* * * * *

154. Section 65.830 is amended by revising paragraphs (a)(3), (a)(4), and (c) to read as follows:

§ 65.830 Deducted items.

(a) * * *

(3) The interstate portion of other long-term liabilities in (Account 4300 Other long-term liabilities and deferred credits) that were derived from the expenses specified in Sec. 65.450(a).

(4) The interstate portion of other deferred credits in (Account 4300 Other long-term liabilities and deferred credits) to the extent they arise from the provision of regulated telecommunications services. This shall include deferred gains related to sale-leaseback arrangements.

(c) The interstate portion of other long-term liabilities included in (Account 4300 Other long-term liabilities and deferred credits) shall bear the same proportionate relationships as the interstate/intrastate expenses which gave rise to the liability.

PART 69—ACCESS CHARGES

155. The authority citation for Part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

156. Section 69.2 is amended by revising paragraphs (j) and (z) to read as follows:

§ 69.2 Definitions.

* * * * *

(j) *Corporate Operations Expenses* are included in General and Administrative Expenses (Account 6720);

* * * * *

(z) *Net Investment* means allowable original cost investment in Accounts 2001 through 2003, 1220 and the investments in nonaffiliated companies included in Account 1410, that has been apportioned to interstate and foreign services pursuant to the Separations Manual from which depreciation, amortization and other reserves attributable to such investment that has been apportioned to interstate and foreign services pursuant to the Separations Manual have been subtracted and to which working capital that is attributable to interstate and foreign services has been added;

* * * * *

157. Section 69.302 is amended by revising paragraph (a) to read as follows:

§ 69.302 Net investment.

(a) Investment in Accounts 2001, 1220 and Class B Rural Telephone Bank Stock booked in Account 1410 shall be apportioned among the interexchange category, billing and collection category and appropriate access elements as provided in §§ 69.303 through 69.309.

* * * * *

158. Section 69.409 is amended by revising the section heading to read as follows:

§ 69.409 Corporate operations expenses (included in Account 6720).

* * * * *

[FR Doc. 02–1212 Filed 2–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 36, and 64

[CC Docket Nos. 00–199, 97–212, and 80–286; FCC 01–305]

2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on fundamental changes to the accounting and reporting requirements and on whether these accounting and reporting requirements should sunset by a date certain, such as three or five years in the future. The Commission seeks comment on sunsetting the remaining Class A accounts by a date certain, whether ARMIS information (particularly infrastructure data) would be better captured through the Local Competition and Broadband Data Gathering Program rather than in ARMIS, eliminating the rules for continuing property records (CPR), eliminating affiliate transactions rules for price cap carriers, and conforming the separations rules to the changes to the chart of accounts in the Report and Order.

DATES: Comments (for all issues except the part 36 issue) are due April 8, 2002; reply comments are due May 7, 2002. For the part 36 issue, comments are due March 8, 2002, and replies are due March 25, 2002. Written comments by the public on the proposed information collections are due April 8, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before April 8, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, TW–A325, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Room 10236, NEOB, Washington, DC 20503 or via the Internet to *EdwardSpringer@eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Peterson, Deputy Division Chief, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–1575 or Mika Savir, Accounting Safeguards Division, Common Carrier Bureau, Legal Branch, at (202) 418–0384. For additional information concerning the information collections in this Report and Order, contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking *(FNPRM)* adopted October 11, 2001 and released November 5, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

This *FNPRM* contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 10413. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act: This *FNPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due April 8, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other form of information technology.

OMB Control Number: None.

Title: Phase 3—FNPRM in CC Dockets No. 00–199 and 97–212, 2000 Biennial Regulatory Review.

Form Nos.: FCC Form 477, FCC Report 43–07.

Type of Review: New Collection.

Respondents: Business or other for-profit.

ESTIMATED HOURS

Title	Number of respondents	Per response	Total annual burden
Part 32—Uniform Systems of Accounts	68	18,373	1,249,364
Local Competition in the Local Exchange Telecommunications Services Report	255	117.34	29,924
FCC Form 4777 ARMIS Infrastructure Report, FCC Report 43–07	0	0	0

*These are estimated hours if all the proposals are adopted in a Report and Order, with the exception of the FCC Report 4777. Estimates provided are current burden estimates.

Total Annual Burden: 1,279,288.

Cost to Respondents: $0.

Needs and Uses: In CC Docket No. 00–199, the Commission seeks comment on sunsetting the remaining Class A accounts, whether ARMIS information (particularly infrastructure data should be better captured through the Local Competition and Broadband Data Gathering Program rather than in ARMIS. The Commission also seeks comment on whether all filers in the Program should report information on hybrid fiber-copper interface locations, number of customer serviced from these interface locations, xDSL customer terminations associated with non-hybrid loops, among other things. The information is needed so that the Commission can fulfill its statutory responsibilities and obligations.

Summary of the FNPRM

A. Phase 3 (CC Docket Nos. 00–199 and 99–301)

The Commission is committed to moving forward with Phase 3 of this comprehensive review proceeding. As competition continues to develop, the original justifications for the Commission's accounting and reporting requirements may no longer be valid. The Commission seeks to refresh the Phase 3 record. The Commission looks forward to working closely with the states, incumbent carriers, and other interested parties in this endeavor.

State regulators have articulated current regulatory needs to maintain certain Class A accounts and ARMIS filing requirements for various purposes, including assisting their work in promoting local competition, developing appropriate prices for unbundled network elements, and conducting local ratemaking proceedings. While the Commission also uses some of this information, there are certain accounts and requirements that appear no longer necessary for federal purposes: Account 5040, Private line revenue; Account 5060, Other basic area revenue; Account 1500, Other jurisdictional assets—net; Account 4370, Other jurisdictional liabilities and deferred credits—net; and Account 7910, Income effect of jurisdictional ratemaking differences—net. The Commission believes that, if it cannot identify a federal need for a regulation, it is not justified in maintaining such a requirement at the federal level. At the same time, however, the Commission recognizes that an immediate end to such requirements could cause severe problems for state regulators. The Commission would like to work with the states to arrange an orderly transition to a mechanism in which states undertake responsibility for collecting this information. The Commission tentatively concludes that these federal requirements should remain in place for a period of three years to enable states to develop alternative means of gathering this information, after which the federal requirements would terminate. The Commission seeks comment on this proposal. Commenters should address whether three years is a sufficient amount of time to transition from federal to state information gathering mechanisms. Commenters should also address whether it would be necessary for each state to set up its own mechanism or whether states might work collectively to set up a mechanism to collect information for multiple states. The Commission understands that some states are required by state law to mirror federal accounting requirements. The Commission asks that those states identify themselves and describe the precise nature of their state statutory constraints. The Commission also seeks comment on whether, rather than sunsetting these federal requirements, there are other means to reform federal requirements that serve only state regulatory needs.

For other accounting and reporting requirements, the Commission continues to have a federal need for this information, such as administering current support mechanisms for universal service and price cap regulation. The Commission believes that the benefits of continuing these federal requirements, at present, outweigh the potential burdens, the assessment of that calculation is likely to change as technological and market conditions continue to evolve. The Commission seeks comment on alternatives to the current accounting and reporting requirements.

The Commission also encourages the state colleagues to consider alternative sources of such information at the state level. There may well come a time in the relatively near future when the Commission concludes that there is no ongoing federal need to maintain these requirements at the federal level. The Commission seeks comment on these tentative views.

The Commission asks commenters to consider whether any of these accounting and reporting requirements should sunset by a date certain, such as three or five years in the future. In particular, should the Commission sunset the remaining Class A accounts by a date certain? Should the Commission maintain the practice of imposing different accounting requirements on classes of carriers based on their size? If so, and if the Commission allows Class A carriers to shift to Class B accounting, are there additional accounts that should be eliminated from the Class B system for small and mid-sized carriers by a date certain? Should the requirement to maintain either Class A or Class B accounts be replaced with a rule requiring adherence to generally accepted accounting principles (GAAP)? Should any or all of the Commission's ARMIS reporting requirements sunset by a date certain? The Commission encourages commenters to discuss the implications of any accounting reforms they recommend on the appropriate scope of ARMIS reporting obligations. To the extent commenters argue that certain part 32 or part 64 rules, or reporting requirements imposed pursuant to 47 U.S.C. 43.21, should not sunset by a date certain, they should identify with specificity which rules should remain in place and provide a full analysis of the justification for that rule, on a rule-by-rule basis.

The Commission seeks comment on the advantages and disadvantages of adopting any of these sunset approaches, as opposed to concluding that requirements should be eliminated only upon the attainment of certain indices associated with the development of a competitive marketplace? For example, if the Commission were to eliminate Class A accounts or shift to a policy of relying on GAAP, could it develop accurate inputs for our universal service cost model by relying on specific, ad hoc data requests? Moreover, what impact would elimination by a date certain of accounting and reporting rules have on attainment of statutory goals, such as the preservation and advancement of universal service and ensuring that pole attachment rates are just and reasonable? Could the Commission satisfy other federal regulatory needs by making data requests on an ad hoc basis and relying on other existing data collection mechanisms, such as the Local Competition and Broadband Data Gathering Program? If the Commission ultimately decides not to sunset certain rules, but instead eliminate those rules only upon attainment of certain indices associated with competition, what costs would be imposed on both regulators and the industry by future administrative proceedings to determine whether those triggers have been met, particularly if proceedings were undertaken on a carrier-by-carrier basis?

The Commission also seeks comment from state commissions and all other interested parties on whether ARMIS information (particularly infrastructure data) would be better captured through the Local Competition and Broadband Data Gathering Program rather than in ARMIS. The Local Competition and Broadband Data Gathering Program seeks to develop the Commission's understanding of the deployment and availability of broadband services and the development of local telephone service competition in order to comply with section 706 of the 1996 Act. The Local Competition and Broadband Data Gathering Program was established for a five-year period, unless the Commission acts to extend it. The Commission seeks comment on the costs and benefits associated with collecting infrastructure information through the Local Competition and Broadband Data Gathering Program for all affected parties, including potential filers and

federal, state, and local regulators. In particular, the Commission seeks comment on whether information currently collected in ARMIS 43–07 should instead be collected through the Local Competition and Broadband Data Gathering Program, which imposes a reporting obligation on a larger universe of carriers. In addition, the Commission seeks comment on collecting such data through the Local Competition and Broadband Data Gathering Program, but requiring only the mandatory price cap companies to report. The Commission also seeks comment on whether all filers in the Local Competition and Broadband Data Gathering Program should report information on hybrid fiber-copper loop interface locations, number of customers served from these interface locations, xDSL customer terminations associated with hybrid fiber-copper loops, and xDSL customer terminations associated with non-hybrid loops. Lastly, the Commission seeks comment on whether to gather information on new technologies that indicate how carriers are upgrading the public switched network, e.g., information for switches capable of transmitting ATM protocol, and data on SMDS, internet routers, and frame relay service, through the Local Competition and Broadband Data Gathering Program.

In addition, the Commission seeks comment on eliminating the rules for continuing property records (CPR), specifically § 32.2000(e) and (f) of the Commission's rules, 47 CFR 32.2000(e) and (f). States assert that they have an ongoing need for this information in order to support state ratemaking proceedings. The Commission seeks comment on whether there are alternative avenues for states to gather whatever information pertaining to property records they need for state regulatory proceedings. Incumbent LECs are subject to a number of other regulatory constraints and appear to have ample incentives to maintain a detailed inventory of their property. Moreover, the record shows that detailed requirements, which include rigid rules for recording property, impose substantial burdens on incumbent LECs. In light of all these factors, the Commission tentatively concludes that the detailed CPR rules should be eliminated in three years. The Commission seeks comment on this proposal. Commenters should address whether there are any federal or state regulatory needs served by the CPR rules that cannot be met through alternative mechanisms. The Commission also seeks further comment on the costs and burdens of maintaining these CPR rules. Additionally, commenters should address whether three years is too little or too much time for states that rely upon the existence of federal CPR rules to transition to alternative mechanisms. Commenters should include an analysis of the costs and benefits of maintaining the CPR rules for a different length of time.

The Commission also seeks comment on alternative approaches to streamline the CPR rules. In earlier comments in this proceeding, Verizon proposed that the Commission should eliminate most of the CPR requirements, but retain the requirement that property records be (1) Subject to internal accounting controls; (2) auditable; (3) equal in the aggregate to the total investment reflected in the financial accounts; and (4) maintained for the life of the property. Moreover, Verizon suggested that CPR rules should provide that (1) records be maintained by original cost where appropriate, and otherwise, be maintained using averages or estimates; (2) average costs may be used for plants consisting of a large number of similar units, and units of similar size and type within each specified account may be grouped; and (3) in cases where the actual original cost of property cannot be ascertained, such as pricing for inventory for the initial entry of a continuing property record or the pricing of an acquisition for which the continuing property record has not been maintained, the original cost may be estimated. In cases where estimates are used, any estimate shall be consistent with accounting practices in effect at the time the property was constructed. The Commission seeks comment on the advantages and disadvantages associated with Verizon's proposal.

Finally, the Commission seeks to refresh the record on the affiliate transactions rules. To what extent do these rules remain necessary for price cap carriers? Do price cap carriers that have obtained pricing flexibility, and have thus waived low-end formula adjustments, retain any incentive or ability to engage in improper cost-shifting or cross-subsidization? What impact, if any, would elimination of these rules for price cap carriers have on state ratemaking processes? What impact would there be on carriers if the Commission elects to retain these rules?

The Commission seeks comment on whether it should maintain affiliate transactions rules, or adopt revised rules, to govern transactions that are subject to section 272 of the Communications Act, 47 U.S.C. 272? Section 272(b)(2) requires that the affiliate required by that section maintain ''books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate.'' Section 272(b)(5) requires that the separate affiliate conduct all transactions with the Bell operating company ''on an arm's length basis.'' The nondiscrimination requirement found in section 272(c) requires the BOC to ''account for all transactions with an affiliate * * * in accordance with accounting principles designed by or approved by the Commission.'' Section 272(e)(4) specifies that the BOC may provide interLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.'' The Commission seeks comment on the advantages or disadvantages of applying one set of rules to transactions between BOCs and their section 272 affiliates and another set of rules (or no rules) to other transactions between incumbent LECs and other types of affiliates? How would this be implemented in situations where an affiliate engages in some activities that are subject to section 272 and other activities that are not?

The Commission seeks comment on the proposal of USTA and BellSouth to modify the centralized service exception to the affiliate transactions rules. That rule states that all services received by a carrier from an affiliate that exists solely to provide services to members of the carrier's corporate family shall be recorded at cost. For these types of affiliates, no fair market valuations are required. USTA and BellSouth have argued that this rule is too restrictive, imposes large costs on carriers to comply, and can cause an affiliate to lose its overall exemption from fair market valuation of all of its services if one service is provided outside of the corporate family. USTA and BellSouth argue that, rather than applying the exception on an affiliate-by-affiliate basis, the exception should be applied on a service-by-service basis. This would allow carriers to record services provided solely within the corporate family at fully distributed cost without fair market valuation, whether or not the affiliate also provided other services outside the corporate family.

The Commission seeks comment on a possible de minimis exception that would mitigate some of the consequences of the current rules. The Commission asks commenters to address whether the Commission should adopt a threshold of $500,000 for

services provided by an affiliate outside the corporate family. If the Commission adopted such a threshold, an affiliate could provide up to $500,000 in services outside the corporate family without causing other services it provides solely to the corporate family to undergo fair market valuation. The Commission also asks if there is a different appropriate dollar value threshold. Alternatively, the Commission seeks comment on whether the exception should be based on a percentage of transactional volume of the service. For example, if a service is provided outside the corporate family and the transactional volume amounts to only five or ten percent of all of the affiliate's services volume, should transactions within the corporate family remain exempt from the fair market valuation requirement? If the Commission adopts a percentage threshold, should that threshold be five percent, ten percent, or some other percentage?

B. Conforming Amendments to Part 36 Separations Rules (CC Docket No. 80–286)

Most of the part 32 revisions adopted in the *Phase 2 Report and Order* (published elsewhere in this issue) consolidate Class A accounts to the Class B level. The Commission tentatively concludes that the elimination of Class A summary accounts will require clarifying revisions to part 36. For example, the elimination of Account 6110, Network support expense, from Class A accounting will require §§ 36.310 and 36.311 of the Commission's rules to be revised to reflect Network support expenses as the sum of accounts 6112, 6113, and 6114. In contrast, Class B accounting will retain Account 6110. Therefore §§ 36.310 and 36.311 will remain intact for Class B carriers, but must be revised to clarify that the use of Account 6110 is for Class B carriers only.

The Commission also tentatively concludes that other changes to part 36 are required as a result of the elimination of Accounts 2215, 3500, 3600, 5000, 5080, 5084, and 6710 from both Class A and Class B accounting. The part 36 sections referencing these accounts will require revisions to reflect the respective accounts now utilized. The Commission proposes to revise, wherever necessary, those part 36 sections affected by the revisions adopted in the *Phase 2 Report and Order.* The Commission seeks comment on these proposed conforming amendments.

In the *Phase 2 Report and Order,* the Commission adopted subaccounts for five existing accounts: 2212, Digital electronic switching; 2232, Circuit equipment, 6212, Digital electronic switching expense; 6232, Circuit equipment expense; and 6620, Services. For now, these accounts will continue to be separated in accordance with current part 36 rules, including the requirements of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80–286, *Report and Order,* 66 FR 33202 (6–21–2001) (*Separations Freeze Order*), and are subject to the conforming part 36 amendments proposed in the preceding paragraph. The Commission seeks comment on whether the creation of subaccounts warrants any modification to the separations treatment of these accounts.

Commenters should also suggest any additional particular part 36 rules that should be revised, how they should be revised, and which part 32 modification in the *Phase 2 Report and Order* forms the basis for each suggested revision. The Commission also seeks comment on interplay of the recent *Separations Freeze Order* with any suggested revisions.

Finally, the Commission welcomes input from the Federal-State Joint Board on Separations on these issues.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this FNPRM, which are set out in paragraphs 226–230 of the Report and Order and Further Notice of Proposed Rulemaking. The Commission will send a copy of this *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Action: The Commission has initiated this FNPRM to seek comment on whether we should sunset our accounting and reporting rules; whether ARMIS information, particularly infrastructure data, would be better captured in the Local Competition and Broadband Data Gathering Program instead of through ARMIS; eliminating or streamlining our rules for continuing property records and our affiliate transactions rules; and what, if any, conforming amendments the Commission should make to its part 36 rules to reflect the revisions to the part 32 rules set forth in the *Phase 2 Report and Order.* The first issue, which discusses in general terms sunsetting the Commission's accounting rules, would not increase the reporting or recordkeeping requirements for small entities. The third and fourth issues, regarding streamlining or eliminating our continuing property records rules and our affiliate transactions rules, would probably not significantly affect small entities. Our proposals in these two areas would, if adopted, result in decreasing recordkeeping requirements and reducing the number of fair market value estimations. The fifth issue merely seeks to conform part 36 to the rule changes adopted in the *Phase 2 Report and Order.* The second issue, however, would probably impact small entities. The second issue addresses the means by which the Commission collects ARMIS data, particularly infrastructure data. The Commission seeks comment on whether such collection should be implemented through the Local Competition and Broadband Data Gathering Program instead of through ARMIS. Under the Local Competition and Broadband Data Gathering Program, facilities-based service providers with at least 250 full or one-way broadband lines or wireless channels in a given state complete applicable portions of the Form 477 for that state and local exchange carriers with 10,000 or more local telephone service lines, or fixed wireless channels, in a state must complete the applicable portions of the Form 477 for each state in which they serve 10,000 or more subscribers. This is a larger group of service providers than the 30 mandatory price cap LECs that file infrastructure reporting requirements. The objective for this proposed action—to collect this data from smaller companies, in addition to the Bell Operating Companies—would be to give the Commission more information about the infrastructure of these companies.

Legal Basis. The legal basis for the action as proposed for this rulemaking is contained in sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503.

Description and Estimate of the Number of Small Entities to which the

Proposed Action May Apply. The Commission seeks comment on whether it should revise its rules so that data collection in ARMIS, particularly infrastructure data, should be collected pursuant to the Local Competition and Broadband Data Gathering Program. Under the Local Competition and Broadband Data Gathering Program, facilities-based service providers with at least 250 full or one-way broadband lines or wireless channels in a given state complete applicable portions of the Form 477 for that state. In addition, local exchange carriers with 10,000 or more local telephone service lines, or fixed wireless channels, in a state must complete the applicable portions of the Form 477 for each state in which they serve 10,000 or more subscribers. Currently, 30 mandatory price cap LECs file infrastructure reporting requirements. Fifty-two LECs file the financial ARMIS reports. Additional LECs are subject to service quality reporting requirements. Thus, if ARMIS information were captured pursuant to the Local Competition and Broadband Data Gathering Program, the data would be collected from more entities than from which the ARMIS data are collected today. The Commission sets out below a description of the types of entities that could possibly be required to comply with the proposed reporting

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of ''small entity'' under the RFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. Recently, the SBA has defined a small business for ''wired telecommunications carriers,'' ''paging,'' ''cellular and other wireless telecommunications,'' and ''telecommunications resellers'' to be small entities when they have no more than 1,500 employees.

The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data derived from filings made in connection with the Telecommunications Reporting Worksheet (FCC Form 477). According to data in the most recent report, there are 4,822 interstate service providers. These providers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission, therefore, has included small incumbent LECs in this RFA analysis, although this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Total Number of Telephone Companies Affected: The Commission's Industry Analysis Division of the Common Carrier Bureau complies a report, Trends in Telephone Service, based on data from various sources, including the FCC Form 499–A worksheets filed by telecommunications carriers. According to Trends in Telephone Service, there were 4,822 service providers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 3,875 had, in combination with affiliates, 1,500 or fewer employees and 947 had, in combination with affiliates, more than 1,500 employees. These numbers contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications service (PCS) providers, covered specialized mobile radio (SMR) providers, and resellers. It seems certain that some of those telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,875 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules proposed in the FNPRM.

Wireline carriers (incumbent LECs). According to Trends in Telephone Service, there were 1,335 incumbent local exchange carriers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 1,037 had, in combination with affiliates, 1,500 or fewer employees and 298 had, in combination with affiliates, more than 1,500 employees. Some of these carriers may not be independently owned or operated, but we are unable at this time to estimate with greater precision the number of wireline carriers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,037 wireline small entities that may be affected by the decisions and rules proposed in the FNPRM.

Other wireline carriers (other than incumbent LECs). According to Trends in Telephone Service, there were 496 fixed local service providers, other than incumbent LECs, filing the FCC Form 499–A on April 1, 2000. Of these carriers, 439 had, in combination with affiliates, 1,500 or fewer employees and 57 had, in combination with affiliates, more than 1,500 employees. These companies include competitive access providers, competitive local exchange providers, resellers, and other local exchange carriers. Some of these carriers may not be independently owned or operated, but we are unable at this time to estimate with greater precision the number of wireline carriers (other than incumbent LECs) that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 439 wireline small entities (other than incumbent LECs) that may be affected by the decisions and rules proposed in the FNPRM.

Wireless telecommunications service providers. According to Trends in Telephone Service, there were 1,495 wireless service providers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 989 had, in combination with affiliates, 1,500 or fewer employees and 506 had, in combination with affiliates, more than 1,500 employees. The wireless service providers include

cellular, PCS, SMR, paging and messaging service, SMR dispatch, wireless data service providers, and other mobile service providers. Some of these carriers may not be independently owned and operated; however, the Commission is unable at this time to estimate with greater precision the number of wireless carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 989 small entity ''cellular and other wireless telecommunications'' providers that may be affected by the rules proposed in the FNPRM.

Payphone service providers. According to Trends in Telephone Service, there were 758 payphone service providers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 755 had, in combination with affiliates, 1,500 or fewer employees and 3 had, in combination with affiliates, more than 1,500 employees. Some of these companies may not be independently owned and operated; however, the Commission is unable at this time to estimate with greater precision the number of payphone service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 755 small entity payphone service providers that may be affected by the rules proposed in the FNPRM.

Toll service providers. According to Trends in Telephone Service, there were 738 toll service providers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 656 had, in combination with affiliates, 1,500 or fewer employees and 82 had, in combination with affiliates, more than 1,500 employees. The toll service providers include interexchange carriers, operator service providers, prepaid calling card providers, satellite service providers, toll resellers, and other toll carriers. Some of these carriers may not be independently owned and operated; however, the Commission is unable at this time to estimate with greater precision the number of toll service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 656 small entity toll service providers that may be affected by the rules proposed in the FNPRM.

Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements: The FNPRM seeks comment on whether ARMIS information, particularly infrastructure data, would be better captured in the Commission's Local Competition and Broadband Data Gathering Program. Pursuant to the current Local Competition and Broadband Data Gathering Program, certain providers of broadband services and of local telephone services must complete FCC Form 477, which collects data on their deployment of those services. Specifically, under the Local Competition and Broadband Data Gathering Program, facilities-based service providers with at least 250 full or one-way broadband lines or wireless channels in a given state complete applicable portions of the FCC Form 477 for that state. In addition, local exchange carriers with 10,000 or more local telephone service lines, or fixed wireless channels, in a state must complete the applicable portions of the Form 477 for each state in which they serve 10,000 or more subscribers. These reporting entities may include more companies than the incumbent LECs currently reporting in ARMIS.

Currently, 30 mandatory price cap LECs, the operating companies of Verizon, BellSouth, SBC, and Qwest, file infrastructure reporting requirements. The financial ARMIS reports are filed by 52 local exchange carriers. Additional LECs are subject to service quality reporting requirements; however, service quality reporting issues are not addressed in this proceeding. Thus, if ARMIS information were captured pursuant to the Local Competition and Broadband Data Gathering Program, the data may be collected from more entities than from which the ARMIS data is collected today. The FNPRM also seeks comment on whether the data discussed in the Phase 3 Report and Order should be captured in the Local Competition and Broadband Data Gathering Program, instead of ARMIS.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The FNPRM seeks comment on whether the Commission should sunset the accounting and reporting rules; whether ARMIS information, particularly infrastructure data, would be better captured in the Local Competition and Broadband Data Gathering Program instead of through ARMIS; and what, if any, conforming amendments the Commission should make to its part 36 rules to reflect the revisions to the part 32 rules set forth in the *Phase 2 Report and Order.* The first, third, and fourth issues, which seek comment on reducing accounting and reporting requirements in the future and discusses sunsetting accounting rules and reporting requirements, would not increase reporting or recordkeeping requirements for small entities. The fifth issue merely seeks to conform part 36 to the rule changes adopted in the *Phase 2 Report and Order.* This is needed due to the consolidation of several Class B accounts that are also used in part 36. The alternative to conforming our part 36 rules would be not to streamline the part 32 rules. Without the part 32 rule changes, there would be no need to conform the part 36 rules. The part 32 rule changes in the *Phase 2 Report and Order,* however, represent a significant reduction in both Class A and Class B accounts. Therefore, conforming amendments to the part 36 jurisdictional separations rules would be a result of the consolidation of part 32 accounts and should not be a significant economic impact on small entities.

The data collection issue, however, would probably have a reporting and recordkeeping requirement impact on some small entities. This issue addresses the means in which the Commission collects ARMIS data, particularly infrastructure data. The Commission seeks comment on whether such collection should be implemented through the Local Competition and Broadband Data Gathering Program instead of through ARMIS. Currently, the Local Competition and Broadband Data Gathering Program does not collect infrastructure data, and any rule change adopted to expand that program in order to collect data currently collected in ARMIS may involve information collection from more entities, including small entities. With respect to minimizing the significant economic impact on small entities, the Commission could reduce the data requested from the rows currently reported in the relevant ARMIS reports. Any such reporting on the part of small entities would, however, be an increase over the current reporting requirement, as these entities do not currently report ARMIS infrastructure data at all. With

respect to significant alternatives, the Commission could continue to collect such information in ARMIS. Currently, the infrastructure data in ARMIS 43–07 are collected from 30 mandatory price cap carriers (operating companies of Verizon, SBC, BellSouth, and Qwest.) The Commission does not collect this information from other, smaller entities. If the Commission does not adopt such a rule change, small entities will not be affected. Alternatively, the Commission could adopt the rule change but specify that the data collection applies only to the mandatory price cap companies. The Commission seeks comment on these options.

Federal Rules that may Duplicate, Overlap, or Conflict With the Proposed Rules. None.

Report to Congress: the Consumer Information Bureau, Reference Information Center, shall provide a copy of this IRFA to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA.

Ordering Clauses

Pursuant to the authority contained in sections 4(i), 4(j), 11, 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 154(j), 161, 201(b), 303(r), and 403, this Further Notice of Proposed Rulemaking in CC Docket Nos. 80–286, 99–301, and 00–199 is adopted.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the two Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 32

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

47 CFR Part 36

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1213 Filed 2–5–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 36, and 64

[CC Docket Nos. 00–199, 97–212, and 80–286; FCC 01–305]

2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on fundamental changes to the accounting and reporting requirements and on whether these accounting and reporting requirements should sunset by a date certain, such as three or five years in the future. The Commission seeks comment on sunsetting the remaining Class A accounts by a date certain, whether ARMIS information (particularly infrastructure data) would be better captured through the Local Competition and Broadband Data Gathering Program rather than in ARMIS, eliminating the rules for continuing property records (CPR), eliminating affiliate transactions rules for price cap carriers, and conforming the separations rules to the changes to the chart of accounts in the Report and Order.

DATES: Comments (for all issues except the part 36 issue) are due April 8, 2002; reply comments are due May 7, 2002. For the part 36 issue, comments are due March 8, 2002, and replies are due March 25, 2002. Written comments by the public on the proposed information collections are due April 8, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before April 8, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, TW–A325, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Room 10236, NEOB, Washington, DC 20503 or via the Internet to *EdwardSpringer@eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Peterson, Deputy Division Chief, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–1575 or Mika Savir, Accounting Safeguards Division, Common Carrier Bureau, Legal Branch, at (202) 418–0384. For additional information concerning the information collections in this Report and Order, contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking *(FNPRM)* adopted October 11, 2001 and released November 5, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

This *FNPRM* contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 10413. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act: This *FNPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due April 8, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other form of information technology.

OMB Control Number: None.

Title: Phase 3—FNPRM in CC Dockets No. 00–199 and 97–212, 2000 Biennial Regulatory Review.

Form Nos.: FCC Form 477, FCC Report 43–07.

Type of Review: New Collection.

Respondents: Business or other for-profit.

ESTIMATED HOURS

Title	Number of respondents	Per response	Total annual burden
Part 32—Uniform Systems of Accounts	68	18,373	1,249,364
Local Competition in the Local Exchange Telecommunications Services Report	255	117.34	29,924
FCC Form 4777 ARMIS Infrastructure Report, FCC Report 43–07	0	0	0

*These are estimated hours if all the proposals are adopted in a Report and Order, with the exception of the FCC Report 4777. Estimates provided are current burden estimates.

Total Annual Burden: 1,279,288.

Cost to Respondents: $0.

Needs and Uses: In CC Docket No. 00–199, the Commission seeks comment on sunsetting the remaining Class A accounts, whether ARMIS information (particularly infrastructure data should be better captured through the Local Competition and Broadband Data Gathering Program rather than in ARMIS. The Commission also seeks comment on whether all filers in the Program should report information on hybrid fiber-copper interface locations, number of customer serviced from these interface locations, xDSL customer terminations associated with non-hybrid loops, among other things. The information is needed so that the Commission can fulfill its statutory responsibilities and obligations.

Summary of the FNPRM

A. Phase 3 (CC Docket Nos. 00–199 and 99–301)

The Commission is committed to moving forward with Phase 3 of this comprehensive review proceeding. As competition continues to develop, the original justifications for the Commission's accounting and reporting requirements may no longer be valid. The Commission seeks to refresh the Phase 3 record. The Commission looks forward to working closely with the states, incumbent carriers, and other interested parties in this endeavor.

State regulators have articulated current regulatory needs to maintain certain Class A accounts and ARMIS filing requirements for various purposes, including assisting their work in promoting local competition, developing appropriate prices for unbundled network elements, and conducting local ratemaking proceedings. While the Commission also uses some of this information, there are certain accounts and requirements that appear no longer necessary for federal purposes: Account 5040, Private line revenue; Account 5060, Other basic area revenue; Account 1500, Other jurisdictional assets—net; Account 4370, Other jurisdictional liabilities and deferred credits—net; and Account 7910, Income effect of jurisdictional ratemaking differences—net. The Commission believes that, if it cannot identify a federal need for a regulation, it is not justified in maintaining such a requirement at the federal level. At the same time, however, the Commission recognizes that an immediate end to such requirements could cause severe problems for state regulators. The Commission would like to work with the states to arrange an orderly transition to a mechanism in which states undertake responsibility for collecting this information. The Commission tentatively concludes that these federal requirements should remain in place for a period of three years to enable states to develop alternative means of gathering this information, after which the federal requirements would terminate. The Commission seeks comment on this proposal. Commenters should address whether three years is a sufficient amount of time to transition from federal to state information gathering mechanisms. Commenters should also address whether it would be necessary for each state to set up its own mechanism or whether states might work collectively to set up a mechanism to collect information for multiple states. The Commission understands that some states are required by state law to mirror federal accounting requirements. The Commission asks that those states identify themselves and describe the precise nature of their state statutory constraints. The Commission also seeks comment on whether, rather than sunsetting these federal requirements, there are other means to reform federal requirements that serve only state regulatory needs.

For other accounting and reporting requirements, the Commission continues to have a federal need for this information, such as administering current support mechanisms for universal service and price cap regulation. The Commission believes that the benefits of continuing these federal requirements, at present, outweigh the potential burdens, the assessment of that calculation is likely to change as technological and market conditions continue to evolve. The Commission seeks comment on alternatives to the current accounting and reporting requirements.

The Commission also encourages the state colleagues to consider alternative sources of such information at the state level. There may well come a time in the relatively near future when the Commission concludes that there is no ongoing federal need to maintain these requirements at the federal level. The Commission seeks comment on these tentative views.

The Commission asks commenters to consider whether any of these accounting and reporting requirements should sunset by a date certain, such as three or five years in the future. In particular, should the Commission sunset the remaining Class A accounts by a date certain? Should the Commission maintain the practice of imposing different accounting requirements on classes of carriers based on their size? If so, and if the Commission allows Class A carriers to shift to Class B accounting, are there additional accounts that should be eliminated from the Class B system for small and mid-sized carriers by a date certain? Should the requirement to maintain either Class A or Class B accounts be replaced with a rule requiring adherence to generally accepted accounting principles (GAAP)? Should any or all of the Commission's ARMIS reporting requirements sunset by a date certain? The Commission encourages commenters to discuss the implications of any accounting reforms they recommend on the appropriate scope of ARMIS reporting obligations. To the extent commenters argue that certain part 32 or part 64 rules, or reporting requirements imposed pursuant to 47 U.S.C. 43.21, should not sunset by a date certain, they should identify with specificity which rules should remain in place and provide a full analysis of the justification for that rule, on a rule-by-rule basis.

The Commission seeks comment on the advantages and disadvantages of adopting any of these sunset approaches, as opposed to concluding that requirements should be eliminated only upon the attainment of certain indices associated with the development of a competitive marketplace? For example, if the Commission were to eliminate Class A accounts or shift to a policy of relying on GAAP, could it develop accurate inputs for our universal service cost model by relying on specific, ad hoc data requests? Moreover, what impact would elimination by a date certain of accounting and reporting rules have on attainment of statutory goals, such as the preservation and advancement of universal service and ensuring that pole attachment rates are just and reasonable? Could the Commission satisfy other federal regulatory needs by making data requests on an ad hoc basis and relying on other existing data collection mechanisms, such as the Local Competition and Broadband Data Gathering Program? If the Commission ultimately decides not to sunset certain rules, but instead eliminate those rules only upon attainment of certain indices associated with competition, what costs would be imposed on both regulators and the industry by future administrative proceedings to determine whether those triggers have been met, particularly if proceedings were undertaken on a carrier-by-carrier basis?

The Commission also seeks comment from state commissions and all other interested parties on whether ARMIS information (particularly infrastructure data) would be better captured through the Local Competition and Broadband Data Gathering Program rather than in ARMIS. The Local Competition and Broadband Data Gathering Program seeks to develop the Commission's understanding of the deployment and availability of broadband services and the development of local telephone service competition in order to comply with section 706 of the 1996 Act. The Local Competition and Broadband Data Gathering Program was established for a five-year period, unless the Commission acts to extend it. The Commission seeks comment on the costs and benefits associated with collecting infrastructure information through the Local Competition and Broadband Data Gathering Program for all affected parties, including potential filers and

federal, state, and local regulators. In particular, the Commission seeks comment on whether information currently collected in ARMIS 43–07 should instead be collected through the Local Competition and Broadband Data Gathering Program, which imposes a reporting obligation on a larger universe of carriers. In addition, the Commission seeks comment on collecting such data through the Local Competition and Broadband Data Gathering Program, but requiring only the mandatory price cap companies to report. The Commission also seeks comment on whether all filers in the Local Competition and Broadband Data Gathering Program should report information on hybrid fiber-copper loop interface locations, number of customers served from these interface locations, xDSL customer terminations associated with hybrid fiber-copper loops, and xDSL customer terminations associated with non-hybrid loops. Lastly, the Commission seeks comment on whether to gather information on new technologies that indicate how carriers are upgrading the public switched network, e.g., information for switches capable of transmitting ATM protocol, and data on SMDS, internet routers, and frame relay service, through the Local Competition and Broadband Data Gathering Program.

In addition, the Commission seeks comment on eliminating the rules for continuing property records (CPR), specifically § 32.2000(e) and (f) of the Commission's rules, 47 CFR 32.2000(e) and (f). States assert that they have an ongoing need for this information in order to support state ratemaking proceedings. The Commission seeks comment on whether there are alternative avenues for states to gather whatever information pertaining to property records they need for state regulatory proceedings. Incumbent LECs are subject to a number of other regulatory constraints and appear to have ample incentives to maintain a detailed inventory of their property. Moreover, the record shows that detailed requirements, which include rigid rules for recording property, impose substantial burdens on incumbent LECs. In light of all these factors, the Commission tentatively concludes that the detailed CPR rules should be eliminated in three years. The Commission seeks comment on this proposal. Commenters should address whether there are any federal or state regulatory needs served by the CPR rules that cannot be met through alternative mechanisms. The Commission also seeks further comment on the costs and burdens of maintaining these CPR rules. Additionally, commenters should address whether three years is too little or too much time for states that rely upon the existence of federal CPR rules to transition to alternative mechanisms. Commenters should include an analysis of the costs and benefits of maintaining the CPR rules for a different length of time.

The Commission also seeks comment on alternative approaches to streamline the CPR rules. In earlier comments in this proceeding, Verizon proposed that the Commission should eliminate most of the CPR requirements, but retain the requirement that property records be (1) Subject to internal accounting controls; (2) auditable; (3) equal in the aggregate to the total investment reflected in the financial accounts; and (4) maintained for the life of the property. Moreover, Verizon suggested that CPR rules should provide that (1) records be maintained by original cost where appropriate, and otherwise, be maintained using averages or estimates; (2) average costs may be used for plants consisting of a large number of similar units, and units of similar size and type within each specified account may be grouped; and (3) in cases where the actual original cost of property cannot be ascertained, such as pricing for inventory for the initial entry of a continuing property record or the pricing of an acquisition for which the continuing property record has not been maintained, the original cost may be estimated. In cases where estimates are used, any estimate shall be consistent with accounting practices in effect at the time the property was constructed. The Commission seeks comment on the advantages and disadvantages associated with Verizon's proposal.

Finally, the Commission seeks to refresh the record on the affiliate transactions rules. To what extent do these rules remain necessary for price cap carriers? Do price cap carriers that have obtained pricing flexibility, and have thus waived low-end formula adjustments, retain any incentive or ability to engage in improper cost-shifting or cross-subsidization? What impact, if any, would elimination of these rules for price cap carriers have on state ratemaking processes? What impact would there be on carriers if the Commission elects to retain these rules?

The Commission seeks comment on whether it should maintain affiliate transactions rules, or adopt revised rules, to govern transactions that are subject to section 272 of the Communications Act, 47 U.S.C. 272? Section 272(b)(2) requires that the affiliate required by that section maintain ''books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate.'' Section 272(b)(5) requires that the separate affiliate conduct all transactions with the Bell operating company ''on an arm's length basis.'' The nondiscrimination requirement found in section 272(c) requires the BOC to ''account for all transactions with an affiliate * * * in accordance with accounting principles designed by or approved by the Commission.'' Section 272(e)(4) specifies that the BOC may provide interLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.'' The Commission seeks comment on the advantages or disadvantages of applying one set of rules to transactions between BOCs and their section 272 affiliates and another set of rules (or no rules) to other transactions between incumbent LECs and other types of affiliates? How would this be implemented in situations where an affiliate engages in some activities that are subject to section 272 and other activities that are not?

The Commission seeks comment on the proposal of USTA and BellSouth to modify the centralized service exception to the affiliate transactions rules. That rule states that all services received by a carrier from an affiliate that exists solely to provide services to members of the carrier's corporate family shall be recorded at cost. For these types of affiliates, no fair market valuations are required. USTA and BellSouth have argued that this rule is too restrictive, imposes large costs on carriers to comply, and can cause an affiliate to lose its overall exemption from fair market valuation of all of its services if one service is provided outside of the corporate family. USTA and BellSouth argue that, rather than applying the exception on an affiliate-by-affiliate basis, the exception should be applied on a service-by-service basis. This would allow carriers to record services provided solely within the corporate family at fully distributed cost without fair market valuation, whether or not the affiliate also provided other services outside the corporate family.

The Commission seeks comment on a possible de minimis exception that would mitigate some of the consequences of the current rules. The Commission asks commenters to address whether the Commission should adopt a threshold of $500,000 for

services provided by an affiliate outside the corporate family. If the Commission adopted such a threshold, an affiliate could provide up to $500,000 in services outside the corporate family without causing other services it provides solely to the corporate family to undergo fair market valuation. The Commission also asks if there is a different appropriate dollar value threshold. Alternatively, the Commission seeks comment on whether the exception should be based on a percentage of transactional volume of the service. For example, if a service is provided outside the corporate family and the transactional volume amounts to only five or ten percent of all of the affiliate's services volume, should transactions within the corporate family remain exempt from the fair market valuation requirement? If the Commission adopts a percentage threshold, should that threshold be five percent, ten percent, or some other percentage?

B. Conforming Amendments to Part 36 Separations Rules (CC Docket No. 80–286)

Most of the part 32 revisions adopted in the *Phase 2 Report and Order* (published elsewhere in this issue) consolidate Class A accounts to the Class B level. The Commission tentatively concludes that the elimination of Class A summary accounts will require clarifying revisions to part 36. For example, the elimination of Account 6110, Network support expense, from Class A accounting will require §§ 36.310 and 36.311 of the Commission's rules to be revised to reflect Network support expenses as the sum of accounts 6112, 6113, and 6114. In contrast, Class B accounting will retain Account 6110. Therefore §§ 36.310 and 36.311 will remain intact for Class B carriers, but must be revised to clarify that the use of Account 6110 is for Class B carriers only.

The Commission also tentatively concludes that other changes to part 36 are required as a result of the elimination of Accounts 2215, 3500, 3600, 5000, 5080, 5084, and 6710 from both Class A and Class B accounting. The part 36 sections referencing these accounts will require revisions to reflect the respective accounts now utilized. The Commission proposes to revise, wherever necessary, those part 36 sections affected by the revisions adopted in the *Phase 2 Report and Order.* The Commission seeks comment on these proposed conforming amendments.

In the *Phase 2 Report and Order,* the Commission adopted subaccounts for five existing accounts: 2212, Digital electronic switching; 2232, Circuit equipment, 6212, Digital electronic switching expense; 6232, Circuit equipment expense; and 6620, Services. For now, these accounts will continue to be separated in accordance with current part 36 rules, including the requirements of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80–286, *Report and Order,* 66 FR 33202 (6–21–2001) (*Separations Freeze Order*), and are subject to the conforming part 36 amendments proposed in the preceding paragraph. The Commission seeks comment on whether the creation of subaccounts warrants any modification to the separations treatment of these accounts.

Commenters should also suggest any additional particular part 36 rules that should be revised, how they should be revised, and which part 32 modification in the *Phase 2 Report and Order* forms the basis for each suggested revision. The Commission also seeks comment on interplay of the recent *Separations Freeze Order* with any suggested revisions.

Finally, the Commission welcomes input from the Federal-State Joint Board on Separations on these issues.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this FNPRM, which are set out in paragraphs 226–230 of the Report and Order and Further Notice of Proposed Rulemaking. The Commission will send a copy of this *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Action: The Commission has initiated this FNPRM to seek comment on whether we should sunset our accounting and reporting rules; whether ARMIS information, particularly infrastructure data, would be better captured in the Local Competition and Broadband Data Gathering Program instead of through ARMIS; eliminating or streamlining our rules for continuing property records and our affiliate transactions rules; and what, if any, conforming amendments the Commission should make to its part 36 rules to reflect the revisions to the part 32 rules set forth in the *Phase 2 Report and Order.* The first issue, which discusses in general terms sunsetting the Commission's accounting rules, would not increase the reporting or recordkeeping requirements for small entities. The third and fourth issues, regarding streamlining or eliminating our continuing property records rules and our affiliate transactions rules, would probably not significantly affect small entities. Our proposals in these two areas would, if adopted, result in decreasing recordkeeping requirements and reducing the number of fair market value estimations. The fifth issue merely seeks to conform part 36 to the rule changes adopted in the *Phase 2 Report and Order.* The second issue, however, would probably impact small entities. The second issue addresses the means by which the Commission collects ARMIS data, particularly infrastructure data. The Commission seeks comment on whether such collection should be implemented through the Local Competition and Broadband Data Gathering Program instead of through ARMIS. Under the Local Competition and Broadband Data Gathering Program, facilities-based service providers with at least 250 full or one-way broadband lines or wireless channels in a given state complete applicable portions of the Form 477 for that state and local exchange carriers with 10,000 or more local telephone service lines, or fixed wireless channels, in a state must complete the applicable portions of the Form 477 for each state in which they serve 10,000 or more subscribers. This is a larger group of service providers than the 30 mandatory price cap LECs that file infrastructure reporting requirements. The objective for this proposed action—to collect this data from smaller companies, in addition to the Bell Operating Companies—would be to give the Commission more information about the infrastructure of these companies.

Legal Basis. The legal basis for the action as proposed for this rulemaking is contained in sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503.

Description and Estimate of the Number of Small Entities to which the

Proposed Action May Apply. The Commission seeks comment on whether it should revise its rules so that data collection in ARMIS, particularly infrastructure data, should be collected pursuant to the Local Competition and Broadband Data Gathering Program. Under the Local Competition and Broadband Data Gathering Program, facilities-based service providers with at least 250 full or one-way broadband lines or wireless channels in a given state complete applicable portions of the Form 477 for that state. In addition, local exchange carriers with 10,000 or more local telephone service lines, or fixed wireless channels, in a state must complete the applicable portions of the Form 477 for each state in which they serve 10,000 or more subscribers. Currently, 30 mandatory price cap LECs file infrastructure reporting requirements. Fifty-two LECs file the financial ARMIS reports. Additional LECs are subject to service quality reporting requirements. Thus, if ARMIS information were captured pursuant to the Local Competition and Broadband Data Gathering Program, the data would be collected from more entities than from which the ARMIS data are collected today. The Commission sets out below a description of the types of entities that could possibly be required to comply with the proposed reporting

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of ''small entity'' under the RFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. Recently, the SBA has defined a small business for ''wired telecommunications carriers,'' ''paging,'' ''cellular and other wireless telecommunications,'' and ''telecommunications resellers'' to be small entities when they have no more than 1,500 employees.

The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data derived from filings made in connection with the Telecommunications Reporting Worksheet (FCC Form 477). According to data in the most recent report, there are 4,822 interstate service providers. These providers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission, therefore, has included small incumbent LECs in this RFA analysis, although this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Total Number of Telephone Companies Affected: The Commission's Industry Analysis Division of the Common Carrier Bureau complies a report, Trends in Telephone Service, based on data from various sources, including the FCC Form 499–A worksheets filed by telecommunications carriers. According to Trends in Telephone Service, there were 4,822 service providers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 3,875 had, in combination with affiliates, 1,500 or fewer employees and 947 had, in combination with affiliates, more than 1,500 employees. These numbers contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications service (PCS) providers, covered specialized mobile radio (SMR) providers, and resellers. It seems certain that some of those telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,875 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules proposed in the FNPRM.

Wireline carriers (incumbent LECs). According to Trends in Telephone Service, there were 1,335 incumbent local exchange carriers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 1,037 had, in combination with affiliates, 1,500 or fewer employees and 298 had, in combination with affiliates, more than 1,500 employees. Some of these carriers may not be independently owned or operated, but we are unable at this time to estimate with greater precision the number of wireline carriers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 1,037 wireline small entities that may be affected by the decisions and rules proposed in the FNPRM.

Other wireline carriers (other than incumbent LECs). According to Trends in Telephone Service, there were 496 fixed local service providers, other than incumbent LECs, filing the FCC Form 499–A on April 1, 2000. Of these carriers, 439 had, in combination with affiliates, 1,500 or fewer employees and 57 had, in combination with affiliates, more than 1,500 employees. These companies include competitive access providers, competitive local exchange providers, resellers, and other local exchange carriers. Some of these carriers may not be independently owned or operated, but we are unable at this time to estimate with greater precision the number of wireline carriers (other than incumbent LECs) that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 439 wireline small entities (other than incumbent LECs) that may be affected by the decisions and rules proposed in the FNPRM.

Wireless telecommunications service providers. According to Trends in Telephone Service, there were 1,495 wireless service providers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 989 had, in combination with affiliates, 1,500 or fewer employees and 506 had, in combination with affiliates, more than 1,500 employees. The wireless service providers include

cellular, PCS, SMR, paging and messaging service, SMR dispatch, wireless data service providers, and other mobile service providers. Some of these carriers may not be independently owned and operated; however, the Commission is unable at this time to estimate with greater precision the number of wireless carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 989 small entity ''cellular and other wireless telecommunications'' providers that may be affected by the rules proposed in the FNPRM.

Payphone service providers. According to Trends in Telephone Service, there were 758 payphone service providers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 755 had, in combination with affiliates, 1,500 or fewer employees and 3 had, in combination with affiliates, more than 1,500 employees. Some of these companies may not be independently owned and operated; however, the Commission is unable at this time to estimate with greater precision the number of payphone service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 755 small entity payphone service providers that may be affected by the rules proposed in the FNPRM.

Toll service providers. According to Trends in Telephone Service, there were 738 toll service providers filing the FCC Form 499–A on April 1, 2000. Of these carriers, 656 had, in combination with affiliates, 1,500 or fewer employees and 82 had, in combination with affiliates, more than 1,500 employees. The toll service providers include interexchange carriers, operator service providers, prepaid calling card providers, satellite service providers, toll resellers, and other toll carriers. Some of these carriers may not be independently owned and operated; however, the Commission is unable at this time to estimate with greater precision the number of toll service providers that would qualify as small business concerns under SBA's definition. Consequently, the Commission estimates that there are fewer than 656 small entity toll service providers that may be affected by the rules proposed in the FNPRM.

Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements: The FNPRM seeks comment on whether ARMIS information, particularly infrastructure data, would be better captured in the Commission's Local Competition and Broadband Data Gathering Program. Pursuant to the current Local Competition and Broadband Data Gathering Program, certain providers of broadband services and of local telephone services must complete FCC Form 477, which collects data on their deployment of those services. Specifically, under the Local Competition and Broadband Data Gathering Program, facilities-based service providers with at least 250 full or one-way broadband lines or wireless channels in a given state complete applicable portions of the FCC Form 477 for that state. In addition, local exchange carriers with 10,000 or more local telephone service lines, or fixed wireless channels, in a state must complete the applicable portions of the Form 477 for each state in which they serve 10,000 or more subscribers. These reporting entities may include more companies than the incumbent LECs currently reporting in ARMIS.

Currently, 30 mandatory price cap LECs, the operating companies of Verizon, BellSouth, SBC, and Qwest, file infrastructure reporting requirements. The financial ARMIS reports are filed by 52 local exchange carriers. Additional LECs are subject to service quality reporting requirements; however, service quality reporting issues are not addressed in this proceeding. Thus, if ARMIS information were captured pursuant to the Local Competition and Broadband Data Gathering Program, the data may be collected from more entities than from which the ARMIS data is collected today. The FNPRM also seeks comment on whether the data discussed in the Phase 3 Report and Order should be captured in the Local Competition and Broadband Data Gathering Program, instead of ARMIS.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The FNPRM seeks comment on whether the Commission should sunset the accounting and reporting rules; whether ARMIS information, particularly infrastructure data, would be better captured in the Local Competition and Broadband Data Gathering Program instead of through ARMIS; and what, if any, conforming amendments the Commission should make to its part 36 rules to reflect the revisions to the part 32 rules set forth in the *Phase 2 Report and Order.* The first, third, and fourth issues, which seek comment on reducing accounting and reporting requirements in the future and discusses sunsetting accounting rules and reporting requirements, would not increase reporting or recordkeeping requirements for small entities. The fifth issue merely seeks to conform part 36 to the rule changes adopted in the *Phase 2 Report and Order.* This is needed due to the consolidation of several Class B accounts that are also used in part 36. The alternative to conforming our part 36 rules would be not to streamline the part 32 rules. Without the part 32 rule changes, there would be no need to conform the part 36 rules. The part 32 rule changes in the *Phase 2 Report and Order,* however, represent a significant reduction in both Class A and Class B accounts. Therefore, conforming amendments to the part 36 jurisdictional separations rules would be a result of the consolidation of part 32 accounts and should not be a significant economic impact on small entities.

The data collection issue, however, would probably have a reporting and recordkeeping requirement impact on some small entities. This issue addresses the means in which the Commission collects ARMIS data, particularly infrastructure data. The Commission seeks comment on whether such collection should be implemented through the Local Competition and Broadband Data Gathering Program instead of through ARMIS. Currently, the Local Competition and Broadband Data Gathering Program does not collect infrastructure data, and any rule change adopted to expand that program in order to collect data currently collected in ARMIS may involve information collection from more entities, including small entities. With respect to minimizing the significant economic impact on small entities, the Commission could reduce the data requested from the rows currently reported in the relevant ARMIS reports. Any such reporting on the part of small entities would, however, be an increase over the current reporting requirement, as these entities do not currently report ARMIS infrastructure data at all. With

respect to significant alternatives, the Commission could continue to collect such information in ARMIS. Currently, the infrastructure data in ARMIS 43–07 are collected from 30 mandatory price cap carriers (operating companies of Verizon, SBC, BellSouth, and Qwest.) The Commission does not collect this information from other, smaller entities. If the Commission does not adopt such a rule change, small entities will not be affected. Alternatively, the Commission could adopt the rule change but specify that the data collection applies only to the mandatory price cap companies. The Commission seeks comment on these options.

Federal Rules that may Duplicate, Overlap, or Conflict With the Proposed Rules. None.

Report to Congress: the Consumer Information Bureau, Reference Information Center, shall provide a copy of this IRFA to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA.

Ordering Clauses

Pursuant to the authority contained in sections 4(i), 4(j), 11, 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 154(j), 161, 201(b), 303(r), and 403, this Further Notice of Proposed Rulemaking in CC Docket Nos. 80–286, 99–301, and 00–199 is adopted.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the two Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 32

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

47 CFR Part 36

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1213 Filed 2–5–02; 8:45 am]

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Federal Register

Wednesday,
February 6, 2002

Part III

Department of Defense

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project at the U.S. Army Engineer Research and Development Center; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project at the U.S. Army Engineer Research and Development Center; Notice

AGENCY: Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), DoD.

ACTION: Notice of amendment of the demonstration project plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995, as amended by section 1114 of the National Defense Authorization Act for Fiscal Year 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology (S&T) Reinvention Laboratories. The above-cited legislation authorizes DoD to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management. This amendment revises the Engineer Research and Development Center (ERDC) project plan by realigning two occupational series to the Administrative occupational family: the Outdoor Recreation Planning (0023) and the Environmental Protection Specialist (0028) series; and to clarify that nothing in the plan is intended to preclude adopting or incorporating any law enacted or regulation issued within the period of the project's duration.

DATES: This amendment to the demonstration project may be implemented beginning on the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: ERDC: Dr. C. H. Pennington, U.S. Army Engineer Research and Development Center, ATTN: CEERD-ZA-VE, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199. DoD: Ms. Patricia M. Stewart, CPMS-AF, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

The final plan was published in the **Federal Register** for the following S&T Reinvention Laboratory Demonstration Project: U.S. Army Engineer Waterways Experiment Station (WES) (Tuesday, March 3, 1998, Volume 63, Number 41, Part IV, page 10462). This final plan was corrected and re-published in the **Federal Register** (Wednesday, March 25, 1998, Volume 63, Number 57, Part V, page 14580). Note: The WES demonstration project was renamed the ERDC demonstration project following consolidation of the Army Corps of Engineers' laboratories.

Amendments to the final plan were published in the **Federal Register** as follows: To expand coverage of the WES demonstration project to include the Construction Engineering Research Laboratory, Cold Regions Research and Engineering Laboratory, and Topographic Engineering Center (Friday, October 16, 1998, Volume 63, Number 200, Part V, page 55770); to add competitive examining and Distinguished Scholastic Achievement Appointment authorities as part of the ERDC plan (Thursday, March 11, 1999, Volume 64, Number 47, Part II, page 12216); and to change reduction-in-force procedures to recognize performance based on the average of the last three annual performance scores in the most recent 4-year period as a criterion to establish retention registers (Monday, May 22, 2000, Volume 65, Number 65, Part 99, page 32135).

This demonstration project involves simplified job classification, pay banding, a performance-based compensation system, employee development provisions, and modified reduction-in-force procedures.

2. Overview

This amendment realigns the 0023, Outdoor Recreation Planning, and 0028, Environmental Protection Specialist, series from the demonstration's Engineers and Scientists and E&S Technicians occupational families to its Administrative family, in order to improve classification consistency.

I. Executive Summary

The Department of the Army established the ERDC personnel demonstration project to be generally similar to the system in use at the Department of the Navy personnel demonstration project known as China Lake. The ERDC project was built upon the concepts of linking performance to pay for all covered positions; simplifying paperwork in the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and unions; and delegating authorities to line managers.

II. Introduction

A. Purpose

The demonstration project at the ERDC intends to provide managers the authority, control, and flexibility needed to achieve quality laboratories and quality products. The purpose of this amendment is to modify the demonstration's position classification system by realigning two occupational series to a different occupational family. Other basic provisions of the approved ERDC project plan are unchanged.

B. Employee Notification and Collective Bargaining Requirements

Employees affected by this amendment will be provided a copy of this notice. Participating organizations must fulfill any collective bargaining obligations to unions that represent employees covered by the demonstration.

C. Problems With the Present System

Currently, the Outdoor Recreation Planning series (0023) is assigned to the Engineers and Scientists occupational family. It is the only series assigned to this occupational family that is not a professional occupation (i.e., one with positive education requirements). The OPM Handbook of Occupational Groups and Families includes this series in the Miscellaneous Occupations group, rather than in one of the occupational groups for science or engineering. The work performed by the 0023 series is properly categorized as administrative.

The Environmental Protection Specialist (0028) series is assigned to the E&S Technicians occupational family. The proper category for Environmental Protection Specialist (0028) is administrative. This series is similar to other two-grade occupations in that occupational family, such as Safety & Occupational Health Specialist (0018), General Supply Specialist (2001), and Transportation Specialist (2101).

D. Changes and Expected Benefits

The Outdoor Recreation Planning (0023) and the Environmental Protection Specialist (0028) series are being realigned to the Administrative occupational family. This is consistent with other series in the Administrative occupational family that are excluded from assigning functional codes and perform two-grade interval work. The Engineers and Scientists occupational family will now consist exclusively of positions in professional series.

Additionally, a provision is being added to clarify that nothing in the demonstration project plan is intended

to preclude adopting or incorporating any law enacted or regulation issued within the period of the project's duration.

III. Personnel System Changes

Realignment of the Outdoor Recreational Planning (0023) and the Environmental Protection Specialist (0028) series to the Administrative occupational family requires amendment to the final ERDC project plan published in the **Federal Register** (Wednesday, March 25, 1998, Volume 63, Number 57, Part V, page 14580). Specifically, Section II. E (page 14584), Table 2. Occupational Series Included in the Demonstration Project, is amended as follows:

Engineers and Scientists		
Delete	0023	Outdoor Recreation Planner.
E&S Technicians		
Delete	0028	Environmental Protection Specialist
Administrative		
Add	0023	Outdoor Recreational Planning
Add	0028	Environmental Protection Specialist

Additionally, Section IX, Required Waivers to Law and Regulation, is amended by inserting after the first paragraph, a new paragraph as follows:

''The following waivers and adaptations of certain Title 5, U.S.C., provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.''

Dated: January 30, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2765 Filed 2–5–02; 8:45 am]

BILLING CODE 5001–08–P

Federal Register

Wednesday,
February 6, 2002

Part III

Department of Defense

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project at the U.S. Army Engineer Research and Development Center; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project at the U.S. Army Engineer Research and Development Center; Notice

AGENCY: Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), DoD.

ACTION: Notice of amendment of the demonstration project plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995, as amended by section 1114 of the National Defense Authorization Act for Fiscal Year 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology (S&T) Reinvention Laboratories. The above-cited legislation authorizes DoD to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management. This amendment revises the Engineer Research and Development Center (ERDC) project plan by realigning two occupational series to the Administrative occupational family: the Outdoor Recreation Planning (0023) and the Environmental Protection Specialist (0028) series; and to clarify that nothing in the plan is intended to preclude adopting or incorporating any law enacted or regulation issued within the period of the project's duration.

DATES: This amendment to the demonstration project may be implemented beginning on the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: ERDC: Dr. C. H. Pennington, U.S. Army Engineer Research and Development Center, ATTN: CEERD-ZA-VE, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199. DoD: Ms. Patricia M. Stewart, CPMS-AF, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

The final plan was published in the **Federal Register** for the following S&T Reinvention Laboratory Demonstration Project: U.S. Army Engineer Waterways Experiment Station (WES) (Tuesday, March 3, 1998, Volume 63, Number 41, Part IV, page 10462). This final plan was corrected and re-published in the **Federal Register** (Wednesday, March 25, 1998, Volume 63, Number 57, Part V, page 14580). Note: The WES demonstration project was renamed the ERDC demonstration project following consolidation of the Army Corps of Engineers' laboratories.

Amendments to the final plan were published in the **Federal Register** as follows: To expand coverage of the WES demonstration project to include the Construction Engineering Research Laboratory, Cold Regions Research and Engineering Laboratory, and Topographic Engineering Center (Friday, October 16, 1998, Volume 63, Number 200, Part V, page 55770); to add competitive examining and Distinguished Scholastic Achievement Appointment authorities as part of the ERDC plan (Thursday, March 11, 1999, Volume 64, Number 47, Part II, page 12216); and to change reduction-in-force procedures to recognize performance based on the average of the last three annual performance scores in the most recent 4-year period as a criterion to establish retention registers (Monday, May 22, 2000, Volume 65, Number 65, Part 99, page 32135).

This demonstration project involves simplified job classification, pay banding, a performance-based compensation system, employee development provisions, and modified reduction-in-force procedures.

2. Overview

This amendment realigns the 0023, Outdoor Recreation Planning, and 0028, Environmental Protection Specialist, series from the demonstration's Engineers and Scientists and E&S Technicians occupational families to its Administrative family, in order to improve classification consistency.

I. Executive Summary

The Department of the Army established the ERDC personnel demonstration project to be generally similar to the system in use at the Department of the Navy personnel demonstration project known as China Lake. The ERDC project was built upon the concepts of linking performance to pay for all covered positions; simplifying paperwork in the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and unions; and delegating authorities to line managers.

II. Introduction

A. Purpose

The demonstration project at the ERDC intends to provide managers the authority, control, and flexibility needed to achieve quality laboratories and quality products. The purpose of this amendment is to modify the demonstration's position classification system by realigning two occupational series to a different occupational family. Other basic provisions of the approved ERDC project plan are unchanged.

B. Employee Notification and Collective Bargaining Requirements

Employees affected by this amendment will be provided a copy of this notice. Participating organizations must fulfill any collective bargaining obligations to unions that represent employees covered by the demonstration.

C. Problems With the Present System

Currently, the Outdoor Recreation Planning series (0023) is assigned to the Engineers and Scientists occupational family. It is the only series assigned to this occupational family that is not a professional occupation (i.e., one with positive education requirements). The OPM Handbook of Occupational Groups and Families includes this series in the Miscellaneous Occupations group, rather than in one of the occupational groups for science or engineering. The work performed by the 0023 series is properly categorized as administrative.

The Environmental Protection Specialist (0028) series is assigned to the E&S Technicians occupational family. The proper category for Environmental Protection Specialist (0028) is administrative. This series is similar to other two-grade occupations in that occupational family, such as Safety & Occupational Health Specialist (0018), General Supply Specialist (2001), and Transportation Specialist (2101).

D. Changes and Expected Benefits

The Outdoor Recreation Planning (0023) and the Environmental Protection Specialist (0028) series are being realigned to the Administrative occupational family. This is consistent with other series in the Administrative occupational family that are excluded from assigning functional codes and perform two-grade interval work. The Engineers and Scientists occupational family will now consist exclusively of positions in professional series.

Additionally, a provision is being added to clarify that nothing in the demonstration project plan is intended

to preclude adopting or incorporating any law enacted or regulation issued within the period of the project's duration.

III. Personnel System Changes

Realignment of the Outdoor Recreational Planning (0023) and the Environmental Protection Specialist (0028) series to the Administrative occupational family requires amendment to the final ERDC project plan published in the **Federal Register** (Wednesday, March 25, 1998, Volume 63, Number 57, Part V, page 14580). Specifically, Section II. E (page 14584), Table 2. Occupational Series Included in the Demonstration Project, is amended as follows:

Engineers and Scientists		
Delete	0023	Outdoor Recreation Planner.
E&S Technicians		
Delete	0028	Environmental Protection Specialist
Administrative		
Add	0023	Outdoor Recreational Planning
Add	0028	Environmental Protection Specialist

Additionally, Section IX, Required Waivers to Law and Regulation, is amended by inserting after the first paragraph, a new paragraph as follows:

''The following waivers and adaptations of certain Title 5, U.S.C., provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.''

Dated: January 30, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2765 Filed 2–5–02; 8:45 am]

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Federal Register

Wednesday,
February 6, 2002

Part IV

Department of Defense

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project at the U.S. Army Aviation and Missile Research, Development, and Engineering Center; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project at the U.S. Army Aviation and Missile Research, Development, and Engineering Center; Notice

AGENCY: Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), DoD.

ACTION: Notice of amendment of the demonstration project plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995, as amended by Section 1114 of the National Defense Authorization Act for Fiscal Year 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology (S&T) Reinvention Laboratories. The above-cited legislation authorizes DoD to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved personnel management.

This notice amends the Aviation and Missile Research, Development, and Engineering Center (AMCOM RDEC) project plan to change the method for pay setting upon promotion, add a staffing supplement, and make a technical correction to the categories of participating employees.

DATES: This amendment to the demonstration project plan may be implemented beginning on the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: AMCOM RDEC: David Knepper, Aviation and Missile Research, Development, and Engineering Center, U.S. Army Aviation and Missile Command, ATTN: AMSAM–RD, Redstone Arsenal, Alabama 35898–5000. DoD: Patricia M. Stewart, CPMS–AF, 1400 Key Blvd., Suite B–200, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Final plans were published in the **Federal Register** for the following S&T Reinvention Laboratory Demonstration Projects: Missile Research, Development, and Engineering Center (MRDEC) (Friday, June 27, 1997, Volume 62, Number 124, Part IV, page 34876); and Aviation Research, Development, and Engineering Center (AVRDEC) (Friday, June 27, 1997, Volume 62, Number 124, Part V, page 34906).

Amendments to the final plans were published in the **Federal Register** as follows: To add competitive examining and Distinguished Scholastic Achievement Appointment authorities as part of the MRDEC and the AVRDEC plans (Thursday, March 11, 1999, Volume 64, Number 47, page 12216); and to merge the two separate demonstrations into one project as the AMCOM RDEC (Thursday, August 31, 2000, Volume 65, Number 170, page 53142).

The AMCOM RDEC demonstration project involves simplified job classification, paybanding, a performance-based compensation system, expanded employee development, and revised reduction-in-force procedures.

2. Overview

Pay setting for promotion is currently achieved by awarding an employee a 6 percent salary increase or the lowest level in the payband to which promoted, whichever is greater. In many instances, the increase has been smaller than what would have been received under comparable circumstances if the employee were in the General Schedule (GS) system. For example, an Engineer or Scientist in the demonstration with a salary equivalent to a GS–13, step 5 would receive a 6 percent increase upon promotion from payband DB III to DB IV. In the GS system, the salary increase from GS–13, step 5 to the next grade is 7.74 percent.

The minimum salary increase upon promotion is being changed from 6 percent to 8 percent or the lowest level in the payband to which promoted, which is more typical of comparable GS increases. Also, flexibility is being provided to the Personnel Management Board to raise the minimum increase beyond 8 percent on a case-by-case basis. The Board will document its rationale for decisions to provide an increase above 8 percent. This amendment is designed to alleviate a potential employee retention issue.

A staffing supplement is needed to provide the AMCOM RDEC the flexibility to remain competitive with special salary rates in the GS system. Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement serves to compensate demonstration project employees for the comparable value of GS special salary rates, removing this as a potential employee hiring and retention issue.

A technical correction is needed specifically to exclude employees covered by the Defense Civilian Intelligence Personnel System (DCIPS). This exclusion was in the AVRDEC **Federal Register** notice. However, it was not made part of the MRDEC plan because MRDEC at the time did not employ DCIPS personnel. The correction is necessary because the two demonstrations (MRDEC and AVRDEC) have been merged into one and the MRDEC plan is being followed for the consolidated AMCOM RDEC project.

I. Executive Summary

The Department of the Army established the AMCOM RDEC personnel demonstration project to be generally similar in nature to the system in use at the Department of the Navy personnel demonstration project known as China Lake. The AMCOM RDEC project was built upon the concepts of linking performance to pay for all covered positions; simplifying paperwork in the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and unions; and delegating authorities to line managers.

II. Introduction

The demonstration project at the AMCOM RDEC intends to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products. The project will allow the laboratory to compete more effectively for high-quality personnel and strengthen the manager's role in personnel management.

A. Purpose

The purpose of this amendment is: (1) To improve pay setting upon promotion to make it comparable to that received by GS employees by increasing the promotion salary entitlement from the current 6 percent or bottom of the payband to which promoted to 8 percent or the bottom of the payband to which promoted; (2) to allow the Personnel Management Board to raise the minimum increase upon promotion beyond 8 percent on a case-by-case basis as described below; (3) to add a staffing supplement to replace special salary rates that are waived in the demonstration project; and (4) specifically to exclude employees covered by the DCIPS from participating

in the demonstration. Other basic provisions of the approved AMCOM RDEC demonstration project are unchanged.

B. Employee Notification and Collective Bargaining Requirements

Employee notification will be made by delivery of a copy of this notice. Supervisors and employees will receive information briefings and training before implementation. Participating organizations must fulfill any collective bargaining obligations to unions that represent employees covered by the demonstration.

III. Personnel System Changes

A. Pay Setting for Promotion

The pay setting for promotion provisions in the MRDEC plan, under Section III B at page 34888, are amended to read: ''Upon promotion, an employee will be entitled to an 8 percent increase in base pay or the lowest level in the payband to which promoted, whichever is greater. However, for employees assigned to occupational categories and geographic areas covered by special rates, the minimum salary rate in the payband to which promoted is the minimum salary for the corresponding special rate or locality rate, whichever is greater. For employees covered by a staffing supplement, the demonstration staffing adjusted pay is considered basic pay for promotion calculations. On a case-by-case basis, the AMCOM RDEC Personnel Management Board may approve requests for promotion base pay increases beyond 8 percent, in accordance with established AMCOM RDEC operating procedures. The Board will document its rationale for decisions to provide an increase above 8 percent. Highest previous rate may also be considered in setting pay in accordance with existing pay-setting policies.''

B. Staffing Supplement

The MRDEC plan is amended by adding the following as Section III G, Staffing Supplement:

Application of the Staffing Supplement Upon Conversion to the Demonstration Project

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to base pay, much like locality rates are added to base pay. For employees being converted into the demonstration, total pay immediately after implementation of this intervention will be the same as immediately before this intervention, but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary. The staffing supplement is calculated as follows:

Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base rate plus the staffing supplement. This amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

Staffing factor = (Maximum special rate for the banded grades)/(GS unadjusted rate corresponding to that special rate)

Demonstration base rate = (Former GS adjusted rate, special or locality rate)/(staffing factor)

Staffing supplement = (Demonstration base rate) × (staffing factor − 1)

Salary upon conversion = (Demonstration base rate) + (staffing supplement) Note: This sum will equal the existing rate.

Example: Assume there is a GS–801–11, step 03, employee stationed in Huntsville, Alabama, who is entitled to the greater of a special salary rate of $50,018 or a locality rate of $48,499 ($44,462 + 9.08 percent). The maximum special rate for a GS–801–11, step 10 is $59,741, and the corresponding regular rate is $54,185. The maximum GS–11 locality rate in Huntsville is $59,105 ($54,185 + 9.08 percent), which is less than the maximum special salary rate. Thus, a staffing supplement is payable. The staffing factor is computed as follows:

Staffing factor = $59,741/$54,185 = 1.1025

Demonstration base rate = $50,018/1.1025 = $45,368

Then to determine the staffing supplement, multiply the demonstration base by the staffing factor minus 1.

Staffing supplement = $45,368 × 0.1025 = $4,650

The staffing supplement of $4,650 is added to the demonstration base rate of $45,368 and the total salary is $50,018, which is the salary of the employee before this intervention.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality rate or special rate) by the applicable locality pay factor (for example, 1.0908 in the Huntsville area for CY 2002). The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

Application of the Staffing Supplement in Circumstances Other than Conversion to the Demonstration Project

Calculation of the staffing supplement discussed above was presented in the context of a General Schedule employee entering the demonstration project. Application of the staffing supplement is normally intended to maintain pay comparability for General Schedule employees entering the demonstration. However, the staffing supplement formulas must be compatible with non-Government employees entering the demonstration and also be adaptable to the special circumstances of employees already in the demonstration. Employees who are already in the demonstration project and who are in occupational categories covered by special salary rate tables will have their salaries examined for the application of a staffing supplement or a one-time salary adjustment.

The principles in paragraphs 1 through 6 will govern the modifications necessary to the previous staffing supplement calculations to apply the staffing supplement to circumstances other than a General Schedule employee entering the demonstration project. No adjustment under these provisions will provide an increase greater than that provided by the special salary rate. An

increase provided under this authority is not an equivalent increase, as defined by 5 CFR 531.403. These principles are stated with the understanding that the necessary conditions exist that require the application of a staffing supplement.

1. If a non-Government employee is hired into the demonstration, then the employee's entry salary will be used for the term, ''former GS adjusted rate'' to calculate the demonstration base rate.

2. If a current demonstration project employee is covered by a special salary rate table that has not changed (other than by annual general pay increases), then the employee's current demonstration adjusted base salary will be used for the term ''former GS adjusted rate'' to calculate the demonstration base rate.

3. If a current demonstration project employee is covered by a new or modified special salary rate table, then the employee's current demonstration base rate is used to calculate the staffing supplement percentage. The employee's new demonstration adjusted base salary is the sum of the current demonstration base rate and the calculated staffing supplement.

4. If a current demonstration project employee is in an occupational category that is covered by a special salary rate table and subsequently, the occupational category becomes covered by a different special salary rate table with a higher value (e.g.; a DB 854 originally covered by table 422 is subsequently covered by table 999B, which is a higher rate schedule), then the following steps must be applied to calculate a new demonstration base rate:

Step 1. To obtain a relevance factor, divide the staffing factor that will become applicable to the employee by the staffing factor that would have applied to the employee. For example, table 999B (2002 rates for Huntsville, AL) is applicable to a DB 854-II employee, and the applicable staffing factor is 1.18 ($63,938/$54,185). For table 0422 (the table that would have applied if table 999B had not been implemented) the applicable staffing factor is 1.1282 ($61,130/$54,185). Thus:

Relevance factor = 1.18/1.1282 = 1.0459

Step 2. Multiply the relevance factor resulting from step 1 by the employee's current adjusted demonstration rate to determine a new adjusted demonstration rate.

Step 3. Divide the result from step 2 by the applicable staffing factor to derive a new demonstration base rate. This new demonstration base rate will be used to calculate the staffing supplement and the new demonstration adjusted base salary.

5. If, after the establishment of a new or adjusted special salary rate table, an employee enters the demonstration (whether converted from the General Schedule or hired from outside Government) prior to this intervention, then the employee's current adjusted base salary is used for the term ''former GS adjusted rate'' to calculate the demonstration base rate. This principle prevents double compensation due to the single event of a new or adjusted special salary rate table.

6. If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's salary may be reviewed and adjusted to accommodate the salary increase provided by the special salary rate. The review may result in a one-time pay increase if the employee's salary equals or is less than the highest special salary grade and step that exceeds the comparable locality grade and step. AMCOM RDEC operating procedures will identify the officials responsible to make such reviews and determinations. The applicable salary increase will be calculated by determining the percentage difference between the highest step 10 special salary rate and the comparable step 10 locality rate and applying this percentage to the demonstration base rate.

An established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), i.e., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

Section V of the MRDEC plan, Conversion to the Demonstration Project, paragraph c is amended to read: ''Employees who are covered by special salary rates, upon being covered by the demonstration project, will no longer be considered special rate employees under the demonstration project. These employees will, therefore, be entitled to full locality pay or a staffing supplement. The adjusted salaries of these employees will not change. Rather, the employees will receive a new basic pay rate computed under the staffing supplement rules in Section III G, Staffing Supplement, if applicable. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary.''

Section V of the MRDEC plan, Conversion or Movement from a Project Position to a General Schedule Position, paragraph a (1), first sentence is amended to read: ''The employees'' adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates on the highest applicable GS rate range.'' Paragraph b (2), first sentence is changed to read: ''An employee's adjusted rate of basic pay under the project (including any locality payment or staffing supplement) is converted to the GS adjusted rate on the highest applicable rate range for the converted GS grade.''

Section IX of the MRDEC plan, Required Waivers to Law and Regulation, is amended by inserting after the first paragraph, a new paragraph as follows: ''The following waivers and adaptations of certain Title 5, U.S.C., provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.''

Section IX is also amended by modifying the existing waiver to title 5, United States Code, chapter 53, sections 5361–5366, Grade and pay retention; re-numbering the existing ''(5)'' as ''(6)'; and inserting a new item ''(5)'' as follows: ''(5) provide that pay retention provisions do not apply when reduction in basic pay is due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement'.

Additionally, Section IX is amended by inserting the following provision above the existing waiver to title 5, United States Code, chapter 55: ''Chapter 55, Section 5542(a)(1)-(2): Overtime rates; computation'These sections are adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.''

Section IX is amended by inserting the following provision above the existing waiver to title 5, United States Code, chapter 57: ''Chapter 55, Section 5547(a)–(b): Limitation on premium pay—These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in

applying the pay cap provisions in 5 U.S.C. 5547.''

Section IX is further amended by modifying the existing waiver to title 5, Code of Federal Regulations, part 536; re-numbering the existing ''(4)'' as ''(5)''; inserting a new item ''(4)'' as follows: ''(4) provide that pay retention provisions do not apply when reduction in basic pay is due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement'.

Finally, Section IX is amended by inserting the following two provisions above the existing waiver to title 5, Code of Federal Regulations, part 550.703:

(1) ''Part 550, sections 550.105 and 550.106: Biweekly and annual maximum earnings limitations—These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.''

(2) ''Part 550, section 550.113(a): Computation of overtime pay—This section is adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.''

C. Participating Employees

The third sentence under Section II E, Participating Employees, of the MRDEC plan is amended to read: ''Senior Executive Service (SES) employees and positions, Federal Wage System (FWS) employees, Defense Civilian Intelligence Personnel System (DCIPS) employees, and employees in the Quality Assurance Specialist (Ammunition Surveillance) (QASAS) career program will not be covered in the demonstration project.''

Dated: January 30, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–2766 Filed 2–5–02; 8:45 am]

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Federal Register

Wednesday,
February 6, 2002

Part IV

Department of Defense

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project at the U.S. Army Aviation and Missile Research, Development, and Engineering Center; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project at the U.S. Army Aviation and Missile Research, Development, and Engineering Center; Notice

AGENCY: Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), DoD.

ACTION: Notice of amendment of the demonstration project plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995, as amended by Section 1114 of the National Defense Authorization Act for Fiscal Year 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology (S&T) Reinvention Laboratories. The above-cited legislation authorizes DoD to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved personnel management.

This notice amends the Aviation and Missile Research, Development, and Engineering Center (AMCOM RDEC) project plan to change the method for pay setting upon promotion, add a staffing supplement, and make a technical correction to the categories of participating employees.

DATES: This amendment to the demonstration project plan may be implemented beginning on the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: AMCOM RDEC: David Knepper, Aviation and Missile Research, Development, and Engineering Center, U.S. Army Aviation and Missile Command, ATTN: AMSAM–RD, Redstone Arsenal, Alabama 35898–5000. DoD: Patricia M. Stewart, CPMS–AF, 1400 Key Blvd., Suite B–200, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Final plans were published in the **Federal Register** for the following S&T Reinvention Laboratory Demonstration Projects: Missile Research, Development, and Engineering Center (MRDEC) (Friday, June 27, 1997, Volume 62, Number 124, Part IV, page 34876); and Aviation Research, Development, and Engineering Center (AVRDEC) (Friday, June 27, 1997, Volume 62, Number 124, Part V, page 34906).

Amendments to the final plans were published in the **Federal Register** as follows: To add competitive examining and Distinguished Scholastic Achievement Appointment authorities as part of the MRDEC and the AVRDEC plans (Thursday, March 11, 1999, Volume 64, Number 47, page 12216); and to merge the two separate demonstrations into one project as the AMCOM RDEC (Thursday, August 31, 2000, Volume 65, Number 170, page 53142).

The AMCOM RDEC demonstration project involves simplified job classification, paybanding, a performance-based compensation system, expanded employee development, and revised reduction-in-force procedures.

2. Overview

Pay setting for promotion is currently achieved by awarding an employee a 6 percent salary increase or the lowest level in the payband to which promoted, whichever is greater. In many instances, the increase has been smaller than what would have been received under comparable circumstances if the employee were in the General Schedule (GS) system. For example, an Engineer or Scientist in the demonstration with a salary equivalent to a GS–13, step 5 would receive a 6 percent increase upon promotion from payband DB III to DB IV. In the GS system, the salary increase from GS–13, step 5 to the next grade is 7.74 percent.

The minimum salary increase upon promotion is being changed from 6 percent to 8 percent or the lowest level in the payband to which promoted, which is more typical of comparable GS increases. Also, flexibility is being provided to the Personnel Management Board to raise the minimum increase beyond 8 percent on a case-by-case basis. The Board will document its rationale for decisions to provide an increase above 8 percent. This amendment is designed to alleviate a potential employee retention issue.

A staffing supplement is needed to provide the AMCOM RDEC the flexibility to remain competitive with special salary rates in the GS system. Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement serves to compensate demonstration project employees for the comparable value of GS special salary rates, removing this as a potential employee hiring and retention issue.

A technical correction is needed specifically to exclude employees covered by the Defense Civilian Intelligence Personnel System (DCIPS). This exclusion was in the AVRDEC **Federal Register** notice. However, it was not made part of the MRDEC plan because MRDEC at the time did not employ DCIPS personnel. The correction is necessary because the two demonstrations (MRDEC and AVRDEC) have been merged into one and the MRDEC plan is being followed for the consolidated AMCOM RDEC project.

I. Executive Summary

The Department of the Army established the AMCOM RDEC personnel demonstration project to be generally similar in nature to the system in use at the Department of the Navy personnel demonstration project known as China Lake. The AMCOM RDEC project was built upon the concepts of linking performance to pay for all covered positions; simplifying paperwork in the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and unions; and delegating authorities to line managers.

II. Introduction

The demonstration project at the AMCOM RDEC intends to provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve a quality laboratory and quality products. The project will allow the laboratory to compete more effectively for high-quality personnel and strengthen the manager's role in personnel management.

A. Purpose

The purpose of this amendment is: (1) To improve pay setting upon promotion to make it comparable to that received by GS employees by increasing the promotion salary entitlement from the current 6 percent or bottom of the payband to which promoted to 8 percent or the bottom of the payband to which promoted; (2) to allow the Personnel Management Board to raise the minimum increase upon promotion beyond 8 percent on a case-by-case basis as described below; (3) to add a staffing supplement to replace special salary rates that are waived in the demonstration project; and (4) specifically to exclude employees covered by the DCIPS from participating

in the demonstration. Other basic provisions of the approved AMCOM RDEC demonstration project are unchanged.

B. Employee Notification and Collective Bargaining Requirements

Employee notification will be made by delivery of a copy of this notice. Supervisors and employees will receive information briefings and training before implementation. Participating organizations must fulfill any collective bargaining obligations to unions that represent employees covered by the demonstration.

III. Personnel System Changes

A. Pay Setting for Promotion

The pay setting for promotion provisions in the MRDEC plan, under Section III B at page 34888, are amended to read: ''Upon promotion, an employee will be entitled to an 8 percent increase in base pay or the lowest level in the payband to which promoted, whichever is greater. However, for employees assigned to occupational categories and geographic areas covered by special rates, the minimum salary rate in the payband to which promoted is the minimum salary for the corresponding special rate or locality rate, whichever is greater. For employees covered by a staffing supplement, the demonstration staffing adjusted pay is considered basic pay for promotion calculations. On a case-by-case basis, the AMCOM RDEC Personnel Management Board may approve requests for promotion base pay increases beyond 8 percent, in accordance with established AMCOM RDEC operating procedures. The Board will document its rationale for decisions to provide an increase above 8 percent. Highest previous rate may also be considered in setting pay in accordance with existing pay-setting policies.''

B. Staffing Supplement

The MRDEC plan is amended by adding the following as Section III G, Staffing Supplement:

Application of the Staffing Supplement Upon Conversion to the Demonstration Project

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to base pay, much like locality rates are added to base pay. For employees being converted into the demonstration, total pay immediately after implementation of this intervention will be the same as immediately before this intervention, but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary. The staffing supplement is calculated as follows:

Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base rate plus the staffing supplement. This amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

Staffing factor = (Maximum special rate for the banded grades)/(GS unadjusted rate corresponding to that special rate)

Demonstration base rate = (Former GS adjusted rate, special or locality rate)/(staffing factor)

Staffing supplement = (Demonstration base rate) × (staffing factor − 1)

Salary upon conversion = (Demonstration base rate) + (staffing supplement) Note: This sum will equal the existing rate.

Example: Assume there is a GS–801–11, step 03, employee stationed in Huntsville, Alabama, who is entitled to the greater of a special salary rate of $50,018 or a locality rate of $48,499 ($44,462 + 9.08 percent). The maximum special rate for a GS–801–11, step 10 is $59,741, and the corresponding regular rate is $54,185. The maximum GS–11 locality rate in Huntsville is $59,105 ($54,185 + 9.08 percent), which is less than the maximum special salary rate. Thus, a staffing supplement is payable. The staffing factor is computed as follows:

Staffing factor = $59,741/$54,185 = 1.1025

Demonstration base rate = $50,018/1.1025 = $45,368

Then to determine the staffing supplement, multiply the demonstration base by the staffing factor minus 1.

Staffing supplement = $45,368 × 0.1025 = $4,650

The staffing supplement of $4,650 is added to the demonstration base rate of $45,368 and the total salary is $50,018, which is the salary of the employee before this intervention.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality rate or special rate) by the applicable locality pay factor (for example, 1.0908 in the Huntsville area for CY 2002). The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

Application of the Staffing Supplement in Circumstances Other than Conversion to the Demonstration Project

Calculation of the staffing supplement discussed above was presented in the context of a General Schedule employee entering the demonstration project. Application of the staffing supplement is normally intended to maintain pay comparability for General Schedule employees entering the demonstration. However, the staffing supplement formulas must be compatible with non-Government employees entering the demonstration and also be adaptable to the special circumstances of employees already in the demonstration. Employees who are already in the demonstration project and who are in occupational categories covered by special salary rate tables will have their salaries examined for the application of a staffing supplement or a one-time salary adjustment.

The principles in paragraphs 1 through 6 will govern the modifications necessary to the previous staffing supplement calculations to apply the staffing supplement to circumstances other than a General Schedule employee entering the demonstration project. No adjustment under these provisions will provide an increase greater than that provided by the special salary rate. An

increase provided under this authority is not an equivalent increase, as defined by 5 CFR 531.403. These principles are stated with the understanding that the necessary conditions exist that require the application of a staffing supplement.

1. If a non-Government employee is hired into the demonstration, then the employee's entry salary will be used for the term, ''former GS adjusted rate'' to calculate the demonstration base rate.

2. If a current demonstration project employee is covered by a special salary rate table that has not changed (other than by annual general pay increases), then the employee's current demonstration adjusted base salary will be used for the term ''former GS adjusted rate'' to calculate the demonstration base rate.

3. If a current demonstration project employee is covered by a new or modified special salary rate table, then the employee's current demonstration base rate is used to calculate the staffing supplement percentage. The employee's new demonstration adjusted base salary is the sum of the current demonstration base rate and the calculated staffing supplement.

4. If a current demonstration project employee is in an occupational category that is covered by a special salary rate table and subsequently, the occupational category becomes covered by a different special salary rate table with a higher value (e.g.; a DB 854 originally covered by table 422 is subsequently covered by table 999B, which is a higher rate schedule), then the following steps must be applied to calculate a new demonstration base rate:

Step 1. To obtain a relevance factor, divide the staffing factor that will become applicable to the employee by the staffing factor that would have applied to the employee. For example, table 999B (2002 rates for Huntsville, AL) is applicable to a DB 854-II employee, and the applicable staffing factor is 1.18 ($63,938/$54,185). For table 0422 (the table that would have applied if table 999B had not been implemented) the applicable staffing factor is 1.1282 ($61,130/$54,185). Thus:

Relevance factor = 1.18/1.1282 = 1.0459

Step 2. Multiply the relevance factor resulting from step 1 by the employee's current adjusted demonstration rate to determine a new adjusted demonstration rate.

Step 3. Divide the result from step 2 by the applicable staffing factor to derive a new demonstration base rate. This new demonstration base rate will be used to calculate the staffing supplement and the new demonstration adjusted base salary.

5. If, after the establishment of a new or adjusted special salary rate table, an employee enters the demonstration (whether converted from the General Schedule or hired from outside Government) prior to this intervention, then the employee's current adjusted base salary is used for the term ''former GS adjusted rate'' to calculate the demonstration base rate. This principle prevents double compensation due to the single event of a new or adjusted special salary rate table.

6. If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's salary may be reviewed and adjusted to accommodate the salary increase provided by the special salary rate. The review may result in a one-time pay increase if the employee's salary equals or is less than the highest special salary grade and step that exceeds the comparable locality grade and step. AMCOM RDEC operating procedures will identify the officials responsible to make such reviews and determinations. The applicable salary increase will be calculated by determining the percentage difference between the highest step 10 special salary rate and the comparable step 10 locality rate and applying this percentage to the demonstration base rate.

An established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), i.e., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

Section V of the MRDEC plan, Conversion to the Demonstration Project, paragraph c is amended to read: ''Employees who are covered by special salary rates, upon being covered by the demonstration project, will no longer be considered special rate employees under the demonstration project. These employees will, therefore, be entitled to full locality pay or a staffing supplement. The adjusted salaries of these employees will not change. Rather, the employees will receive a new basic pay rate computed under the staffing supplement rules in Section III G, Staffing Supplement, if applicable. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary.''

Section V of the MRDEC plan, Conversion or Movement from a Project Position to a General Schedule Position, paragraph a (1), first sentence is amended to read: ''The employees'' adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates on the highest applicable GS rate range.'' Paragraph b (2), first sentence is changed to read: ''An employee's adjusted rate of basic pay under the project (including any locality payment or staffing supplement) is converted to the GS adjusted rate on the highest applicable rate range for the converted GS grade.''

Section IX of the MRDEC plan, Required Waivers to Law and Regulation, is amended by inserting after the first paragraph, a new paragraph as follows: ''The following waivers and adaptations of certain Title 5, U.S.C., provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.''

Section IX is also amended by modifying the existing waiver to title 5, United States Code, chapter 53, sections 5361–5366, Grade and pay retention; re-numbering the existing ''(5)'' as ''(6)'; and inserting a new item ''(5)'' as follows: ''(5) provide that pay retention provisions do not apply when reduction in basic pay is due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement'.

Additionally, Section IX is amended by inserting the following provision above the existing waiver to title 5, United States Code, chapter 55: ''Chapter 55, Section 5542(a)(1)-(2): Overtime rates; computation'These sections are adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.''

Section IX is amended by inserting the following provision above the existing waiver to title 5, United States Code, chapter 57: ''Chapter 55, Section 5547(a)–(b): Limitation on premium pay—These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in

applying the pay cap provisions in 5 U.S.C. 5547.''

Section IX is further amended by modifying the existing waiver to title 5, Code of Federal Regulations, part 536; re-numbering the existing ''(4)'' as ''(5)''; inserting a new item ''(4)'' as follows: ''(4) provide that pay retention provisions do not apply when reduction in basic pay is due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement'.

Finally, Section IX is amended by inserting the following two provisions above the existing waiver to title 5, Code of Federal Regulations, part 550.703:

(1) ''Part 550, sections 550.105 and 550.106: Biweekly and annual maximum earnings limitations—These sections are adapted only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.''

(2) ''Part 550, section 550.113(a): Computation of overtime pay—This section is adapted only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.''

C. Participating Employees

The third sentence under Section II E, Participating Employees, of the MRDEC plan is amended to read: ''Senior Executive Service (SES) employees and positions, Federal Wage System (FWS) employees, Defense Civilian Intelligence Personnel System (DCIPS) employees, and employees in the Quality Assurance Specialist (Ammunition Surveillance) (QASAS) career program will not be covered in the demonstration project.''

Dated: January 30, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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