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Presidential Documents

Title 3—

The President

Presidential Determination No. 2002–07 of February 23, 2002

President's Report to Congress on Major Drug Transit or Major Illicit Drug Producing Countries under the FY 2002 Modification to the Annual Drug Certification Procedures

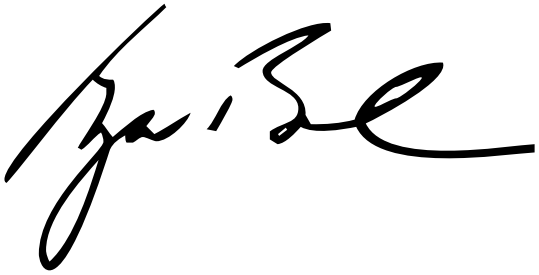
Memorandum for the Secretary of State

This report is submitted under section 591 of the Kenneth H. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (P.L. 107–115) (the ''FY 2002 FOAA''). Pursuant to section 591 of the FY 2002 FOAA, I hereby identify the following countries as major drug-transit or major illicit drug producing countries: Afghanistan, The Bahamas, Bolivia, Brazil, Burma, China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela, and Vietnam. I previously identified these same countries as major drug-transit or major illicit drug producing countries on November 1, 2001, pursuant to section 490(h) of the Foreign Assistance Act of 1961, as amended (the ''FAA'').

Pursuant to section 591 of the FY 2002 FOAA, I hereby designate Afghanistan, Burma and Haiti as countries that failed demonstrably, during the previous 12 months, to adhere to their obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a) (1) of the FAA. I have attached a justification for each of the countries so designated, as required by section 591.

Pursuant to section 591(3), I hereby also determine that provision of United States assistance to Afghanistan and Haiti in FY 2002 under the FY 2002 FOAA is vital to the national interests of the United States.

You are hereby authorized and directed to transmit this report to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 23, 2002.

Billing code 4710–10–M

STATEMENT OF EXPLANATION

Afghanistan

Afghanistan has failed demonstrably during the previous 12 months to make significant efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended. Provision of United States assistance to Afghanistan in Fiscal Year 2002 under the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (P.L. 107–115) is vital to the national interests of the United States.

After the Taliban began enforcing a ban on the cultivation of opium poppy in September 2000, the total production of opium in Afghanistan dropped by 94 percent, thereby reducing the global annual supply by nearly 75 percent. Although the Taliban successfully prevented cultivation, opium trafficking and heroin processing continued unabated through 2001, indicating the existence of large stockpiles of opium in the region used to control the opium market. At no point did the Taliban take any steps to adhere to its international obligations to interrupt opium trafficking or trade. In addition, cultivation and opium production increased in former Northern Alliance territory of Afghanistan. Drug traffickers in Afghanistan have switched allegiances from the Taliban to local commanders and warlords and available information indicates that poppy cultivation has resumed in several areas of Afghanistan since last fall.

Although the new Afghan Interim Authority led by Hamid Karzai has made a commitment to fight the production and trafficking of drugs in Afghanistan consistent with the Bonn Agreement of December 2001, it will take several months and significant assistance from the international community before the Interim Authority can take concrete measures to eradicate poppy and counter drug trafficking in Afghanistan. In the coming months, I will continue to monitor the Interim Authority's counternarcotics efforts closely. In the meantime, it is in the vital national interest of the United States to provide the full range of U.S. assistance to support the reconstruction of Afghanistan. Afghanistan poppy farmers must have viable alternatives to poppy cultivation that provide a sustainable income. The Afghan Interim Authority will need to establish rule of law and a basic law enforcement capacity at the local and regional level for its counternarcotics strategy to succeed. More broadly, although the United States' military campaign in Afghanistan has been successful, it is essential to ensure that Afghanistan does not again become a haven for terrorists. Stabilizing Afghanistan by providing various forms of assistance, including economic and military assistance in addition to counternarcotics, anti-crime, and humanitarian assistance is essential.

STATEMENT OF EXPLANATION

Burma

Burma has failed demonstrably during the last 12 months to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended. With the ban on opium production in Afghanistan imposed by the Taliban in 2001, Burma returned to its position as the world's largest producer of illicit opium. Burma is also the primary source of methamphetamines trafficked throughout Southeast Asia and has done little to stop the production of an estimated 800 million tablets annually and trafficking of these drugs.

Burma has taken some useful counternarcotics measures in the last year, but these measures are too limited in duration and scope to constitute a substantial effort to meet the standards set forth under U.S. law.

Burma's 1993 Narcotic Drugs and Psychotropic Substances Law conforms to the 1988 UN Drug Convention and contains useful legal tools for addressing money laundering, seizing drug-related assets, and prosecuting drug conspiracy cases, but the Government of Burma (GOB) has been slow to implement the law. Burma has not enforced its existing money-laundering laws. In 2001, Burma was placed on the Financial Action Task Force's List of Non-Cooperating Countries and Territories. To its credit Burma responded by drafting new anti-money-laundering legislation, but its passage has been delayed until sometime in 2002.

In 2001, the GOB took stronger, more aggressive law-enforcement actions against some ethnic groups, notably the Kokang Chinese, engaged in drug production and trafficking and considerably improved counternarcotics cooperation with China and Thailand. In areas controlled by the United Wa State Army (the principal drug-producing and drug-trafficking organization in Burma) the government has been very cautious, only slowly expanding its administrative presence, but not yet attempting any aggressive law-enforcement operations comparable to those it has staged elsewhere. Although unwilling to risk confronting the Wa, a potent organization with a well-manned and well-trained military force, the GOB did take the modest steps of establishing a police presence in the Wa territories in 2001 and, in December 2001, opening its first military intelligence office in the Wa territories.

Seizures of opium in 2001 modestly exceeded the amounts seized last year, but seizures of heroin declined for the fourth straight year. Burmese law-enforcement agencies seized approximately 1,629 kilograms of raw opium and 98 kilograms of heroin during 2001. Heroin seized in 2000 totaled 159 kilograms compared to 273 kilograms in 1999 and 404 kilograms in 1998.

The GOB has not yet taken effective action against methamphetamine production and trafficking. Considering that an estimated 800 million methamphetamine tablets are produced in Burma each year, the amounts seized in each of the past two years represent only small fraction of the total produced and have no real effect on the overall scope of the problem. In 2001, Burma seized 32.4 million methamphetamine pills, compared to 26.7 million pills seized during 2000.

The GOB continued to refuse to transfer to U.S. custody drug lord Chang Qifu (Khun Sa), who resides in Rangoon, on grounds that he had not violated his 1996 surrender agreement. The 1988 UN Drug Convention obligates parties, including Burma, to prosecute such traffickers.

While recognizing that Burma has intensified its counternarcotics efforts in 2001, particularly during the second half of the year, those efforts must be sustained and expanded, if they are to have a significant impact on the overall scope of the production and trafficking problem. Burma has not yet curbed involvement in illicit narcotics perpetrated by the largest, most powerful and most important trafficking organization within its borders, the United Wa State Army.

On balance, the United States Government remains concerned that the GOB's efforts are not commensurate with the extent of Burma's illicit drug problem and believes that Burma has failed demonstrably to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act. Large-scale poppy cultivation and opium production continue and enormous quantities of methamphetamines are produced in and trafficked from Burma, having serious adverse effects on neighboring countries and throughout the region. Its toleration of money laundering, its unwillingness to implement fully its counterdrug laws, and its failure to transfer notorious trafficker Chang Qifu (Khun Sa) under indictment in the United States are all serious concerns.

Although the GOB's actions in 2001, particularly in cooperation with China and Thailand, demonstrated a new commitment to effective counternarcotics measures; the GOB has failed to enforce its narcotics laws, to eradicate systematically all forms of illicit drugs, including methamphetamines, and to address meaningfully the growing problem of drug abuse and HIV/AIDS.

The GOB must aggressively pursue drug traffickers, including the most prominent trafficking groups and organizations, most particularly the United Wa State Army. The GOB should continue and expand its cooperation with other countries in the region, particularly those most seriously affected by drugs trafficked from Burma. Although Burma's counternarcotics record in 2001 is noticeably improved over that of prior years, its efforts need to be sustained, expanded, and intensified over the next year.

STATEMENT OF EXPLANATION

Haiti

Haiti has failed demonstrably during the last 12 months to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended. However, it is in the vital national interests of the United States to continue to provide assistance to the Government of Haiti (GOH) under the Kenneth M. Ludden, Foreign Operations, Export Financing, and Related Programs Act, 2002 (P.L. 107–115). Haiti remains a significant transshipment point for drugs, primarily cocaine, moving through the Caribbean from South America to the United States.

Although tactical cooperation by the GOH modestly improved, Haiti's overall counterdrug commitment remined weak, in part due to political instability and low levels of assistance. Such instability coupled with economic degradation has led to an increase in criminal and political violence and compromised internal security. Aristide has attempted to shore up his personal and political security by politicizing the police. Continued politicization of the Haitian National Police, in contravention to one of President Aristide's commitments to the United States Government, bodes ill for an effective counternarcotics effort.

Amid political and economic instability and in spite of limited resources, the GOH made some efforts to cooperate with counternarcotics initiatives. Due largely to the efforts of the Haitian Minister of Justice, the GOH made efforts to curb corruption in the judiciary, joined the Caribbean Financial Action Task Force (CFATF), and formed a Financial Intelligence Unit to combat money laundering. The GOH also, with the assistance of U.S. law enforcement, increased the amount of cocaine seized in 2001 over that seized in 2000. The GOH honored all United States Government requests for expulsion and extradition in 2001 by expelling two non-Haitian drug traffickers. The GOH cooperated with U.S. and Dominician Republic law enforcement by participating in a two-week counternarcotics operation and maintaining subsequent contact with U.S. and Dominican anti-drug units. Finally, the GOH honored the terms of a Bilateral Maritime Counternarcotics Interdiction Agreement pending formal official acceptance by the GOH since 1997.

However, Haiti failed to take many other significant counterdrug actions. These actions can be categorized into the areas of anti-corruption, anti-money laundering, law enforcement, prosecution, and international cooperation: the GOH did not deposit an instrument of ratification of the OAS Inter-American Convention Against Corruption; introduce anti-corruption legislation; prosecute drug-related public (including police) corruption; put into force the anti-money laundering law passed in January 2001; enforce existing anti-money laundering guidelines issued by the Central Bank; require cross-border currency declarations and provide penalties for noncompliance; increase the number of arrests of major traffickers; increase the size of the antidrug squad (BLTS) to 75 officers; establish a permanent BLTS office

outside Port au Prince; take steps to ensure the integrity of the BLTS; provide training to judges, prosecutors, and law enforcement officials; waive Haiti's primary right to exercise prosecutorial jurisdiction over non-Haitian flag vessels interdicted by the U.S. Coast Guard in Haitian waters; or put into force the 1997 U.S.-Haiti Bilateral Maritime Counternarcotics Interdiction Agreement. The GOH did not sign a counterdrug Letter of Agreement with the United States Government.

Despite Haiti's demonstrable failure on counternarcotics issues, U.S. vital national interests require that U.S. assistance to Haiti continue. Because Haiti is the hemisphere's poorest country, there is need for continued assistance to programs that alleviate hunger, increase access to education, combat environmental degradation, fight the spread of HIV/AIDS, and foster the development of civil society. These programs create an environment conductive to building democracy and reducing illegal migration. They also address the root causes of poverty and hopelessness in Haiti, which are important contributing factors behind Haitian involvement in the drug trade. Additionally, suspension of assistance to Haiti would result in the further deterioration of Haitian institutions essential to combat increasing criminality.

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Tuesday, March 5, 2002

Presidential Documents

Title 3—

The President

Presidential Determination No. 2002–07 of February 23, 2002

President's Report to Congress on Major Drug Transit or Major Illicit Drug Producing Countries under the FY 2002 Modification to the Annual Drug Certification Procedures

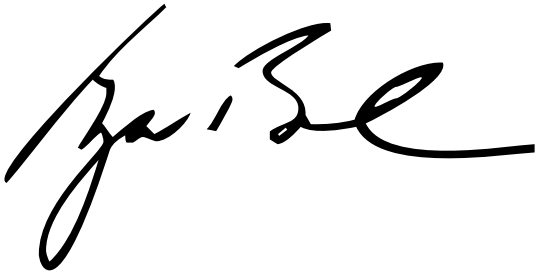
Memorandum for the Secretary of State

This report is submitted under section 591 of the Kenneth H. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (P.L. 107–115) (the ''FY 2002 FOAA''). Pursuant to section 591 of the FY 2002 FOAA, I hereby identify the following countries as major drug-transit or major illicit drug producing countries: Afghanistan, The Bahamas, Bolivia, Brazil, Burma, China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela, and Vietnam. I previously identified these same countries as major drug-transit or major illicit drug producing countries on November 1, 2001, pursuant to section 490(h) of the Foreign Assistance Act of 1961, as amended (the ''FAA'').

Pursuant to section 591 of the FY 2002 FOAA, I hereby designate Afghanistan, Burma and Haiti as countries that failed demonstrably, during the previous 12 months, to adhere to their obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a) (1) of the FAA. I have attached a justification for each of the countries so designated, as required by section 591.

Pursuant to section 591(3), I hereby also determine that provision of United States assistance to Afghanistan and Haiti in FY 2002 under the FY 2002 FOAA is vital to the national interests of the United States.

You are hereby authorized and directed to transmit this report to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 23, 2002.

Billing code 4710–10–M

STATEMENT OF EXPLANATION

Afghanistan

Afghanistan has failed demonstrably during the previous 12 months to make significant efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended. Provision of United States assistance to Afghanistan in Fiscal Year 2002 under the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (P.L. 107–115) is vital to the national interests of the United States.

After the Taliban began enforcing a ban on the cultivation of opium poppy in September 2000, the total production of opium in Afghanistan dropped by 94 percent, thereby reducing the global annual supply by nearly 75 percent. Although the Taliban successfully prevented cultivation, opium trafficking and heroin processing continued unabated through 2001, indicating the existence of large stockpiles of opium in the region used to control the opium market. At no point did the Taliban take any steps to adhere to its international obligations to interrupt opium trafficking or trade. In addition, cultivation and opium production increased in former Northern Alliance territory of Afghanistan. Drug traffickers in Afghanistan have switched allegiances from the Taliban to local commanders and warlords and available information indicates that poppy cultivation has resumed in several areas of Afghanistan since last fall.

Although the new Afghan Interim Authority led by Hamid Karzai has made a commitment to fight the production and trafficking of drugs in Afghanistan consistent with the Bonn Agreement of December 2001, it will take several months and significant assistance from the international community before the Interim Authority can take concrete measures to eradicate poppy and counter drug trafficking in Afghanistan. In the coming months, I will continue to monitor the Interim Authority's counternarcotics efforts closely. In the meantime, it is in the vital national interest of the United States to provide the full range of U.S. assistance to support the reconstruction of Afghanistan. Afghanistan poppy farmers must have viable alternatives to poppy cultivation that provide a sustainable income. The Afghan Interim Authority will need to establish rule of law and a basic law enforcement capacity at the local and regional level for its counternarcotics strategy to succeed. More broadly, although the United States' military campaign in Afghanistan has been successful, it is essential to ensure that Afghanistan does not again become a haven for terrorists. Stabilizing Afghanistan by providing various forms of assistance, including economic and military assistance in addition to counternarcotics, anti-crime, and humanitarian assistance is essential.

STATEMENT OF EXPLANATION

Burma

Burma has failed demonstrably during the last 12 months to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended. With the ban on opium production in Afghanistan imposed by the Taliban in 2001, Burma returned to its position as the world's largest producer of illicit opium. Burma is also the primary source of methamphetamines trafficked throughout Southeast Asia and has done little to stop the production of an estimated 800 million tablets annually and trafficking of these drugs.

Burma has taken some useful counternarcotics measures in the last year, but these measures are too limited in duration and scope to constitute a substantial effort to meet the standards set forth under U.S. law.

Burma's 1993 Narcotic Drugs and Psychotropic Substances Law conforms to the 1988 UN Drug Convention and contains useful legal tools for addressing money laundering, seizing drug-related assets, and prosecuting drug conspiracy cases, but the Government of Burma (GOB) has been slow to implement the law. Burma has not enforced its existing money-laundering laws. In 2001, Burma was placed on the Financial Action Task Force's List of Non-Cooperating Countries and Territories. To its credit Burma responded by drafting new anti-money-laundering legislation, but its passage has been delayed until sometime in 2002.

In 2001, the GOB took stronger, more aggressive law-enforcement actions against some ethnic groups, notably the Kokang Chinese, engaged in drug production and trafficking and considerably improved counternarcotics cooperation with China and Thailand. In areas controlled by the United Wa State Army (the principal drug-producing and drug-trafficking organization in Burma) the government has been very cautious, only slowly expanding its administrative presence, but not yet attempting any aggressive law-enforcement operations comparable to those it has staged elsewhere. Although unwilling to risk confronting the Wa, a potent organization with a well-manned and well-trained military force, the GOB did take the modest steps of establishing a police presence in the Wa territories in 2001 and, in December 2001, opening its first military intelligence office in the Wa territories.

Seizures of opium in 2001 modestly exceeded the amounts seized last year, but seizures of heroin declined for the fourth straight year. Burmese law-enforcement agencies seized approximately 1,629 kilograms of raw opium and 98 kilograms of heroin during 2001. Heroin seized in 2000 totaled 159 kilograms compared to 273 kilograms in 1999 and 404 kilograms in 1998.

The GOB has not yet taken effective action against methamphetamine production and trafficking. Considering that an estimated 800 million methamphetamine tablets are produced in Burma each year, the amounts seized in each of the past two years represent only small fraction of the total produced and have no real effect on the overall scope of the problem. In 2001, Burma seized 32.4 million methamphetamine pills, compared to 26.7 million pills seized during 2000.

The GOB continued to refuse to transfer to U.S. custody drug lord Chang Qifu (Khun Sa), who resides in Rangoon, on grounds that he had not violated his 1996 surrender agreement. The 1988 UN Drug Convention obligates parties, including Burma, to prosecute such traffickers.

While recognizing that Burma has intensified its counternarcotics efforts in 2001, particularly during the second half of the year, those efforts must be sustained and expanded, if they are to have a significant impact on the overall scope of the production and trafficking problem. Burma has not yet curbed involvement in illicit narcotics perpetrated by the largest, most powerful and most important trafficking organization within its borders, the United Wa State Army.

On balance, the United States Government remains concerned that the GOB's efforts are not commensurate with the extent of Burma's illicit drug problem and believes that Burma has failed demonstrably to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act. Large-scale poppy cultivation and opium production continue and enormous quantities of methamphetamines are produced in and trafficked from Burma, having serious adverse effects on neighboring countries and throughout the region. Its toleration of money laundering, its unwillingness to implement fully its counterdrug laws, and its failure to transfer notorious trafficker Chang Qifu (Khun Sa) under indictment in the United States are all serious concerns.

Although the GOB's actions in 2001, particularly in cooperation with China and Thailand, demonstrated a new commitment to effective counternarcotics measures; the GOB has failed to enforce its narcotics laws, to eradicate systematically all forms of illicit drugs, including methamphetamines, and to address meaningfully the growing problem of drug abuse and HIV/AIDS.

The GOB must aggressively pursue drug traffickers, including the most prominent trafficking groups and organizations, most particularly the United Wa State Army. The GOB should continue and expand its cooperation with other countries in the region, particularly those most seriously affected by drugs trafficked from Burma. Although Burma's counternarcotics record in 2001 is noticeably improved over that of prior years, its efforts need to be sustained, expanded, and intensified over the next year.

STATEMENT OF EXPLANATION

Haiti

Haiti has failed demonstrably during the last 12 months to make substantial efforts to adhere to its obligations under international counternarcotics agreements and to take the counternarcotics measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended. However, it is in the vital national interests of the United States to continue to provide assistance to the Government of Haiti (GOH) under the Kenneth M. Ludden, Foreign Operations, Export Financing, and Related Programs Act, 2002 (P.L. 107–115). Haiti remains a significant transshipment point for drugs, primarily cocaine, moving through the Caribbean from South America to the United States.

Although tactical cooperation by the GOH modestly improved, Haiti's overall counterdrug commitment remined weak, in part due to political instability and low levels of assistance. Such instability coupled with economic degradation has led to an increase in criminal and political violence and compromised internal security. Aristide has attempted to shore up his personal and political security by politicizing the police. Continued politicization of the Haitian National Police, in contravention to one of President Aristide's commitments to the United States Government, bodes ill for an effective counternarcotics effort.

Amid political and economic instability and in spite of limited resources, the GOH made some efforts to cooperate with counternarcotics initiatives. Due largely to the efforts of the Haitian Minister of Justice, the GOH made efforts to curb corruption in the judiciary, joined the Caribbean Financial Action Task Force (CFATF), and formed a Financial Intelligence Unit to combat money laundering. The GOH also, with the assistance of U.S. law enforcement, increased the amount of cocaine seized in 2001 over that seized in 2000. The GOH honored all United States Government requests for expulsion and extradition in 2001 by expelling two non-Haitian drug traffickers. The GOH cooperated with U.S. and Dominician Republic law enforcement by participating in a two-week counternarcotics operation and maintaining subsequent contact with U.S. and Dominican anti-drug units. Finally, the GOH honored the terms of a Bilateral Maritime Counternarcotics Interdiction Agreement pending formal official acceptance by the GOH since 1997.

However, Haiti failed to take many other significant counterdrug actions. These actions can be categorized into the areas of anti-corruption, anti-money laundering, law enforcement, prosecution, and international cooperation: the GOH did not deposit an instrument of ratification of the OAS Inter-American Convention Against Corruption; introduce anti-corruption legislation; prosecute drug-related public (including police) corruption; put into force the anti-money laundering law passed in January 2001; enforce existing anti-money laundering guidelines issued by the Central Bank; require cross-border currency declarations and provide penalties for noncompliance; increase the number of arrests of major traffickers; increase the size of the antidrug squad (BLTS) to 75 officers; establish a permanent BLTS office

outside Port au Prince; take steps to ensure the integrity of the BLTS; provide training to judges, prosecutors, and law enforcement officials; waive Haiti's primary right to exercise prosecutorial jurisdiction over non-Haitian flag vessels interdicted by the U.S. Coast Guard in Haitian waters; or put into force the 1997 U.S.-Haiti Bilateral Maritime Counternarcotics Interdiction Agreement. The GOH did not sign a counterdrug Letter of Agreement with the United States Government.

Despite Haiti's demonstrable failure on counternarcotics issues, U.S. vital national interests require that U.S. assistance to Haiti continue. Because Haiti is the hemisphere's poorest country, there is need for continued assistance to programs that alleviate hunger, increase access to education, combat environmental degradation, fight the spread of HIV/AIDS, and foster the development of civil society. These programs create an environment conductive to building democracy and reducing illegal migration. They also address the root causes of poverty and hopelessness in Haiti, which are important contributing factors behind Haitian involvement in the drug trade. Additionally, suspension of assistance to Haiti would result in the further deterioration of Haitian institutions essential to combat increasing criminality.

[FR Doc. 02–5331
Filed 3–4–02; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 67, No. 43
Tuesday, March 5, 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 29

[Docket No. TB–02–03]

Tobacco Inspection; Producer Referenda on Mandatory Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule and notice of referenda.

SUMMARY: This rule establishes procedures which the U.S. Department of Agriculture (USDA) will use in conducting a referenda among producers of each kind of tobacco that is eligible for price support to determine whether they favor mandatory grading of that kind of tobacco. Currently, tobacco that is not sold at auction is not subject to mandatory grading.

DATES: *Effective Date:* March 6, 2002.

Referenda Dates: The voting periods for the producer referenda will be March 11–15, 2002, for flue-cured tobacco, types 11, 12, 13, 14; and burley tobacco, type 31; and March 18–22, 2002, for Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250–0280; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: Section 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Public Law 107–76) (Appropriations Act) requires USDA to conduct referenda among producers of each kind of tobacco that is eligible for price support under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) to determine whether a majority of producers of a kind of tobacco voting in the referendum favor the mandatory grading of that kind of tobacco. The referenda should be conducted by March 31, 2002. If a majority of the producers voting in a referendum favor the mandatory grading of that kind, USDA is directed to ensure that the kind of tobacco is graded at the time of sale for the 2002 and subsequent marketing years. The USDA is also directed to establish user fees for any such inspections. To the maximum extent practicable, these fees would be established in the same manner as user fees for the grading of tobacco sold at auction authorized under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Regulations for tobacco inspection, including fees and charges, appear in Subpart B of 7 CFR part 29.

The USDA published in the **Federal Register** on February 1, 2002 (67 FR 4926) a proposed rule to establish procedures for referenda among producers of each kind of tobacco that is eligible for price support to determine whether they favor the mandatory grading of that kind of tobacco. The USDA requested comments on the proposal which expired on February 11, 2002. One comment was received from a major tobacco manufacturing company. This respondent stated that a copy of a sample ballot indicates that a grower only votes ''yes'' or ''no'' for mandatory grading and that the ballot does not notify the grower that user fees for grading which would be a consequence of the referendum passing. AMS does not believe that the ballot is the appropriate place for notices of this kind. Tobacco producers will, of course, be informed that if mandatory grading is adopted, user fees will be established for non-auction inspections and that these fees would be established in the same manner and be comparable to user fees for the grading of tobacco sold at auction. These fees are chargeable to the grower consigning the tobacco for sale.

The respondent also stated that only growers who would directly pay the mandatory grading fees should be eligible to vote in the referenda. Such a limitation, however, is not permissible under the statute, which provides that the referenda shall be conducted among tobacco producers.

Provisions are included for the method of conducting the referendum, eligibility for voting, a one vote limitation, form and distribution of ballots, filing and tabulation of ballots, and confidentiality. As provided for in the Appropriations Act, separate referenda will be conducted among the producers of each kind of tobacco eligible for price support. These kinds are flue-cured tobacco, types 11, 12, 13, 14; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; burley tobacco, type 31; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55, as set forth at 7 CFR 1464.2.

Producers of each kind of tobacco will be eligible to vote in the referendum for that kind. Under USDA's price support program, periodic referenda are conducted among producers of specific commodities, including tobacco, to determine whether they favor the continuation of quotas. Voting eligibility is governed by 7 CFR 717.3. This final rule will follow those provisions as they apply to tobacco producers and will determine eligibility to vote in the same or similar way. In general, the persons eligible to vote in a referendum for a particular kind of tobacco would be the farmers engaged in the production of the crop of such tobacco harvested in the immediately preceding crop-year prior to the holding of the referendum. This includes any person who is entitled to share in a crop of the commodity, or the proceeds thereof because he or she shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper, but would not include a landlord whose return from the crop is fixed regardless of the amount of the crop produced.

This rule will administer the Appropriations Act requirements in accordance with USDA voting procedures with which the affected producers are familiar. The AMS Mandatory Grading Referenda program, producer eligibility, and procedural requirements will be governed by 7 CFR part 717, Holding of Referenda, and the

definitions contained in §§ 718.2 and 723.104 of that same chapter which govern USDA, Farm Service Agency (FSA) referenda for tobacco producer quotas. This avoids development of redundant requirements, besides, quota holders are familiar with these procedures. A copy of these regulations, a referendum ballot, and voting procedures are available for review in any USDA Service Center.

This final rule establishes procedures for conducting the producer referenda. The voting periods for the producer referenda will be March 11–15, 2002, for flue-cured tobacco, types 11, 12, 13, 14; and burley tobacco, type 31; and March 18–22, 2002, for Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55.

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** in order to fulfill the requirements of the statute that the referenda be conducted by March 31, 2002.

Executive Order 12866 and 12988

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), consideration has been given to the potential economic impact upon small business. There are approximately 450,000 tobacco producers who would be eligible to vote in the referenda. Pursuant to criteria established under the Regulatory Flexibility Act, most of the tobacco producers would be considered small entities. This rule will not substantially affect tobacco growers. Voting in the referendum is voluntary. As discussed in the following section on the Paperwork Reduction Act, the public reporting burden is minimal, an estimated 5 minutes per response. Voting will be conducted by mail. The overall impact of this rule should be minimal on tobacco growers because this rule provides for referenda procedures only and relies on, to a great extent, existing procedures. Accordingly, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collections will be carried out using the referenda procedures of the Farm Service Agency and Form FSA MQ–5, Referendum Ballot. This rule will add no additional burden to that currently approved by OMB and assigned OMB Control Number 0560–0182 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

Accordingly, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B is revised to read as follows:

Authority: 7 U.S.C. 511m and 511r. Section 29.74a is also issued under sec. 759, Pub. L. 107–76, 115 Stat. 741 (7 U.S.C. 511s).

2. A new § 29.74a is added to read as follows:

§ 29.74a Producer referenda on mandatory grading.

(a)(1) *Method of conducting.* Referenda shall be conducted among producers who were engaged in the production of the following types of tobacco harvested in the immediately preceding crop year: flue-cured tobacco, types 11, 12, 13, 14; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; burley tobacco, type 31; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55. A referendum will be conducted for each kind of tobacco and the results will apply to each individual kind. A producer is eligible to vote in referenda for each kind of tobacco they produce.

(2) *Farmers engaged in the production of tobacco.* For purposes of the referenda, persons engaged in the production of tobacco includes any person who is entitled to share in a crop of the tobacco or the proceeds thereof because he or she shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper (a landlord whose return from the crop is fixed regardless of the amount of the crop produced is excluded) on a farm on which such crop is planted in a workmanlike manner for harvest: Provided, That any failure to harvest the crop because of conditions beyond the control of such person shall not affect his or her status as a person engaged in the production of the crop. In addition, persons engaged in the production of tobacco also includes each person who it is determined would have had an interest as a producer in the crop on a farm for which a farm allotment under the quota program (7 CFR part 723, subpart B) for the crop was established and no acreage of the crop was planted but an acreage of the crop was regarded as planted for history acreage purposes under the applicable Farm Service Agency commodity regulations of the Department of Agriculture.

(3) *One vote limitation.* Each person eligible to vote in a particular referendum shall be entitled to only one vote in such referendum regardless of the number of farms in which such person is interested or the number of communities, counties, or States in which farms are located in which farms such person is interested: Provided, That:

(i) The individual members of a partnership shall each be entitled to one vote, but the partnership as an entity shall not be entitled to vote;

(ii) An individual eligible voter shall be entitled to one vote even though he or she is interested in an entity (including but not limited to a corporation) which entity is also eligible to vote;

(iii) A person shall also be entitled to vote in each instance of his or her capacity as a fiduciary (including but not limited to a guardian, administrator, executor or trustee) if in such fiduciary capacity he or she is eligible to vote but the person for whom he or she acts as a fiduciary shall not be eligible to vote.

(4) *Joint and family interest.* Where several persons, such as members of a family, have participated or will participate in the production of tobacco under the same lease or cropping agreement, only the person or persons who signed the lease or agreement, or agreed to an oral lease or agreement, shall be eligible to vote. Where two or more persons have produced or will produce tobacco as joint tenants, tenants in common, or owners of community property, each such person shall be

entitled to one vote if otherwise eligible. The eligibility of one spouse does not affect the eligibility of the other spouse.

(5) *Minors.* A minor shall be entitled to one vote if he or she is otherwise eligible and is 18 years of age or older when he or she votes.

(6) *Interpretation.* In the case of tobacco on a farm where no acreage of tobacco is actually planted but an acreage of the commodity is regarded as planted under applicable regulations of the Department of Agriculture, persons on the farm who it is determined would have had an interest in the commodity as a producer if an acreage of the commodity had been actually planted shall be eligible to vote in the referendum.

(b) *Referenda procedures.* See part 717 of chapter VII of this title for eligibility criteria and the procedures to be used in carrying out mandatory grading referenda. Where not inconsistent with this part, the definitions contained in parts 717, 718 and 723 of this title will govern administration of these referenda. A copy of the regulations in parts 717, 718, and 723 of this title, a referendum ballot, and voting procedures are available for review in any USDA Service Center.

Dated: February 28, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–5228 Filed 3–1–02; 10:49 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 907 and 908

[No. 2002–03]

RIN 3069–AB03

Rules of Practice and Procedure

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to implement the provisions of Title VI of the Gramm-Leach-Bliley Act, Pub. L. 106–102 (1999) and to establish rules of practice and procedure governing hearings on the record in certain administrative enforcement actions. The final rule is intended to provide Finance Board personnel, the Federal Home Loan Banks (Banks), the Office of Finance (OF) and the directors and executive officers of the Banks and OF, as well as any other interested parties, with sufficient notice and guidance to fully utilize the procedures. The Finance Board is also making certain conforming amendments to its existing rules.

EFFECTIVE DATE: April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408–2510, *reidc@fhfb.gov.* Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Federal Home Loan Bank Act, *as amended,* 12 U.S.C. 1421–1449 (Act), the Federal Housing Finance Board (Finance Board),[1] regulates the twelve Federal Home Loan Banks (Banks).[2] Section 2A of the Act sets forth the duties of the Finance Board and provides that the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that duty, the Act requires the Finance Board to supervise the Banks, ensure that they carry out their housing finance mission, and ensure that the Banks remain adequately capitalized and able to raise funds in the capital markets. 12 U.S.C. 1422a(a)(3)(A), (B). To ensure that the Banks operate in a safe and sound manner and comply with applicable laws and regulations, section 2B of the Act grants broad authority to the Finance Board to supervise the Banks and to promulgate and enforce such regulations and orders as are necessary to carry out the provisions of the Act. 12 U.S.C. 1422b(a)(1).[3]

In 1999, with the enactment of section 606 of Title VI of the Gramm-Leach-Bliley Act,[4] the Finance Board received substantially enhanced civil administrative enforcement powers under section 2B(a)(5) of the Act. *See* 12 U.S.C. 1422b(a)(5). Section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) establishes the cease and desist authority of the agency, and adopts certain enforcement powers set out in subtitle C of Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act),[5] as well as the authority to require affirmative corrective action under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, *as amended* (codified at 12 U.S.C. 1818(b)(6) and (7)). Additionally, a new section 2B(a)(7) of the Act confers authority on the agency to act in its own name by and through its own attorneys to enforce any provision of the Act or any regulation promulgated under the Act.[6]

Section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) establishes the civil administrative enforcement authority of the Finance Board in four parts. First, section 2B(a)(5) of the Act expressly authorizes the Finance Board to issue and enforce cease and desist orders based upon three broad grounds: an unsafe or unsound practice in conducting the business of a Bank; any conduct that violates any provision of the Act or any law, order, rule, or regulation; or any conduct that violates any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by a Bank, or any written agreement entered into by a Bank with the Finance Board. *See* 12 U.S.C. 1422b(a)(5). Thus, among other things, section 2B(a)(5) of the Act authorizes the Finance Board to issue a notice of charges if it determines that a Bank or an executive officer or director of a Bank ''is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the Bank, executive officer, or director is about to engage in an unsafe or unsound practice.'' 12 U.S.C. 1422b(a)(5).

Second, section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) adopts the procedural provisions for initiating a cease and desist proceeding that govern

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[1] The Finance Board, an independent agency in the executive branch of the Federal government, was created by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101–73, § 702, 103 Stat. 412 (FIRREA). 12 U.S.C. 1422a(a)(2).

[2] The Banks, together with the Office of Finance, which is a joint office of the Banks as provided in 12 U.S.C. 1422b(2)(b), comprise the Federal Home Loan Bank System. 12 CFR 985.1. In accordance with section 985.4(a) of the Finance Board's regulations, the Finance Board has the same regulatory and enforcement authority over the Office of Finance and its officers, directors, employees and agents as the agency has with respect to each of the Banks and their respective officers, directors, employees and agents. *See* 12 CFR 985.4(a).

[3] Additionally, section 20 of the Act authorizes the Finance Board to conduct examinations of the Banks (12 U.S.C. 1440) and section 6 of the Act requires the Finance Board to establish uniform capital requirements for the Banks and directs the Banks to submit conforming capital plans (12 U.S.C. 1426).

[4] Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999) (GLB Act) (Title VI of the GLB Act is known as the Federal Home Loan Bank System Modernization Act of 1999).

[5] The Subtitle C enforcement powers are codified at 12 U.S.C. 4631–4641.

[6] Section 2B(a)(7) also authorizes the Finance Board to act in its own name and through its own attorneys in any action, suit, or proceeding to which the Finance Board is a party that involves the agency's regulation or supervision of any Bank. 12 U.S.C. 1422b(a)(7).

the process by which the Office of Federal Housing Enterprises Oversight (OFHEO) may issue a cease and desist order, which are set forth in sections 1371(c) and (f) of the Safety and Soundness Act.[7] Importantly, these two provisions in section 1371 of the Safety and Soundness Act (12 U.S.C. 4631(c) and (f)), which govern the process for initiating a cease and desist proceeding, are the only provisions in that section that apply to the Finance Board in accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)). As stated, the Finance Board's cease and desist authority is expressly stated in section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)). Thus, the Finance Board's cease and desist authority is independent of, and unrestricted by, OFHEO's cease and desist authority under section 1371 of the Safety and Soundness Act (12 U.S.C. 4631).

Third, section 2B(a)(5) of the Act provides that the Finance Board shall have all other powers to enforce the Act that OFHEO has under sections 1372 through 1379B of the Safety and Soundness Act, 12 U.S.C. 4632–4641, including the grounds and authority to issue and enforce temporary cease and desist orders (12 U.S.C. 4632) and civil money penalty assessment orders (12 U.S.C. 4636), and the authority to issue subpoenas and subpoenas *duces tecum* (12 U.S.C. 4641). To implement this authority the provision adopts OFHEO's statutory authority and procedures governing hearings on the record, subject matter jurisdiction and judicial review of final orders, as well as the enforcement of final orders. Finally, section 2B(a)(5) of the Act also incorporates the same authority to require affirmative action to correct violations and conditions as the appropriate Federal banking agencies have with respect to insured depository institutions under 12 U.S.C. 1818(b)(6) and (7). *See* 12 U.S.C. 1422b(a)(5).

II. Synopsis of the Final Rule

On December 18, 2000, the Finance Board published for notice and comment a proposed rule (65 FR 78944) to implement the enforcement powers set forth in the GLB Act amendments and establish the necessary hearing procedures.[8] The comment period ended on January 17, 2001 and the Finance Board received comment letters from seven of the twelve Banks. The Banks' comments generally favor adoption of rules of practice and procedures consistent with those of other banking regulatory agencies. All of the comment letters provide suggestions for revising certain provisions in the rule. The proposed rule has been revised to respond to certain comments, to improve the organization or clarity of the final rule, and to conform the text of subpart B of the final rule as closely as possible to the statutory authority upon which it is based. By way of example, all of the references in the proposed rule to the Office of Finance and its executive officers and directors have been deleted from the final rule. A section-by-section analysis of the final rule follows.[9]

Subpart A of the final rule, which has been revised for improved organization prescribes the scope and authority of the regulation, defines certain terms appearing in this part, and relates the general rules of construction. Some of the commenters suggest that the definition of ''violation'' be revised to clarify that ''policy'' means ''written policy.'' The Finance Board has determined that the term ''policy,'' which was intended to refer to directives issued pursuant the Finance Board's supervisory and enforcement authority under the Act, should be deleted in favor of the term ''order'' in the definition of ''violation.'' Thus, as used in the final rule, ''violation'' is intended to refer to any violation of ''any provision of [the] Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement entered into by the Bank with the agency,'' as set forth in section 2B(a)(5) of the Act. 12 U.S.C. 1422b(a)(5).

The proposed definition of ''adjudicatory proceeding or hearing'' has been simplified in the final rule to indicate that a hearing means an adjudicatory proceeding conducted under part 908. The definition of ''decisional employee'' has been revised to exclude Finance Board employees in the Office of General Counsel to allow for the agency and agency head to obtain the assistance of counsel in such proceedings. ''Notice'' is defined to mean a written notice of charges or a written notice of assessment of a civil money penalty, with an exception carved out for the common usage of the word in phrases such as 'reasonable notice.' The definition of ''party'' has been revised to allow for the common use of the term in the rule, except that for purposes of subparts C through F, party means the Finance Board or respondent. Similarly, the definition of ''respondent'' has been revised in the final rule to mean any person named in a notice of charges or a notice of assessment of a civil money penalty. Consistent with its effort to conform the rule to the statutory authority, the Finance Board declines to adopt a commenter's request to adopt the definition of ''executive officer,'' in section 1303(7) of the Safety and Soundness Act (12 U.S.C. 4502(7)). The proposed definition, which excludes directors, is inconsistent with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)), which expressly provides that the Finance Board shall have such enforcement authority over ''any executive officer or director'' of a Bank. Finally, several commenters request that the term ''unsafe and unsound'' be expressly defined in subpart A. The Finance Board declines to do so, for the reasons stated in the discussion of subpart B, below.

Subpart B of the final rule specifies the scope of the Finance Board's enforcement authority with respect to the Banks or any executive officer or director of a Bank, including issuing a notice of charges or a notice of assessment of a civil money penalty, and enforcing cease and desist orders, temporary cease and desist orders, assessment of civil money penalty orders. The rule also specifies the process for judicial review of final orders and public disclosure of final orders. Additionally, the final rule states that there is no implied private right of action created by the provision pursuant to section 1378 of the Safety and Soundness Act (12 U.S.C. 4638). The final rule also provides for the service of a notice of charges on a former executive officer or director of a Bank, within two years of the person's departure from the Bank, as is provided

[7] OFHEO's enforcement powers extend to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (enterprises) and their executive officers (as defined in 12 U.S.C. 4502(7)). Sections 1371(c) and (f) of the Safety and Soundness Act are codified at 12 U.S.C. 4631(c) and (f).

[8] Section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) incorporates the hearing on the record requirement from section 1373(a)(3) of the Safety and Soundness Act, 12 U.S.C. 4633(a)(3). These procedures serve a dual purpose to both implement and supplement the procedural requirements for such hearings provided in the Administrative Procedure Act, 5 U.S.C. 551, 553–59, 701–06, 1305, 3344, 5372, 7521 (APA).

[9] The Finance Board's authority to proceed under Part 908 of the Finance Board's regulations is distinct from, and is not contingent procedurally upon, the internal review procedures set forth in Part 907 of the Finance Board's regulations. Thus, no civil administrative enforcement proceeding undertaken pursuant to Part 908 is contingent upon the issuance of an examination finding, any order or directive concerning safety and soundness or compliance, or any other order of the Finance Board that may be reviewed in accordance with part 907.

in section 1377 of the Safety and Soundness Act (12 U.S.C. 4637).

Section 908.4 of the final rule contains the Finance Board's authority to issue a notice of charges and the grounds for a cease and desist order as set forth in section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)). Specifically, section 2B(a)(5) states that the Finance Board shall have the power to issue and serve a notice of charges upon a Bank, or upon any executive officer or director of a Bank, if in the determination of the Finance Board, the subject individual or Bank:

> is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the Bank, executive officer, or director is about to engage in an unsafe or unsound practice in conducting the business of the bank, or any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement entered into by the Bank with the agency, in accordance with the procedures provided in subsection (c) or (f) of section 1371 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. § 4631(c) and (f)].

12 U.S.C. 1422b(a)(5).

One commenter suggests that the final rule should establish a definition of ''unsafe and unsound'' as follows: ''Unsafe or unsound practice means a practice that is contrary to prudent standards of operation and is likely to have a material adverse impact on the financial condition of the Bank or on the ability of any Bank or the OF to raise funds in the capital markets.'' The Finance Board has studied the issue and concludes that the proposed definition is inconsistent with generally accepted interpretations of the meaning of ''unsafe and unsound practices.'' First, ''material adverse impact'' would unnecessarily establish a higher standard relative to the risk of possible loss than traditional definitions of unsafe and unsound practices cited by many courts. Second, the concept of ''unsafe and unsound,'' by design, is intended to be flexible. Historically, the term ''unsafe and unsound'' has been broadly interpreted to adapt to the ever-changing nature of banking and finance practices. Finally, the fact that the concept is not defined in the Act supports the conclusion that the Finance Board, as the agency in which Congress has invested exclusive supervisory oversight, is authorized to make judgments concerning safety and soundness issues because it best suited to do so on a case-by-case basis.

In 1966, Mr. John Horne, the Chairman of the Federal Home Loan Bank Board (FHLBB), the Finance Board's predecessor, provided a useful definition of the phrase ''unsafe and unsound practices'' in hearings before Congress prior to the adoption of the Financial Institutions Supervisory Act of 1966, Pub. L. No. 89–695 (Supervisory Act of 1966). Chairman Horne stated: ''Generally speaking, an 'unsafe or unsound practice' embraces any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds.'' (Financial Institutions Supervisory Act of 1966: Hearings on S. 3158 and S. 3695 before the House Committee on Banking and Currency, 89th Cong., 2d Sess. 49–50.) The Supervisory Act of 1966 gave the federal banking regulatory agencies ''authority to issue cease and desist orders or suspension or removal orders * * * as intermediate powers short of conservatorship or withdrawal of insurance, in order to prevent violations of law or regulations and unsafe and unsound practices which otherwise might adversely affect the Nation's financial institutions, with resulting harmful consequences to the growth and development of the Nation's economy.'' (S. Rep. No. 89–1482, 89th Cong., 2d Sess. 2 (August 18, 1966) (reprinted in 1966 U.S.C.C.A.N. 3532, 3533)).

The interpretation of ''unsafe or unsound practice'' offered by the commenter departs from this tested model. The courts have interpreted the phrase ''as a flexible concept which gives the administering agency the ability to adapt to changing business problems and practices in the regulation of the banking industry.'' *Seidman* v. *OTS,* 37 F.3d 911, 927 (3rd Cir. 1994) (citing *Groos Nat'l Bank* v. *Comptroller of the Currency,* 573 F.2d 889, 897 (5th Cir. 1978) (''The phrase 'unsafe or unsound banking practice' is widely used in the regulatory statutes and in case law, and one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies.'')). Therefore, the Finance Board has determined that the final rule should not contain a definition of ''unsafe and unsound practices.''

The Finance Board's authority to issue cease and desist orders under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)), which incorporates the provisions of sections 8(b)(6) and (7) of the Federal Deposit Insurance Act,[10] includes the authority to issue an order requiring a Bank, or any executive officer or director of a Bank, to take affirmative action to correct or remedy any condition resulting from any violation or practice with respect to which such order was issued.[11] Accordingly, as set forth section 908.4(b)(2)(iv) of the final rule [proposed 908.4(b)(1)(iv)], the Finance Board may require such party to, among other things, rescind any agreement or contract. Three commenters support deleting this provision from the final rule. One of those commenters suggests that the provision might create uncertainty for the Banks when they enter the capital markets to raise funds regarding the enforcability of capital market agreements, and suggests that if the provision is not deleted it should be amended to exclude such contracts. The Finance Board is not persuaded that any such risk is presented and declines to adopt that recommendation.

One commenter opposes the rescission provision on the ground that it could seriously jeopardize the Banks' ability to enter binding, enforceable contracts. Another commenter argues that the provision might impair the ability of a Bank to set employees' compensation, rights, and pension or profit-sharing terms by employment contract and suggests amending the provision to exclude employment contracts, change in control agreements, pension or profit sharing plans, or similar employment agreements. This rationale is unavailing. Congress, as the legislative body with exclusive authority to define the extent of the Finance Board's supervisory and oversight authority, has required the Finance Board, as its ''primary duty'' to ''ensure'' that the Banks are run in a ''financially safe and sound manner'' (*see* 12 U.S.C. 1422a(a)(3)(A)). Congress expressly incorporated into the Act the contract rescission authority under section 8(b)(6) of the FDI Act (12 U.S.C. 1818(b)(6)) as a tool to achieve this mandate. In fact, the banking regulatory agencies have had the identical authority since 1989, with no known negative effect on the regulated financial institutions. Such decisions are, as they should be, made by the banking regulatory agency on a case-by-case basis taking into account many factors that may not be anticipated in a rulemaking. The Finance Board finds no justification for the suggestion that the agency should otherwise interpret the

[10] *See* 12 U.S.C. 1818(b)(6) and (7).

[11] The Finance Board derives this authority from 12 U.S.C. 1818(b)(6)(D).

clear intent of Congress with respect to such oversight of the Banks. Moreover, this supervisory model ultimately may strengthen the Finance Board's ability to ensure that the Banks remain adequately capitalized and able to access the capital markets, and able to fulfill their housing finance mission, as required under section 2A of the Act. Therefore, the Finance Board has retained this oversight power in the final rule.

Section 908.5 of the final rule revises the proposed rule to clarify that a temporary cease and desist order may be issued only in connection with a notice of charges issued and served by the Finance Board to initiate cease and desist proceedings in accordance with section 2B(a)(5) of the Act. 12 U.S.C. 1422b(a)(5). Pursuant to section 2B(a)(5) of the Act, the statutory authority for the Finance Board to issue a temporary cease and desist order derives from and is governed by section 1372 of the Safety and Soundness Act (12 U.S.C. 4632). Accordingly, the final rule reorders the provisions in sections 908.5(a)(1) and (a)(2) of the proposed rule and restates these provisions in sections 908.5(a) and (b) of the final rule in order to more clearly delineate the separate grounds and authority to issue a temporary cease and desist order. Section 908.5(a) of the final rule consolidates the grounds for a temporary cease and desist order based on conduct or violation or threatened conduct or violation likely to cause insolvency or a significant depletion of capital together with the authority to issue a temporary cease and desist order requiring a Bank or individual respondent to cease and desist from such conduct or violation and to take affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of the cease and desist hearing. Similarly, the revision set forth in section 908.5(b) of the final rule combines in one provision the Finance Board's authority to base a temporary cease and desist order on a Bank's incomplete or inaccurate books and records and the Finance Board's authority to issue a temporary cease and desist order that would require a respondent to cease and desist from conduct that caused or contributed to the incompleteness of the books and records and to require affirmative action to restore the books to a complete and accurate state. Additionally, in light of the improvements to section 908.5 in the final rule, section 908.5(a)(3) of the proposed rule was deleted in the final rule in response to a comment to make the provisions consistent with the statutory authority.

In accordance with section 1372(d) of the Safety and Soundness Act (12 U.S.C. 4632(d)), which confers subject matter jurisdiction on the United States District Court for the District of Columbia (district court), section 908.5(f) of the final rule [proposed 908.5(c)] describes how a respondent may seek injunctive relief from a temporary cease and desist order. Specifically, a respondent may petition the district court to issue an injunction setting aside, limiting, or suspending the enforcement, operation, of effectiveness of the order pending completion of the hearing pursuant to the notice of charges. In accordance with sections 2B(a)(5) and (7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and sections 1372(d) and 1375(b) of the Safety and Soundness Act (12 U.S.C. 4632(d) and 4635(b)), the district court's jurisdiction is limited to granting the injunctive relief requested. In effect, the district court lacks subject matter jurisdiction to consider any substantive challenge to the notice of charges, such as an action for judicial review under the Administrative Procedure Act. The means of obtaining judicial review of final orders of the Board of Directors is described separately in § 908.10 of the final rule, in accordance with section 1374 of the Safety and Soundness Act (12 U.S.C. 4634). Under section 908.5(g) of the final rule [proposed 908.5(d)], the district court has subject matter jurisdiction, which is based on sections 2B(a)(5) and (7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1372(e) of the Safety and Soundness Act (12 U.S.C. 4632(e)), to enforce a temporary cease and desist order if a respondent violates, threatens to violate, or fails to obey such order. Certain commenters contended that the Finance Board cannot confer or limit the jurisdiction of federal courts by regulation. The references to jurisdiction in the proposed rule were intended only to reflect what Congress has provided by statute, and the final rule has been revised to make that point clear.

Section 908.6 of the final rule states the authority of the Finance Board to initiate civil money penalty enforcement proceedings in accordance with section 1376 of the Safety and Soundness Act (12 U.S.C. 4636). As proposed, section 908.6(a)(4) of the rule included unsafe or unsound practices and breaches of fiduciary duty as grounds for assessing a civil money penalty. The Finance Board has deleted these terms from the text of the final rule solely to conform the rule text to that of section 1376(a)(4) of the Safety and Soundness Act (12 U.S.C. 4636(a)(4)). The Finance Board, as the safety and soundness regulator of the Banks, has explicit statutory authority under the Act to determine whether any acts or omissions may constitute an unsafe or unsound practice, a violation of law, order or regulation, or is likely to result in a loss. One commenter opposes the use of the term ''loss'' in proposed section 908.6(a)(4) of the rule, which provides that the agency may impose a civil money penalty if a Bank or any executive officer or director of a Bank ''engages in any conduct that causes or is likely to cause a loss to a Bank.'' The commenter argues that the term ''loss'' is too broad and should be deleted from the rule. The Finance Board disagrees and has retained the provision in section 908.6(a)(4) of the final in as much as it is an exact recitation of the statutory authority in section 1376(a)(4) of the Safety and Soundness Act (12 U.S.C 4636(a)(4)). The Finance Board concludes that any determination of whether or not a ''loss'' is presented under this provision is to be made on a case-by-case basis and factually established in a hearing on the record. The Finance Board believes that the final rule provides ample procedural safeguards. There is no credible likelihood to suppose, as one commenter suggests, that a determination of ''loss'' could be made on the basis of shifting market values, or that the provision could make Bank directors guarantors of all Bank activities.

Section 908.6(d) of the final rule [proposed 908.6(c)] lists certain factors to be considered by the Finance Board in assessing a civil money penalty. On its face, the list is not exclusive because it states ''such factors as.'' One commenter urges the Finance Board to adopt additional factors, taking a page from comments submitted by Freddie Mac and Fannie Mae directed to OFHEO in a recent rulemaking. The Finance Board is not persuaded that it is necessary to encumber section 908.6(d) by inserting ''any other factors the [agency] may determine by regulation to be appropriate.'' The change would only add redundancy to the rule, which currently permits the Board of Directors to look to other appropriate factors as needed on a case-by-case basis.

One commenter argues that the Finance Board lacks authority to provide in section 908.6(f)(4) of the rule that, in an action brought by the Finance Board in the district court to enforce a civil money penalty assessment order, the court would not have subject matter jurisdiction to review the validity and appropriateness of the order. The commenter calls for the provision to be

deleted on the ground that due process rights are abridged. This claim lacks merit. Section 908.6(f)(4) of the final rule, as proposed, is based on and faithfully applies the applicable provisions in the Safety and Soundness Act. The Finance Board is bound by the jurisdictional limitations on the district court set by Congress. Sections 1376(c)(3), 1376(d) and 1375(b) of the Safety and Soundness Act (12 U.S.C. 4636(c)(3), 4636(d) and 4635(b)) together provide the district court with exclusive jurisdiction to enforce a civil money penalty assessment order and expressly bar judicial review of such orders in the district court. Section 1374 of the Safety and Soundness Act (12 U.S.C. 4634) vests jurisdiction to review the validity and appropriateness of a civil money penalty assessment order or a cease and desist order exclusively in the United States Court of Appeals for the District of Columbia Circuit (court of appeals). Therefore, the Finance Board has declined to delete section 908.6(f)(4) from the final rule.

One commenter suggests that section 908.6(i) of the proposed rule should be eliminated or, at a minimum, the bar against indemnification of directors and executive officers should be limited to tier 3 violations for knowing conduct that caused or is likely to cause a substantial loss. The Finance Board agrees with the commenter that the rule should state the statutory authority and has revised the indemnification provision in § 908.6(i) of the final rule accordingly.

Section 908.6(k) of the proposed rule set forth the obligation of the Finance Board periodically to adjust the statutory civil money penalty amounts pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104–134, Title III, § 31001(s)(2), April 26, 1996, 110 Stat. 1321–373, and Pub. L. 105–362, Title XIII, § 1301(a)(1), Nov. 19, 1988, 112 Stat. 3293 (collectively, the Inflation Adjustment Act) (*codified* at 28 U.S.C. 2461 note). The Finance Board is required to adjust each civil money penalty set forth herein by a prescribed cost-of-living adjustment at least once every four years.

The adjustment is based on the formula prescribed in the Inflation Adjustment Act. Section 5(a) of the Inflation Adjustment Act prescribes that the inflation adjustment for each maximum monetary civil penalty (or the range of minimum and maximum civil monetary penalties) shall be determined by the cost-of-living adjustment and shall be rounded to the nearest multiple of a specified dollar amount as set forth in that provision. Section 5(b) of the act defines the term cost-of-living adjustment to mean ''the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.'' The agencies are required to use the Consumer Price Index for All Urban Consumers (CPI–U), which is compiled by the Bureau of Statistics of the Department of Labor. [12] Section 908.6(k) is included in the final rule for comprehensiveness and clarity.

Section 908.7 of the proposed rule included provisions for the suspension and removal of officers, directors, employees and agents of the Banks under section 2B(a)(2) of the Act (12 U.S.C. 1422b(a)(2)). Numerous comments on the removal provision argue that the agency lacks authority to adopt the rule and challenge whether the rule met the constitutional requirements of due process. The Finance Board has deleted the removal provision from the final rule because section 2B(a)(2) of the Act (12 U.S.C. 1422b(a)(2)) predated the GLB Act, thus it is not logically a necessary element of this rulemaking, the purpose of which is to implement the GLB Act amendments. Moreover, because section 2B(a)(2) of the Act (12 U.S.C. 1422b(a)(2)) does not require that a hearing on the record be held to remove or suspend an officer, director, employee or agent of a Bank, it raises additional and disparate administrative law issues. Section 908.7 of the proposed rule established different procedures than those applicable to cease and desist and civil money penalty proceedings under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)). In order to eliminate any potential confusion that may arise from addressing these very different remedies in the same rulemaking, the Finance Board has determined to undertake a separate rulemaking in the future to provide a full and fair opportunity for comment and to respond to such comments in detail at that time. Instead, section 908.7 of the final rule establishes in accordance with section 1379A of the Safety and Soundness Act (12 U.S.C. 4640) that any notice (e.g., notice of charges or notice of civil money penalty assessment) to be served on a respondent under the rule may be served by registered mail or other appropriate manner reasonably calculated to give actual notice to the respondent as the Finance Board may by regulation or otherwise provide.

The Finance Board has adopted several provisions in the final rule pertinent to certain administrative requirements in the Safety and Soundness Act. Briefly, section 908.8 of the rule as proposed was adopted with an additional section that specifies the fees and expenses to be paid witnesses subpoenaed under the provision, in accordance with section 1379B of the Safety and Soundness Act (12 U.S.C. 4641). Section 908.9 of the final rule sets forth the requirement under sections 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and 1373 of the Safety and Soundness Act (12 U.S.C. 4633) that hearings conducted pursuant to section 908.4 and 908.6 of the rule are to be held on the record and in the District of Columbia. Section 908.13 of the final rule provides that such hearings shall be public in accordance with section 1379(b) of the Safety and Soundness Act (12 U.S.C. 4639(b)). Section 908.10 of the final rule adopts the provision as proposed, but with certain clarifications. The reference to Rule 4 of the Federal Rules of Procedure [proposed 908.10(b)] has been eliminated. Judicial review of a final order of the Board of Directors (whether a cease and desist order or an order assessing a civil money penalty) is governed by the applicable federal law and appellate court rules. Section 1374 of the Safety and Soundness Act (12 U.S.C. 4634) provides that the petition seeking review must be filed within 30 days after the date of service of the final order with the court of appeals. Rule 15(c) of the Federal Rules of Appellate Procedure (FRAP) and Rule 15 of the United States Court of Appeals, District of Columbia Circuit (Local Rules) require the clerk of the court to transmit a copy of the petition to the Finance Board, in a manner prescribed by FRAP Rule 3(d). Sections 908.10(a) and (b) of the rule have been amended accordingly. Similarly, section 908.10(c) has been amended to clarify that the Finance Board shall file the hearing record with the clerk of the court of appeals in accordance with FRAP 17 and Local Rule 17 as provided in section 2112 of Title 28 of the United States Code. Additional language in the remaining paragraphs clearly states the statutory authority for subject matter

[12] By way of example, most recently in October 2000, the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC) each published a final rule adjusting the civil money penalty amounts in their respective regulations pursuant to the Inflation Adjustment Act. *See* 65 FR 61260 (Oct. 17, 2000) (OTS) and 65 FR 64884 (Oct. 31, 2000) (FDIC).

jurisdiction or other appropriate statutory authority underlying these provisions of the final rule. Finally, section 908.12 of the final rule sets out the Finance Board's authority under section 1377 of the Safety and Soundness Act (12 U.S.C. 4637) to issue a notice of charges or a notice of assessment of a civil money penalty to an individual within two years of separation from a Bank.

Subpart C of the final rule provides the general rules that govern the process and specifies the authority of the Finance Board and the Board of Directors and the presiding officer, an Administrative Law Judge (ALJ) or other neutral, qualified individual who is appointed by the Finance Board to preside over the hearing and file with the Board of Directors a recommended decision and order, which shall be based on the record of the hearing, for a final decision and order to be issued by the Board of Directors. The Board of Directors may intervene in any matter to perform, direct the performance of, or waive the performance of any authorized action of the presiding officer. The presiding officer is authorized to: change the hearing date, time or place; issue or modify subpoenas or subpoenas *duces tecum;* issue protective orders; administer oaths and affirmations; regulate the course of the hearing and hold conferences to address issues arising in the hearing; and rule on non-dispositive motions.

All hearings are open to the public, unless the Finance Board determines that an open hearing would be contrary to the public interest or a party moves for a closed hearing and the Board of Directors orders the hearing closed. Because the presiding officer is fully authorized to regulate the course of the hearing, he or she may limit public and media access to any hearing the Finance Board has determined will be a public hearing. Additionally, the Finance Board may file any document or portion of a document under seal and the presiding officer is required to take all appropriate steps to preserve the confidentiality of such document(s) or parts thereof.

The final rule provides that every filing or submission of record shall be signed by at least one representative of record to certify that the document has been read and that to the best of the representative's knowledge it is supported in fact and is not made for any improper purpose. *Ex parte* communications are prohibited. Any party or representative who makes or elicits an *ex parte* communication may be subject to appropriate sanctions. The Finance Board anticipates that in the future, under applicable law, the agency will have the necessary technological ability to enable the parties to submit documents by electronic media, and may specify the conditions for such electronic transmission. Until further notice, for purposes of this regulation, all papers filed by the parties shall be filed in accordance with the requirements set out in § 908.25(c) of the final rule.

Any respondent may submit a settlement proposal to the Finance Board in accordance with section 908.30 of the final rule. Submission of a settlement offer does not provide a basis for delaying a proceeding, and no settlement offer is admissible in evidence in the adjudicative proceeding or any court. Nothing in the rule prohibits or restricts the authority of the Finance Board to conduct any examination or inspection of any Bank, or to conduct or to continue any form of investigation authorized by the Act.

Under subpart D, the Finance Board commences proceedings by issuing and serving a notice of charges or a notice of assessment of a civil money penalty on a respondent. During the course of a hearing, the presiding officer controls virtually all aspects of the proceeding. The presiding officer: determines the hearing schedule; presides over any pre-hearing conferences; rules on motions, discovery, and evidentiary issues; and ensures that the proceeding is fair, equitable, and impartial. The presiding officer does not, however, have the authority to make a ruling that disposes of the proceeding. Only the Board of Directors has the authority to dismiss the proceeding or to make a final determination on the merits of the proceeding following a hearing on the record or a negotiated disposition.

Subpart E of the final rule governs hearings and post-hearing proceedings. Section 908.60 of the final rule provides that hearings shall be conducted in accordance with the APA. The parties to the proceeding have the right to present evidence and witnesses at the hearing and to examine and cross-examine the witnesses. At the completion of the hearing, the parties may submit proposed findings of fact and conclusions of law and a proposed order. The presiding officer then submits the complete record to the Board of Directors for consideration and action. The record includes the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order. The record also includes all pre-hearing and hearing transcripts, exhibits, rulings, motions, briefs and memoranda, and all supporting papers filed in connection with the hearing. The Board of Directors shall issue a final ruling within 90 days of the date the presiding officer serves notice on the parties that the record is complete and the case has been submitted to the Board of Directors for final decision, or at such time as is practicable within the discretion of the Board of Directors.

Subpart F, ''Rules of Practice Before the Finance Board,'' governs the parties and their representatives appearing before the Finance Board under this rule and provides for the imposition of disciplinary sanctions—censure, suspension or disbarment—by the presiding officer or the Board of Directors against parties or their representatives. This subpart covers parties and individuals that appear before the Finance Board in a representational capacity; covered representation may include, but is not limited to, the practice of attorneys and accountants. The presiding officer may decide what notice and responses are appropriate where sanctions are at issue for conduct arising in an adjudicatory proceeding or hearing. The final rule prescribes when sanctions may be imposed, and what those sanctions may be. Employees of the Finance Board are not subject to disciplinary proceedings under this subpart. The Finance Board may also apply these qualification and disciplinary rules to parties or representatives in an administrative proceeding under part 907 of the Finance Board's rules and regulations (12 CFR part 907).

III. Regulatory Impact

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications, that is, regulations or actions 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 between Federal and State Government. The Finance Board has determined that this rule has no federalism implications that warrant consultation with the states or the preparation of a federalism summary impact statement in accordance with Executive Order 13132.

Executive Order 12866, Regulatory Planning and Review

In order to make the regulatory process more efficient, Executive Order 12866 requires the centralized review of regulatory action. The Finance Board has determined that this rule is not a

significant regulatory action as such term is defined in Executive Order 12866, has so indicated to the Office of Management and Budget (OMB), and was not notified by OMB that the rule must be reviewed by OMB.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. This rule meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires for any rule that includes a Federal mandate that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million, that an agency prepare an assessment statement of the anticipated costs and benefits of the Federal mandate. *See* 2 U.S.C. 1532(a). The rule does not include such a Federal mandate, and, therefore, it does not warrant the preparation of such an assessment statement.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must include a regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, when promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act seeks to minimize the paperwork burden for individuals, small businesses, and other entities resulting from the collection of information by or for the Federal government. *See* 44 U.S.C. 3501 *et seq.* This rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. 44 U.S.C. 3502(3). Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 907

Administrative practice and procedure, Federal Home Loan Banks.

12 CFR Part 908

Administrative practice and procedure, Penalties.

For the reasons stated in the preamble, the Finance Board amends 12 CFR parts 907 and 908 as follows:

PART 907—PROCEDURES

1. The authority citation for part 907 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1).

2. Add § 907.16 to read as follows:

§ 907.16 Rules of practice.

In connection with any matter initiated or pending pursuant to this part, petitioners, requestors or intervenors, or their representatives, shall be subject to the provisions of subpart F of 12 CFR part 908. No other provision of part 908 shall apply under this part.

3. Add part 908 to read as follows:

PART 908—RULES OF PRACTICE AND PROCEDURE IN HEARINGS ON THE RECORD

Subpart A—Introduction

Sec.
908.1 Scope.
908.2 Definitions.
908.3 Rules of construction.

Subpart B—Scope and Authority—Enforcement Proceedings

908.4 Cease and desist proceedings.
908.5 Temporary cease and desist orders.
908.6 Civil money penalties.
908.7 Service of notice.
908.8 Subpoenas.
908.9 Hearings on the record.
908.10 Judicial review.
908.11 Jurisdiction and enforcement.
908.12 Notice after separation.
908.13 Public disclosure of final orders.
908.14 No implied private right of action.
908.15–908.19 [Reserved]

Subpart C—General Rules

908.20 Authority of the Board of Directors.
908.21 Authority of the presiding officer.
908.22 Public hearings.
908.23 Good faith certification.
908.24 Ex parte communications.
908.25 Filing of papers.
908.26 Service of papers.
908.27 Computing time.
908.28 Change of time limits.
908.29 Witness fees and expenses.
908.30 Settlement or other dispute resolution.
908.31 Right to supervise the Banks.
908.32 Collateral attacks on proceedings under this part.
908.33–908.39 [Reserved]

Subpart D—Pre-Hearing Proceedings

908.40 Commencement of proceeding and contents of notices.
908.41 Answer.
908.42 Amended pleadings.
908.43 Failure to appear.
908.44 Consolidation and severance of actions.
908.45 Motions.
908.46 Discovery.
908.47 Request for document discovery from parties.
908.48 Document subpoenas to nonparties.
908.49 Deposition of witness unavailable for hearing.
908.50 Interlocutory review.
908.51 Summary disposition.
908.52 Partial summary disposition.
908.53 Scheduling and prehearing conferences.
908.54 Pre-hearing submissions.
908.55 Hearing subpoenas.
908.56–908.59 [Reserved]

Subpart E—Hearing and Post-hearing Proceedings

908.60 Conduct of hearings.
908.61 Evidence.
908.62 Post-hearing filings.
908.63 Recommended decision and filing of record.
908.64 Exceptions to recommended decision.
908.65 Review by Board of Directors.
908.66 Exhaustion of administrative remedies.
908.67 Stay of final decision and order pending judicial review.
908.68–908.69 [Reserved]

Subpart F—Rules of Practice Before the Finance Board

908.70 Scope.
908.71 Practice before the Finance Board.
908.72 Appearances and practice in proceedings before the Finance Board.
908.73 Conflicts of interest.
908.74 Sanctions.
908.75 Censure, suspension, disbarment and reinstatement.

Authority: 12 U.S.C. 1422b(a)(5), 4631(c) and (f), and 4632–4641. Section 908.4 is also authorized by 12 U.S.C. 1818(b)(6) and (7).

Subpart A—Introduction

§ 908.1 Scope.

This part prescribes rules of practice and procedure applicable to any hearing with regard to:

(a) Cease and desist proceedings under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)); or

(b) Civil money penalty assessment proceedings under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)).

§ 908.2 Definitions.

For purposes of this part—

Decisional employee means any employee of the Finance Board, except

the Office of General Counsel, or any member of the presiding officer's staff who has not engaged in an investigative or prosecutorial role in connection with the subject cease and desist or civil money penalty proceedings and who may assist the Board of Directors or the presiding officer, respectively, in preparing orders, recommended decisions, decisions and other documents under this part.

Hearing means an adjudicatory proceeding conducted pursuant to this part;

Notice means a written notice of charges or notice of assessment of a civil money penalty so titled that served by the Finance Board upon a respondent, which conforms to § 908.40 and describes the alleged violations with sufficient specificity to put the respondent on notice of the nature and scope of the charges being brought against him, except in the context of the plain meaning of the word notice in a provision, such as reasonable notice or actual notice.

Party means, for purposes of subparts C through F of this part only, the Finance Board or respondent.

Person means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency, Bank, or other entity or organization with the exception of the Finance Board.

Presiding officer means an administrative law judge or other qualified, neutral individual who is appointed by the Finance Board under applicable law, and, pursuant to Title 5 of the United States Code, may conduct a hearing or adjudicatory proceeding under this part.

Representative of record means an individual who is authorized to represent a respondent (and includes a respondent who represents himself) at a hearing conducted under this part and who has filed a notice of appearance in accordance with § 908.72.

Respondent means any person named in a notice of charges or notice of determination to impose civil money penalties issued by the Finance Board.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501–4641) (Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550).

Violation includes any act or omission by any person, undertaken alone or with one or more others, that causes directly or indirectly, counsels, participates in, or otherwise furthers, aids or abets a violation of the Act, other applicable law, regulation, or order of the Finance Board.

§ 908.3 Rules of construction.

For purposes of this part—

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party's representative of record, if any, may, on behalf of that party, take any action required to be taken by the party.

Subpart B—Scope and Authority—Enforcement Proceedings

§ 908.4 Cease and desist proceedings.

(a) *Notice of Charges.* (1) *Grounds.* The Finance Board may issue and serve a notice of charges upon a Bank or any executive officer or director of a Bank if the Finance Board determines that such party is engaging or has engaged in, or, if the Finance Board has reasonable cause to believe is about to engage in:

(i) An unsafe or unsound practice in conducting the business of the Bank;

(ii) Any conduct that violates any provision of the Act or any applicable law, order, rule or regulation; or

(iii) Any conduct that violates any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement between the Bank and the Finance Board.

(2) *Content of notice of charges.* A notice of charges shall contain a statement of the facts constituting the alleged conduct or violation and otherwise shall conform to the requirements set forth in § 908.40.

(b) *Cease and desist order.* (1) *Issuance of order.* An order to cease and desist shall be issued in writing and only after the respondent has been given the opportunity for a hearing on the record in accordance with the requirements set forth in § 908.9. If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of charges has been established or if a respondent consents (or is deemed to have consented pursuant to § 908.43), the Board of Directors may issue and serve upon the respondent an order requiring the respondent to cease and desist from any such practice, violation or conduct, to take affirmative action to correct or remedy the conditions resulting from any such practice, violation or conduct, or to comply with such limitations on activities or functions as may be prescribed therein.

(2) *Affirmative action.* The authority of the Board of Directors to issue and serve a cease and desist order that requires a respondent to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require a respondent to—

(i) Make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(A) The respondent was unjustly enriched in connection with the violation, conduct or practice described in the order; or

(B) The violation, conduct or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Finance Board;

(ii) Restrict the growth of the Bank;

(iii) Dispose of any loan or asset involved;

(iv) Rescind any agreement or contract;

(v) Employ qualified officers or employees (who may be subject to approval by the Finance Board, as directed by the Finance Board); and

(vi) Take such other action as the Finance Board determines to be appropriate.

(3) *Authority to limit activities.* The authority of the Board of Directors to issue and serve a cease and desist order includes the authority to place limitations on the activities or functions of a respondent.

(c) *Effective date of order.* An order issued under paragraph (b) of this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the respondent, (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Board of Directors or otherwise as provided for in this part.

§ 908.5 Temporary cease and desist orders.

(a) *Grounds.* Whenever the Board of Directors determines that any conduct or violation, or threatened conduct or violation, specified in a notice of charges issued and served upon a respondent, or the continuation of such conduct or violation, is likely to cause insolvency, a significant depletion of total capital, or irreparable harm to a Bank prior to the completion of the cease and desist proceeding, the Board of Directors may issue a temporary order requiring the respondent to cease and

desist from any such conduct or violation, or such threatened conduct or violation, and to take affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings. Such order may include any requirement authorized under § 908.4(b)(2).

(b) *Incomplete records.* If a notice of charges specifies that the books and records of a Bank are so incomplete or inaccurate that the Finance Board is unable, through the normal supervisory process, to determine the financial condition of the Bank or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of a Bank, the Finance Board may issue a temporary order requiring a respondent to:

(1) Cease and desist from any activity or practice that caused or contributed to, whether in whole or in part, the incomplete or inaccurate state of the books or records of a Bank; or

(2) Take affirmative action to restore the books or records to a complete and accurate state.

(c) *Effective date.* Any temporary order issued pursuant to this section shall become effective upon service upon the respondent.

(d) *Effective period.* (1) Any temporary order issued under paragraph (a) of this section, unless set aside, limited, or suspended by a court in a proceeding under paragraph (e) of this section, shall remain in effect and enforceable pending the completion of the proceeding on the notice of charges and shall remain effective until the Board of Directors dismisses the charges specified in the notice of charges or it is superceded by a cease and desist order.

(2) Any temporary order issued under paragraph (b) of this section, unless set aside, limited, or suspended by a court in proceedings pursuant to paragraph (e) of this section, shall remain in effect and enforceable until the earlier of the completion of the proceeding on the notice of charges, or the date that the Finance Board determines, by examination or otherwise, that the books and records of the Bank are accurate and reflect the financial condition of the Bank.

(e) *Judicial relief.* As authorized by section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and sections 1372(d) and 1375(b) of the Safety and Soundness Act (12 U.S.C. 4632(d) and 4635(b)), a respondent that has been served with a temporary order may apply to the United States District Court for the District of Columbia within ten days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the hearing pursuant to the notice of charges.

(f) *Enforcement of temporary order.* If a respondent violates, threatens to violate, or fails to obey, a temporary order issued pursuant to this section, the Finance Board may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such temporary order, as authorized by sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1372(e) of the Safety and Soundness Act (12 U.S.C. 4632(e)).

§ 908.6 Civil money penalties.

(a) *Notice of assessment.* (1) *Grounds.* The Finance Board may issue and serve a notice of assessment of a civil money penalty on any Bank or any executive officer or director of a Bank that:

(i) Violates any provision of the Act, or any order, rule, or regulation issued under the Act;

(ii) Violates any final or temporary cease and desist order issued by the Finance Board pursuant to the Act;

(iii) Violates any written agreement between a Bank and the Finance Board; or

(iv) Engages in any conduct that causes or is likely to cause a loss to a Bank.

(2) *Content of notice.* A notice of assessment of a civil money penalty shall contain a statement of the facts constituting the alleged conduct or violation and otherwise conform to the requirements set forth in § 908.40.

(b) *Order assessing penalty.* An order assessing a civil money penalty shall be issued in writing and only after the respondent has been given the opportunity for a hearing on the record in accordance with the procedures set forth in § 908.9. If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of assessment of a civil money penalty has been established or if a respondent consents (or is deemed to have consented pursuant to § 908.43), the Board of Directors may issue and serve upon the respondent an order assessing a civil money penalty.

(c) *Amount of penalty.* (1) The Finance Board may impose a civil money penalty under paragraph (b) of this section against a Bank for a violation described in paragraph (a)(i) through (iii) of this section in an amount not to exceed $5,000.00 for each day that such violation continues;

(2) The Finance Board may impose a civil money penalty on an executive officer or director of a Bank in an amount not to exceed $10,000.00, or on a Bank in an amount not to exceed $25,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct:

(i) Is part of a pattern of misconduct; or

(ii) Involved recklessness and caused or would be likely to cause a material loss to a Bank; or

(3) The Finance Board may impose a civil money penalty on an executive officer or director of a Bank in an amount not to exceed $100,000.00, or on a Bank in an amount not to exceed $1,000,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to a Bank.

(d) *Factors in determining the amount of the penalty.* In determining the amount of the civil money penalty to be assessed under this section, the Finance Board shall consider such factors as the gravity of the violation, any history of prior violations, the good faith of the officer or director of a Bank, the effect of the penalty on promoting or protecting the safety and soundness of a Bank or the Bank System, any injury to members of the subject Bank or to the public at large, any benefits received, and the potential for the deterrence of future violations.

(e) *Judicial relief.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1376(c)(3) of the Safety and Soundness Act (12 U.S.C. 4636(c)(3)), an order of the Board of Directors imposing a civil money penalty under this subsection shall not be subject to judicial review except as otherwise provided in § 908.10, in accordance with section 1374 of the Safety and Soundness Act (12 U.S.C. 4634).

(f) *Judicial enforcement of an order imposing a penalty.* Pursuant to sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1376(d) of the Safety and Soundness Act (12 U.S.C. 4636(d)), if a Bank, or an executive officer or director of a Bank, fails to comply with an order of the Board of Directors imposing a civil money penalty, the Finance Board may seek to enforce the order as follows:

(1) After the order is final and no longer subject to judicial review under § 908.10, the Finance Board may bring an action in the United States District

Court for the District of Columbia to obtain a monetary judgment against a Bank or the executive officer or director of a Bank;

(2) The Finance Board may, in addition, seek such other relief as may be available from the District Court;

(3) The monetary judgment may, in the discretion of the District Court, include any attorneys fees and other expenses incurred by the Finance Board in connection with the action; and

(4) The validity and appropriateness of the Board of Directors' order assessing a civil money penalty shall not be subject to review of the United States District Court for the District of Columbia.

(g) *Board of Directors' authority to review.* The Board of Directors may:

(1) Review any order to assess a civil money penalty or any interlocutory ruling arising from a hearing on the record, or

(2) Settle, modify, or remit in whole or in part, any civil money penalty, which may be or may have been assessed under this section.

(h) *Availability of other remedies.* Any civil money penalty assessed under this section shall be in addition to any other available civil remedy and may be assessed whether or not the Finance Board imposes other administrative sanctions pursuant to this part.

(i) *Prohibition of reimbursement or indemnification.* A Bank shall not reimburse, indemnify, or otherwise compensate directly or indirectly any executive officer or director for any penalty imposed against such individual under paragraph (c)(3) of this section.

(j) *Applicability.* Any penalty under this part may be imposed only for conduct or violations occurring after November 12, 1999.

(k) *Adjustment of civil money penalties by the rate of inflation.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, Pub. Law No. 104–134 (1996) (collectively, the Inflation Adjustment Act) (to be codified at 28 U.S.C. 2461 note), the Finance Board is required to adjust each civil money penalty set forth herein by a prescribed cost-of-living adjustment at least once every four years. The adjustment is based on the formula prescribed in section 5(b) of the Inflation Adjustment Act (28 U.S.C. 2461 note).

§ 908.7 Service of notice.

In accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1379A of the Safety and Soundness Act (12 U.S.C. 4640), any service required or authorized to be made by the Finance Board under this part may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Finance Board may by regulation or otherwise provide.

§ 908.8 Subpoenas.

(a) *Authority.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1379B of the Safety and Soundness Act (12 U.S.C. 4641), the Finance Board, in the course of or in connection with a hearing under this part, shall have the authority:

(1) To administer oaths and affirmations;

(2) To take and preserve testimony under oath;

(3) To issue subpoenas and subpoenas *duces tecum*; and

(4) To revoke, quash, or modify subpoenas and subpoenas *duces tecum* issued by the Finance Board pursuant to this part.

(b) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) *Enforcement.* The Finance Board may file an action in the United States district court for the judicial district where the proceeding is being conducted or where the witness resides or conducts business, or in the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena *duces tecum* issued pursuant to this section. Such courts shall have jurisdiction over such actions and power to order and require compliance with such subpoenas and subpoenas *duces tecum*.

(d) *Fees and Expenses.* Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by a Bank may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses shall be paid by the Bank or from its assets.

§ 908.9 Hearings on the record.

(a) *Requirements.* (1) *Venue and record.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1373 of the Safety and Soundness Act (12 U.S.C. 4633), any hearing conducted pursuant to §§ 908.4 or 908.6 shall be held on the record and in the District of Columbia.

(2) *Timing.* Any hearing shall be set for a date not earlier than thirty (30) days nor later than sixty (60) days after service of a notice, unless an earlier or a later date is set by the presiding officer at the request of the party served.

(3) *Procedure.* Any hearing held pursuant to §§ 908.4 or 908.6 shall be conducted in accordance with chapter 5 of Title 5 of the United States Code.

(4) *Failure to appear.* If a respondent fails to appear at a hearing individually or through a duly authorized representative, the respondent shall be deemed to have consented to the issuance of a cease and desist order or an order assessing a civil money penalty for which the hearing is held.

(5) *Open to the public.* All hearings on the record with respect to any notice issued by the Finance Board shall be open to the public, unless the Board of Directors, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(b) *Issuance of final order.* After a hearing on the record has been concluded, and within 90 days after the parties have been notified that the case has been submitted to the Board of Directors for final decision, the Board of Directors shall render the final decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding a final order or orders consistent with the provisions.

(c) *Judicial review and modification of final orders.* Judicial review of any such final decision and order shall be exclusively as provided for in § 908.10, pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and sections 1373 and 1374 of the Safety and Soundness Act (12 U.S.C. 4633 and 4634). Unless a petition for review is timely filed as provided in § 908.10, and thereafter until the record in the proceeding has been filed as so provided, the Board of Directors may at any time modify, terminate, or set aside any such final decision and order, upon such notice and in such manner as the Board of Directors, in its sole discretion, considers proper. Upon such filing of the record, the Board of Directors may modify, terminate, or set aside any such final decision and order with permission of the court.

§ 908.10 Judicial review.

(a) *Authority.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374 of the Safety and Soundness Act (12 U.S.C. 4634), any party to a hearing may obtain judicial review of a final decision and

order issued under §§ 908.4 or 908.6 exclusively by filing a written petition in the United States Court of Appeals for the District of Columbia Circuit within thirty (30) days after the date of service of the final decision and order, requesting the court to modify, terminate or set aside the final decision and order.

(b) *Filing of record.* Upon receiving a copy of the petition from the clerk of the court of appeals, the Finance Board shall file the hearing record with the clerk, as provided in section 2112 of Title 28 of the United States Code (28 U.S.C. 2112).

(c) *Jurisdiction.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(c) of the Safety and Soundness Act (12 U.S.C. 4634(c)), upon the filing of a petition, the court of appeals shall have jurisdiction, which upon the filing of the record by the Finance Board (except as otherwise provided in § 908.9) shall be exclusive, to affirm, modify, terminate or set aside, in whole or in part, a final decision and order of the Board of Directors.

(d) *Review.* Review by the court of appeals of a final decision and order of the Board of Directors and the record of any hearing conducted pursuant to this part shall be governed by chapter 7 of Title 5 of the United States Code (5 U.S.C. 701 *et seq.*).

(e) *Order to pay civil money penalty.* In connection with its review of a final order pursuant to this part, the court of appeals shall have authority in accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(e) of the Safety and Soundness Act (12 U.S.C. 4634(e)), to order payment of any civil money penalty imposed by the Finance Board.

(f) *No automatic stay.* In accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(f) of the Safety and Soundness Act (12 U.S.C. 4634(f)), the commencement of an action for judicial review of a final decision and order of the Board of Directors under this section shall not operate as a stay of any such order, unless the court of appeals specifically orders a stay of the order in whole or in part.

§ 908.11 Jurisdiction and enforcement.

(a) *Enforcement.* In accordance with sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1375(a) of the Safety and Soundness Act (12 U.S.C. 4635(a)), the Finance Board may bring an action in the United States District Court for the District of Columbia for the enforcement of any effective order issued by the Board of Directors under this part. Such court shall have jurisdiction and power to order and require compliance with such order.

(b) *Limitation on jurisdiction.* In accordance with sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1375(b) of the Safety and Soundness Act (12 U.S.C. 4635(b)), and except as otherwise provided in the Act, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any order issued by the Board of Directors under this part, or to review, modify, suspend, terminate, or set aside any such notice or order.

§ 908.12 Notice after separation.

The resignation, termination of employment or participation, or separation of a director or executive officer of a Bank shall not affect the jurisdiction and authority of the Finance Board to issue any notice and proceed under this part against any such director or executive officer, if such notice is served before the end of the two-year period beginning on the date such director or executive officer ceases to be associated with the Bank.

§ 908.13 Public disclosure of final orders.

(a) *In general.* The Finance Board shall make available to the public—

(1) Any written agreement or other written statement for which a violation may be redressed by the Finance Board or any modification to or termination thereof, unless the Finance Board in its discretion, determines that public disclosure would be contrary to the public interest;

(2) Any order that is issued by the Board of Directors and that has become final in accordance with this part; and

(3) Any modification to or termination of any final order made public pursuant to this part.

(b) *Delay of public disclosure under exceptional circumstances.* If the Finance Board determines in writing that the public disclosure, pursuant to paragraph (a) of this section, of any final decision and order of the Board of Directors would seriously threaten the financial health or security of a Bank, the Finance Board may delay the public disclosure of such decision and order for a reasonable time.

(c) *Documents filed under seal.* The Finance Board may file any document or part thereof under seal in any hearing commenced by the Finance Board under this part, if it determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Finance Board shall keep and maintain a record, for not less than six years, of all documents described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Finance Board under this part or any other law.

(e) *Disclosure to Congress.* This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

§ 908.14 No implied private right of action.

This part shall not create any private right of action on behalf of any person against a Bank or any director or executive officer of a Bank or impair any existing private right of action under applicable law.

§ 908.15—908.19 [Reserved]

Subpart C—General Rules

§ 908.20 Authority of the Board of Directors.

The Board of Directors may, at any time during the pendency of a proceeding under this part, perform, direct the performance of, or waive the performance of any act that could be done or ordered by the presiding officer.

§ 908.21 Authority of the presiding officer.

(a) *General rule.* All cease and desist or civil money penalty proceedings governed by this subpart shall be conducted in a hearing on the record in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 551–559. The presiding officer shall have complete charge of the hearing, conduct a fair and impartial hearing, avoid unnecessary delay, and assure that a record of the hearing is made.

(b) *Powers.* The presiding officer shall have all powers necessary to conduct the hearing in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding, including settlement conferences, mediation or other consensual methods of dispute resolution;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, subpoenas *duces tecum*, and protective orders, as authorized by this part, and to revoke, quash, or modify such subpoenas;

(6) Take and preserve testimony under oath;

(7) Rule on motions and other procedural matters appropriate in a hearing, except that only the Board of Directors shall have the power to grant any motion to dismiss a cease and desist or civil money penalty proceeding or to make a final determination on the merits of such proceedings;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, exclude, limit, or otherwise rule on evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Recuse herself/himself upon motion made by a party or on her or his own motion;

(14) Prepare and present to the Board of Directors a recommended decision as provided in this part;

(15) Establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(16) Do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 908.22 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Finance Board, in its discretion, determines that holding an open hearing would be contrary to the public interest. The Finance Board may make such determination *sua sponte* at any time by written notice to all parties.

(b) *Motion for closed hearing.* Within twenty (20) days of service of a notice, any party or respondent may file with the presiding officer a motion for a non-public hearing and any party may file a pleading in reply to the motion. The presiding officer shall forward the motion and any reply, together with a recommended decision on the motion, to the Board of Directors, who shall make a final determination. Such motions and replies shall be governed by § 908.45.

(c) *Filing documents under seal.* The Finance Board, in its discretion, may file any document, or any part of any document, under seal if the agency makes a written determination that disclosure of the document would be contrary to the public interest. The presiding officer shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 908.23 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice by the Finance Board shall be signed by at least one representative of record in her or his individual name and shall state that representative's address and telephone number and the names, addresses and telephone numbers of all other representatives of record for the person making the filing or submission.

(b) *Effect of signature.* (1) By signing a document, the representative of record or party certifies that—

(i) The representative of record or party has read the filing or submission of record;

(ii) To the best of her or his knowledge, information and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal of existing law, regulation or Finance Board policy or order; and

(iii) The filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the presiding officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any representative or party shall constitute a certification that to the best of her or his knowledge, information, and belief, formed after reasonable inquiry, such expressions or statements are well-grounded in fact and are warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal of existing law, regulation, or Finance Board policy or order, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 908.24 Ex parte communications.

(a) *Definition.* (1) *Ex parte* communication means any material oral or written communication relevant to the merits of a cease and desist or civil money penalty proceeding under this part that was neither on the record nor on reasonable prior notice to all parties that takes place between—

(i) An interested person outside the Finance Board (including the person's representative); and

(ii) The presiding officer handling the proceeding, the Board of Directors or any member thereof, a decisional employee of the Finance Board assigned to that proceeding, or any other person who is or may reasonably be expected to be involved in the decisional process.

(2) A communication that does not concern the merits of a proceeding under this part, such as a request for status of the proceeding, does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications.* From the time that a notice commencing a proceeding under this part is issued by the Finance Board until the date that the Board of Directors issues its final decision pursuant to § 908.65, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an *ex parte* communication. The Board of Directors, any member thereof individually, the presiding officer, or an employee of the Finance Board, shall not knowingly make or cause to be made an *ex parte* communication.

(c) *Procedure upon occurrence of ex parte communication.* If an *ex parte* communication is received by any person identified in paragraph (a) of this section, that person promptly shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within ten days of receipt of service of the *ex parte* communication or the written record of an oral communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or representative for a party who makes an *ex parte* communication, or who encourages or solicits another person or entity to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board of Directors or the presiding officer, including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue that is the subject of the prohibited communication.

(e) *Consultations by presiding officer.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the presiding officer may not consult a person or party on

any matter relevant to the merits of a proceeding, unless on notice and opportunity for all parties to participate.

(f) *Separation of functions.* An employee or agent engaged in the performance of investigative or prosecuting functions for the Finance Board in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or Board of Directors' review of the recommended decision under § 908.65, except as a witness or counsel in a hearing.

§ 908.25 Filing of papers.

(a) *Filing.* Any papers required to be filed shall be addressed to the presiding officer and filed with the Finance Board, 1777 F Street, NW., Washington, DC 20006.

(b) *Manner of filing.* Unless otherwise specified by the Finance Board or the presiding officer, filing shall be accomplished by:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media upon any conditions specified by the Finance Board or the presiding officer. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.* (1) *Form.* All papers must set forth the name, address and telephone number of the representative or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ × 11-inch paper and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 908.23.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Finance Board and of the filing party, the title and docket number of the proceeding and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Finance Board or the presiding officer, an original and one copy of all documents, papers, transcripts of testimony, and exhibits shall be filed.

§ 908.26 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers or serving a subpoena shall serve a copy upon the representative of record for each party to the proceeding so represented and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 908.25(c).

(c) *By the Finance Board or the presiding officer.* (1) All papers required to be served by the Finance Board or the presiding officer upon a party who has appeared in the proceeding in accordance with § 908.72 may be served by any means specified in paragraph (b) of this section.

(2) If a notice of appearance has not been filed in the proceeding for a party in accordance with § 908.72, the Finance Board or the presiding officer shall make service upon such party by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Subject to applicable provisions in this part, service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method reasonably calculated to give actual notice.

(e) *Area of service.* Service in any State, commonwealth, possession, territory of the United States or the District of Columbia on any person doing business in any State, commonwealth, possession, territory of the United States or the District of Columbia, or on any person as otherwise permitted by law, is effective without regard to the place where the hearing is held.

(f) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is taken thereon. The proof of service, which shall serve as prima facie evidence of the fact and date of service, shall show the date and manner of service and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of a representative of record. However, failure to file proof of service contemporaneously with the papers shall not affect the validity of actual service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 908.27 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday or Federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is ten (10) days or less, not including any additional time allowed for in paragraph (c) of this section, intermediate Saturdays, Sundays and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective—

(i) In the case of personal service or same day reliable commercial delivery service, upon actual service;

(ii) In the case of U.S. Postal Service or reliable commercial overnight delivery service, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection; or

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing in the case of filing, and as agreed among the parties in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Finance Board or the presiding officer in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers*. Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits shall be calculated as follows:

(1) If service was made by first class, registered, or certified mail, or by delivery to the U.S. Postal Service for longer than overnight delivery service, add three (3) calendar days to the prescribed period for the responsive filing.

(2) If service was made by U.S. Postal Service or reliable commercial overnight delivery service, add one (1) calendar day to the prescribed period for the responsive filing.

(3) If service was made by electronic media transmission, add one (1) calendar day to the prescribed period for the responsive filing, unless otherwise determined by the Board of Directors or the presiding officer in the case of filing, or by agreement among the parties in the case of service.

§ 908.28 Change of time limits.

Except as otherwise provided by law, the presiding officer may, for good cause shown, extend the time limits prescribed above or prescribed by any notice or non-dispositive order issued under this part. After the referral of the case to the Board of Directors pursuant to § 908.63, the Board of Directors may grant extensions of the time limits for good cause shown. Extensions may be granted on the motion of a party after notice and opportunity to respond is afforded all nonmoving parties, or on the Board of Directors' or the presiding officer's own motion.

§ 908.29 Witness fees and expenses.

Witnesses (other than parties) subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid to witnesses pursuant to the Federal Rules of Civil Procedure (title 28 of the U.S. Code) governing proceedings in the United States district courts, in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage shall be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Finance Board is the issuer of the subpoena. The Finance Board shall not be responsible for or required to pay any fees to or expenses of any witness not subpoenaed by the Finance Board.

§ 908.30 Settlement or other dispute resolution.

Any respondent may, at any time in a cease and desist or civil money penalty proceeding, unilaterally submit to the Finance Board's counsel of record written offers or proposals for settlement of such proceeding in whole or in part without prejudice to the rights of any of the parties. Any such offer or proposal shall be made exclusively to the Finance Board. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. Any party to a proceeding under this part may request a neutral individual preside over settlement negotiations. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding under this part or any court.

§ 908.31 Right to supervise the Banks.

Nothing contained in this part shall limit in any manner the right of the Finance Board to conduct any examination, inspection, or visitation of any Bank, or the right of the Finance Board to conduct or continue any form of investigation authorized by law. Nothing set forth in this part shall restrict or be deemed to restrict the authority of the Finance Board to supervise the Banks or to issue or enforce orders or directives pursuant to section 2B(a)(1), or any other provision, of the Act (12 U.S.C. 1422b(a)(1)).

§ 908.32 Collateral attacks on proceedings under this part.

If a respondent files in any court a collateral attack that purports to challenge all or any portion of a proceeding under this part, the hearing on the merits shall continue without regard to the pendency of any such challenge action. No default or other failure to act as directed in the hearing within the times prescribed in this subpart shall be excused based on the pendency of any such challenge action.

§ 908.33—908.39 [Reserved]

Subpart D—Pre-Hearing Proceedings

§ 908.40 Commencement of proceeding and contents of notices.

Proceedings under this part are commenced by the issuance of a notice of charges or a notice of assessment of a civil money penalty (notice). A notice that is served by the Finance Board upon a respondent in accordance with § 908.7 shall state all of the following:

(a) The legal authority for the proceeding and for the Finance Board's jurisdiction over the proceeding;

(b) A statement of the matters of fact or law showing that the Finance Board is entitled to relief;

(c) A proposed order or prayer for an order granting the requested relief;

(d) The time, place and nature of the hearing;

(e) The time within which to file an answer;

(f) The time within which to request a hearing; and

(g) The address for filing the answer and/or request for a hearing.

§ 908.41 Answer.

(a) *Deadline for filing answer*. Unless otherwise specified by the Finance Board in the notice, respondent shall file an answer within twenty (20) days of service of the notice.

(b) *Content of answer*. An answer shall respond specifically to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice that is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer shall set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*. Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of such respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, the Finance Board's counsel of record may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to

file a timely answer, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board of Directors based upon a respondent's failure to answer shall be deemed to be an order issued upon consent.

§ 908.42 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented by the Finance Board prior to the scheduling conference held in accordance with § 908.53, or at any stage of the proceeding with the permission of the presiding officer for good cause shown. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten (10) days after service of the amended notice, whichever period is longer, unless the Board of Directors or the presiding officer orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the notice or answer, and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 908.43 Failure to appear.

Failure of a respondent to appear in person or by a duly authorized representative at the hearing constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice.

§ 908.44 Consolidation and severance of actions.

(a) *Consolidation.* On the motion of any party, or on the Finance Board's or the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the pre-hearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of the Finance Board or any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 908.45 Motions.

(a) *Written motions.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions shall state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally and on the record at a hearing, unless the presiding officer directs that such motion be reduced to writing and filed with the presiding officer. Oral motions must be made a part of the record of the hearing, and accompanied by a proposed order.

(c) *Filing of motions.* Motions shall be filed with the presiding officer, except that following the filing of a recommended decision with the Board of Directors, motions must be filed with the Board of Directors in accordance with § 908.64.

(d) *Responses.* (1) Except as otherwise provided herein, any party may file a written response to a motion within ten days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Board of Directors. The presiding officer shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions shall be governed by §§ 908.51 and 908.52.

§ 908.46 Discovery.

(a) *Limits on discovery.* Subject to the limitations set out in paragraphs (b), (d), and (e) of this section, any party to a hearing under this part may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term *documents* may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(b) *Relevance.* A party may obtain document discovery regarding any matter not privileged provided that the information sought has a logical connection to consequential facts (i.e., material) or may tend to prove or disprove a matter in issue (i.e., relevant) related to the merits of the pending action. Any request to produce documents that calls for irrelevant or immaterial information, or that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents, shall be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § 908.47.

(c) *Forms of discovery.* Document discovery shall be limited to requests for production of documents for inspection and copying. No other form of discovery shall be allowed. Discovery by use of interrogatories may be permitted. This paragraph shall not be interpreted to require the creation of a document.

(d) *Privileged matter.* Privileged documents shall not be discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

(e) *Time limits.* All discovery, including all responses to discovery requests, shall be completed within the time set by the presiding officer, but in no case later than ten (10) days prior to the service deadline for pre-hearing submissions in accordance with § 908.54. No exception to this time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 908.47 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. Copies of the request shall be served on all other parties. The request must identify the documents to be produced either by individual item or by category and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or they shall be labeled and organized to correspond with the categories in the request.

(b) *Production or copying.* The request shall specify a reasonable time, place and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests more than 250 pages of copying, the requesting party shall pay for copying and shipping charges. Copying charges are at the current rate per page imposed by the Finance Board at § 910.9(g) of this chapter for requests for documents filed under the Freedom of Information Act, 5 U.S.C. 552. The party to whom the request is addressed may require payment in advance before producing the documents.

(c) *Obligation to update responses.* A party who has responded to a discovery request is not required to supplement the response, unless:

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect, and

(2) The additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(d) *Motions to strike or limit discovery requests.* (1) Any party that objects to a discovery request may, within ten (10) days of being served with such request, file a motion in accordance with the provisions of § 908.45 requesting the presiding officer order the request be stricken or otherwise limited. If an objection is made to only a portion of an item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and § 908.45 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five (5) days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The presiding officer has discretion to determine when the identification by category is insufficient.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within (10) ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 908.45 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may, within five (5) days of service of a motion for the issuance of a subpoena compelling production, file a written response to the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses to motions pursuant to this section has expired, the presiding officer shall rule promptly on all such motions. If the presiding officer determines that a discovery request or any of its terms calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he or she may deny or modify the request and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the presiding officer. Notwithstanding any other provision in this part, the presiding officer may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the presiding officer its intention to file a timely motion for interlocutory review of the presiding officer's order to produce the documents, until the motion for interlocutory review has been decided.

(h) *Enforcing discovery subpoenas.* If the presiding officer issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the presiding officer against a party who fails to produce or induces another to fail to produce subpoenaed documents.

§ 908.48 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the presiding officer for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for production in response to the subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 908.46(e) and in accordance with § 908.47. The party requesting the document subpoena is

responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any State, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The presiding officer shall promptly issue any document subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be determined by the presiding officer.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena shall be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 908.47 and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with any part of the subpoena that the presiding officer has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§ 908.49 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) A party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section to the presiding officer for the issuance of a subpoena, including a subpoena *duces tecum,* requiring the attendance of the witness at a deposition. The presiding officer may issue a deposition subpoena under this section upon a showing that—

(i) The testimony is reasonably expected to be material; and

(ii) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed anywhere within the United States and its possessions and territories in which that witness resides or has a regular place of employment or such other convenient place as the presiding officer shall fix.

(3) A subpoena shall be promptly issued upon request, unless the presiding officer determines that the request fails to set forth a valid basis under this section for its issuance. The presiding officer shall make a determination that there is a valid basis for issuing the subpoena. The presiding officer may require a written response from the party requesting the subpoena or require attendance at a conference to determine whether there is a valid basis upon which to issue the requested subpoena.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the presiding officer orders otherwise, no deposition under this section shall be taken on fewer than ten (10) days' notice to the witness and all parties. Deposition subpoenas may be served anywhere within the United States or its possessions or territories on any person doing business anywhere within the United States or its possessions or territories, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion under § 908.45 with the presiding officer to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten (10) days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section shall accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena shall be duly sworn and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for objection might have been avoided if the objection had been presented timely. All questions, answers and objections must be recorded.

(2) Any party may move before the presiding officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence that, during the deposition, the witness has refused to submit.

(3) The deposition shall be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or with any order of the presiding officer made upon motion under paragraph (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the presiding officer has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the presiding officer on a party who fails to comply with or induces a failure to comply with a subpoena issued under this section.

§ 908.50 Interlocutory review.

(a) *General rule.* The Board of Directors may review a ruling of the presiding officer prior to the certification of the record to the Board of Directors only in accordance with the procedures set forth in this section.

(b) *Procedure.* Any motion for interlocutory review shall be filed by a party with the presiding officer within ten (10) days of his ruling. Upon the expiration of the time for filing all responses, the presiding officer shall refer the matter to the Board of Directors for final disposition. In referring the matter to the Board of Directors, the presiding officer may indicate

agreement or disagreement with the asserted grounds for interlocutory review of the ruling in question.

(c) *Scope of review.* The Board of Directors may exercise interlocutory review of a ruling of the presiding officer if it finds that—

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Board of Directors under this section suspends or stays the proceeding unless otherwise ordered by the presiding officer or the Board of Directors.

§ 908.51 Summary disposition.

(a) *In general.* The presiding officer shall recommend that the Board of Directors issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that—

(1) There is no genuine issue as to any material fact; and

(2) The movant is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within twenty (20) days after service of such motion or within such time period as allowed by the presiding officer, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of material facts as to which the movant contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, written interrogatory responses, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the movant contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the movant. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his own motion, the presiding officer may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the presiding officer shall determine whether the movant is entitled to summary disposition. If the presiding officer finds that the moving party is not entitled to summary disposition, the presiding officer shall make a ruling denying the motion. If the presiding officer determines that summary disposition is warranted, the presiding officer shall submit a recommended decision to that effect to the Board of Directors under § 908.63.

§ 908.52 Partial summary disposition.

If the presiding officer determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision to the Board of Directors as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the presiding officer has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 908.53 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within thirty (30) days of service of the notice or order commencing a proceeding or at such other time as the parties may agree, the presiding officer shall direct representatives for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a ''scheduling conference.'' The identification of potential witnesses, the time for and manner of discovery and the exchange of any pre-hearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Pre-hearing conference.* The presiding officer may, in addition to the scheduling conference, on his own motion or at the request of any party, direct representatives for the parties to meet with him (in person or by telephone) at a pre-hearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The presiding officer, in his discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at such party's expense.

(d) *Scheduling or pre-hearing orders.* Within a reasonable time following the conclusion of the scheduling conference or any pre-hearing conference, the presiding officer shall serve on each party an order setting forth any agreements reached and any procedural determinations.

§ 908.54 Pre-hearing submissions.

(a) *Service deadline.* Within the time set by the presiding officer, but in no case later than 10 (ten) days before the start of the hearing, each party shall serve on every other party the serving party's:

(1) Pre-hearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such

witness or exhibit is not listed in the pre-hearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 908.55 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general materiality or relevance and reasonableness of scope of the testimony or other evidence sought, the presiding officer may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any State, commonwealth, possession, territory of the United States, or the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of or during a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the presiding officer.

(3) The presiding officer shall promptly issue any hearing subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue the subpoena in a modified form upon any conditions consistent with this subpart. Upon issuance by the presiding officer, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but no more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 908.8(c). A party's right to seek court enforcement of a hearing subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who fails, or induces a failure, to comply with any subpoena issued under this section.

§§ 908.56–908.59 [Reserved]

Subpart E—Hearing and Post-hearing Proceedings

§ 908.60 Conduct of hearings.

(a) *General rules.* (1) *Hearings.* Hearings shall be conducted in accordance with chapter 5 of Title 5 of the United States Code (5 U.S.C. 501–559) and other applicable law, so as to provide a fair and expeditious presentation of the relevant disputed issues. Except as limited by this subpart, each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross-examination of witnesses as may be required for full disclosure of the facts.

(2) *Order of hearing.* The Finance Board shall present its case-in-chief first, unless otherwise ordered by the presiding officer or unless otherwise expressly specified by law or regulation. The Finance Board shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order or presentation of their cases, but if they do not agree, the presiding officer shall fix the order.

(3) *Examination of witnesses.* Only one representative for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the presiding officer may permit more than one representative for the party presenting the witness to conduct the examination. A party may have one representative conduct the direct examination and another representative conduct re-direct examination of a witness, or may have one representative conduct the cross examination of a witness and another representative conduct the re-cross examination of a witness.

(4) *Stipulations.* Unless the presiding officer directs otherwise, all documents that the parties have stipulated as admissible shall be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing shall be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the presiding officer's own motion.

§ 908.61 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551–559) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence (*see generally,* 28 U.S.C.) is admissible in a proceeding conducted pursuant to this subpart.

(3) The presiding officer may admit evidence, which otherwise would be inadmissible under the Federal Rules of Evidence (28 U.S.C.), upon a finding made on the record that the evidence is relevant, material, probative and reliable, and would not prejudice the rights of or cause an undue burden to any party to the proceeding.

(b) *Official notice.* (1) Official notice may be taken of any material fact that may be judicially noticed by a United States district court and any material information in the official public records of any Federal or State government agency.

(2) All matters officially noticed by the presiding officer or the Finance Board shall appear on the record.

(3) If official notice is requested of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a)(1) of this section, any document, including a report of examination, oversight activity, inspection, or visitation, prepared by the Finance Board or by another Federal or State financial institution's regulatory agency is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the presiding officer's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear in the record.

(2) When an objection to a question or line of questioning is sustained, the examining representative of record may make a specific proffer on the record of what he expected to prove by the expected testimony of the witness. The proffer may be by representation of the representative or by direct interrogation of the witness.

(3) The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record and transmit such exhibits to the Board of Directors.

(4) Failure to object to admission of evidence or to any evidentiary ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing and that witness has testified in a deposition in accordance with § 908.49, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the presiding officer may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 908.62 Post-hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the presiding officer shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the presiding officer proposed findings of fact, proposed conclusions of law and a proposed order within thirty (30) days after the parties have received notice that the transcript has been filed with the presiding officer, unless otherwise ordered by the presiding officer.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document.

(3) Any party is deemed to have waived any issue not raised in proposed findings or conclusions timely filed by that party.

(b) *Reply briefs.* Reply briefs may be filed within fifteen (15) days after the date on which the parties' proposed findings and conclusions and proposed order are due. Reply briefs must be limited strictly to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief shall not file a reply brief.

(c) *Simultaneous filing required.* The presiding officer shall not order the filing by any party of any brief or reply brief supporting proposed findings and conclusions in advance of the other party's filing of its brief.

§ 908.63 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within forty-five (45) days after expiration of the time allowed for filing reply briefs under § 908.62(b), the presiding officer shall file with and certify to the Board of Directors, for decision, the record of the proceeding. The record must include the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order; all pre-hearing and hearing transcripts, exhibits and rulings; and the motions, briefs, memoranda and other supporting papers filed in connection with the hearing. The presiding officer shall serve upon each party the recommended decision, recommended findings and conclusions, and proposed order.

(b) *Filing of index.* At the same time the presiding officer files with and certifies to the Board of Directors, for final determination, the record of the proceeding, the presiding officer shall furnish to the Board of Directors a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the presiding officer in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

§ 908.64 Exceptions to recommended decision.

(a) *Filing exceptions.* Within thirty (30) days after service of the recommended decision, recommended findings and conclusions, and proposed order under § 908.63, a party may file with the Finance Board written exceptions to the presiding officer's recommended decision, recommended findings and conclusions, or proposed order; to the admission or exclusion of evidence; or to the failure of the presiding officer to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Board of Directors if the party taking exception had an opportunity to raise the same objection, issue, or argument before the presiding officer and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in or omissions from the presiding officer's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the presiding officer's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception and the legal authority relied upon to support each exception. Exceptions and briefs in support shall not exceed a total of 30 pages, except by leave of the Finance Board on motion.

(3) Each party may submit one reply brief within ten (10) days of service of exceptions and briefs in support of

exceptions. Reply briefs shall not exceed 15 pages, except by leave of the Finance Board on motion.

§ 908.65 Review by Board of Directors.

(a) *Notice of submission to the Board of Directors.* When the Board of Directors determines that the record in the proceeding is complete, the Finance Board shall serve notice upon the parties that the proceeding has been submitted to the Board of Directors for final decision and order in accordance with this section.

(b) *Oral argument before the Board of Directors.* Upon the initiative of the Board of Directors or on the written request of any party filed with the Board of Directors within the time for filing exceptions under § 908.64, the Board of Directors may order and hear oral argument on the recommended findings, conclusions, decision and order of the presiding officer. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board of Directors' final decision and order. Oral argument before the Board of Directors must be transcribed.

(c) *Board of Directors' final decision and order.* (1) Decisional employees may advise and assist the Board of Directors in the consideration and disposition of the case, and in the preparation of the final decision and order. The final decision and order of the Board of Directors will be based upon review of the entire record of the proceeding, except that the Board of Directors may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties in accordance with this part.

(2) The Board of Directors shall render and issue a final decision and order within ninety (90) days after notification of the parties that the case has been submitted to the Board of Directors, unless the Board of Directors orders that the action or any aspect thereof be remanded to the presiding officer for further proceedings in accordance with instructions as may be specified by the Board of Directors. Copies of the final decision and order of the Board of Directors shall be served upon each party to the proceeding and otherwise, as may be required by the Board of Directors in accordance with applicable law.

§ 908.66 Exhaustion of administrative remedies.

To exhaust administrative remedies as to any issue on which a party disagrees with the presiding officer's recommendations, a party must file exceptions with the Board of Directors under § 908.64. A party must exhaust administrative remedies as a precondition to seeking judicial review of any final decision and order, in whole or in part, issued by the Board of Directors under § 908.65.

§ 908.67 Stay of final decision and order pending judicial review.

The commencement of proceedings for judicial review of all or part of a final order issued by the Board of Directors in accordance with § 908.65, as provided in § 908.10 may not, unless specifically ordered by the Board of Directors or a reviewing court, operate as a stay of any order issued by the Board of Directors. The Board of Directors may, in its discretion and on such terms as it finds just, stay the effectiveness of all or any part of an order of the Board of Directors pending a final decision on a petition for judicial review of that order.

§ 908.68–908.69 [Reserved]

Subpart F—Rules of Practice Before the Finance Board

§ 908.70 Scope.

This subpart contains rules governing practice by parties or their representatives in any proceeding before the Finance Board. In particular, these rules of practice shall apply to any appearances before the Board of Directors under this part or part 907 of this chapter. This subpart also shall govern the imposition of sanctions by the Finance Board or a presiding officer against parties or their representatives in a hearing under this part or a proceeding under part 907 of this chapter. In the sole discretion of the Finance Board, §§ 908.74 and 908.75 may be applied to persons who appear in a representational capacity in any hearing under this part or any proceeding under part 907 of this chapter, or in any other matter that involves contacting the Finance Board as a principal or agent with respect to asserting the rights, privileges, or liabilities of an individual or entity, including presentations to or communications with the Board of Directors or any member of the Board of Directors. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of the Finance Board are not subject to disciplinary proceedings under this subpart.

§ 908.71 Practice before the Finance Board.

Practice before the Finance Board for the purposes of this subpart, includes, but is not limited to, transacting any business with the Finance Board as counsel, representative or agent for any other person, unless the Finance Board orders otherwise. Practice before the Finance Board also includes the preparation of any statement, opinion, or other paper by a counsel, representative or agent that is filed with the Finance Board in any request, certification, notification, application, report, or other document, with the consent of such counsel, representative or agent. Practice before the Finance Board does not include work prepared for a Bank solely at the request of the Bank for use in the ordinary course of its business.

§ 908.72 Appearances and practice in proceedings before the Finance Board.

(a) *Appearances in proceedings before the Finance Board.* (1) *By attorneys.* A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, commonwealth, possession, territory of the United States, or the District of Columbia and who is not currently suspended or disbarred from practice before the Finance Board.

(2) *By non-attorneys.* An individual may appear on his own behalf. A member of a partnership may represent the partnership and a duly authorized officer, board of director member, employee, or other agent of any corporation or other entity not specifically listed herein may represent such corporation or other entity; provided that such officer, board of director member, employee, or other agent is not currently suspended or disbarred from practice before the Finance Board. A duly authorized officer or employee of any Government unit, agency, or authority may represent that unit, agency, or authority.

(b) *Notice of appearance.* Any person appearing in a representative capacity on behalf of a party, including the Finance Board, shall execute and file a notice of appearance with the presiding officer at or before the time such person submits papers or otherwise appears on behalf of a party in a hearing under this part. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraphs (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing

a notice of appearance on behalf of a party in a hearing under this part, the representative thereby agrees and represents that he is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the presiding officer, continue to accept service until a new representative has filed a notice of appearance or until the represented party indicates that he or she will proceed on a *pro se* basis. Unless the representative filing the notice is an attorney, the notice of appearance shall also be executed by the person represented or, if the person is not an individual, by the chief executive officer, or duly authorized officer of that person.

§ 908.73 Conflicts of interest.

(a) *Conflict of interest in representation.* No representative shall represent another person in an adjudicatory proceeding if it reasonably appears that such representation may be limited materially by that representative's responsibilities to a third person or by that representative's own interests. The presiding officer may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel or other representative represents two or more parties in a proceeding under this part or also represents a nonparty on a matter relevant to an issue in the proceeding, that representative must certify in writing at the time of filing the notice of appearance required by § 908.72:

(1) That the representative has personally and fully discussed the possibility of conflicts of interest with each such party and nonparty;

(2) That each such party and nonparty waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 908.74 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed during the course of any proceeding when any party or representative of record has acted or failed to act in a manner required by applicable statute, regulation, or order, and that act or failure to act—

(1) Constitutes contemptuous conduct. Contemptuous conduct includes dilatory, obstructionist, egregious, contumacious, unethical, or other improper conduct at any phase of any proceeding, hearing, or appearance before the Board of Directors;

(2) Has caused some other party material and substantive injury, including, but not limited to, incurring expenses including attorney's fees or experiencing prejudicial delay;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has delayed the proceeding unduly.

(b) *Sanctions.* Sanctions that may be imposed include, but are not limited to, any one or more of the following:

(1) Issuing an order against a party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that may be just; or

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) The presiding officer, on the motion of any party, or on his own motion, and after such notice and responses as may be directed by the presiding officer, may impose any sanction authorized by this section. The presiding officer shall submit to the Board of Directors for final ruling any sanction that would result in a final order that terminates the case on the merits or is otherwise dispositive of the case.

(2) Except as provided in paragraph (d) of this section, no sanction authorized by this section, other than refusing to accept late papers, shall be imposed without prior notice to all parties and an opportunity for any representative or party against whom sanctions would be imposed to be heard. The presiding officer shall determine and direct the appropriate notice and form for such opportunity to be heard. The opportunity to be heard may be limited to an opportunity to respond verbally immediately after the act or inaction in question is noted by the presiding officer.

(3) For purposes of interlocutory review, motions for the imposition of sanctions by any party and the imposition of sanctions shall be treated the same as motions for any other ruling by the presiding officer.

(4) Nothing in this section shall be read to preclude the presiding officer or the Finance Board from taking any other action or imposing any other restriction or sanction authorized by any applicable statute or regulation.

(d) *Sanctions for contemptuous conduct.* If, during the course of any proceeding, a presiding officer finds any representative or any individual representing himself to have engaged in contemptuous conduct, the presiding officer may summarily suspend that individual from participating in that or any related proceeding or impose any other appropriate sanction.

§ 908.75 Censure, suspension, disbarment and reinstatement.

(a) *Discretionary censure, suspension and disbarment.* (1) The Finance Board may censure any individual who practices or attempts to practice before it or suspend or revoke the privilege to appear or practice before the Finance Board of such individual if, after notice of and opportunity for a hearing in the matter, that individual is found by the Finance Board—

(i) Not to possess the requisite qualifications or competence to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have caused unfair and material injury or prejudice to another party, such as prejudicial delay or unnecessary expenses including attorney's fees;

(iv) To have engaged in, or aided and abetted, a material and knowing violation of the Act or the rules or regulations issued under the Act or any other law or regulation governing Bank operations;

(v) To have engaged in contemptuous conduct before the Finance Board;

(vi) With intent to defraud in any manner, to have willfully and knowingly deceived, misled, or threatened any client or prospective client; or

(vii) Within the last ten years, to have been convicted of an offense involving moral turpitude, dishonesty or breach of trust, if the conviction has not been reversed on appeal. A conviction within the meaning of this paragraph shall be deemed to have occurred when the convicting court enters its judgment or order, regardless of whether an appeal is pending or could be taken and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of

whether a violation is admitted in the consent.

(2) Suspension or revocation on the grounds set forth in paragraphs (a)(1)(ii), (iii), (iv), (v), (vi) and (vii) of this section shall only be ordered upon a further finding that the individual's conduct or character was sufficiently egregious as to justify suspension or revocation. Suspension or disbarment under this paragraph shall continue until the applicant has been reinstated by the Finance Board for good cause shown or until, in the case of a suspension, the suspension period has expired.

(3) If the final order against the respondent is for censure, the individual may be permitted to practice before the Finance Board, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the Finance Board's files.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any State, commonwealth, possession, territory of the United States or the District of Columbia; any accountant or other licensed expert whose license to practice has been revoked in any State, commonwealth, possession, territory of the United States or the District of Columbia; any person who has been and remains suspended or barred from practice before the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of Federal Housing Enterprise Oversight, the Farm Credit Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission is also suspended automatically from appearing or practicing before the Finance Board. A disbarment or suspension within the meaning of this paragraph shall be deemed to have occurred when the disbarring or suspending agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken and regardless of whether a violation is admitted in the consent.

(2) A suspension or disbarment from practice before the Finance Board under paragraph (b)(1) of this section shall continue until the person suspended or disbarred is reinstated under paragraph (d)(2) of this section.

(c) *Notices to be filed.* (1) Any individual appearing or practicing before Finance Board who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall file promptly with the Finance Board a copy thereof, together with any related opinion or statement of the agency or tribunal involved.

(2) Any individual appearing or practicing before the Finance Board who is or within the last ten years has been convicted of a felony or of a misdemeanor that resulted in a sentence of prison term or in a fine or restitution order totaling more than $5,000 shall file a notice promptly with the Finance Board. The notice shall include a copy of the order imposing the sentence or fine, together with any related opinion or statement of the court involved.

(d) *Reinstatement.* (1) Unless otherwise ordered by the Finance Board, an application for reinstatement for good cause may be made in writing by a person suspended or disbarred under paragraph (a)(1) of this section at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. An applicant for reinstatement under this paragraph (d)(1) may, in the Finance Board's sole discretion, be afforded a hearing.

(2) An application for reinstatement for good cause by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time, but not less than one (1) year after the applicant's most recent application. An applicant for reinstatement for good cause under this paragraph (d)(2) may, in the Finance Board's sole discretion, be afforded a hearing. However, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section have been removed by a reversal of the order of suspension or disbarment or by termination of the underlying suspension or disbarment, any person suspended or disbarred under paragraph (b)(1) of this section may apply immediately for reinstatement and shall be reinstated upon written application notifying the Finance Board that the grounds have been removed.

(e) *Conferences.* (1) The Finance Board may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, disbarment or suspension, regardless of whether a proceeding for censure, disbarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(2) Resignation or voluntary suspension. In order to avoid the institution of or a decision in a disbarment or suspension proceeding, a person who practices before the Finance Board may consent to censure, suspension or disbarment from practice. At the discretion of the Finance Board, the individual may be censured, suspended or disbarred in accordance with the consent offered.

(f) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this part, provided that in proceedings to terminate an existing suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application supported with proof that the suspension should be terminated. The Finance Board may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment be limited to written submissions. All hearings held under this section shall be closed to the public unless the Finance Board, on its own motion or upon the request of a party, otherwise directs that the hearing be open to the public.

Dated: February 13, 2002.

By the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 02–5094 Filed 3–4–02; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 20

Guides for the Rebuilt, Reconditioned, and Other Used Automobile Parts Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has completed its review of the Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (''Used Auto Parts Guides'' or ''Guides'') and has determined to retain the Guides with updated language and minor revisions.

EFFECTIVE DATE: March 5, 2002.

ADDRESSES: Requests for copies of this document should be sent to the

Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580. The document is available on the Internet at the Commission's website <*http://www.ftc.gov*>

FOR FURTHER INFORMATION CONTACT: David Plottner, Investigator, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, Ohio 44114, telephone number (216) 263–3409, e-mail <*dplottner@ftc.gov*>.

SUPPLEMENTARY INFORMATION:

Introduction

The Used Auto Parts Guides address claims for automotive parts and assemblies that have been used or contain used parts. These parts or assemblies may have been rebuilt, repaired, reconditioned, etc., since they were last used, and may have been repainted and repackaged in such a way that they could easily be confused with new products. Even used parts that have not been rebuilt are usually cleaned and sometimes repainted before being marketed. The Guides suggest that junk yards, rebuilders, auto parts stores, service garages and others in the distribution chain for these parts or assemblies not mislead purchasers about the prior use and/or the reconstructed nature of the parts and the identity of the rebuilder.

Rebuilt auto parts account for a significant portion of the total automobile replacement parts market. One large retailer/distributor commenting on the Guides reported that such parts account for 20% of its retail sales dollars. Some replacement components, alternators and power steering pumps, for example, are nearly always rebuilt because of the significant cost savings over new parts.

The Guides provide advice regarding the manner in which those who sell used automobile parts can avoid unfair or deceptive acts or practices that may violate section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45. The Guides define industry products broadly to include not only used parts for automobiles, but also used parts and assemblies containing used parts for trucks, tractors, motorcycles and other similar self-propelled vehicles. Industry members are those who sell or distribute any of these parts. The Used Auto Parts Guides advise that industry members not:

(1) Deceive purchasers about the previous use of products;

(2) deceive purchasers about the identity of the rebuilder, remanufacturer, reconditioner or reliner;

(3) misrepresent the condition of products and misuse the terms ''rebuilt,'' ''factory rebuilt,'' ''remanufactured,'' or other similar terms.

II. Regulatory Review of the Guides

As part of its program to review current rules and guides, the Commission published in the **Federal Register** in 1998, a notice seeking comments about the regulatory and economic costs and benefits of the Guides (63 FR 17132 (Apr. 8, 1998)). Eight written comments were received.[1] Seven comments favored keeping the Guides; one favored rescinding the Guides.

The comments in favor of retaining the Guides stated that the Guides provide clear guidance to industry members to assist them in determining what disclosures they should make to consumers about used, rebuilt and reconditioned automobile parts and assemblies, and how to make them in a consistent manner. Those who rebuild industry products especially supported retaining the Guides' clear definitions for the terms ''rebuilt'' and ''remanufactured.'' The state Attorneys General supported retaining the Guides because they clearly advise industry of the disclosures necessary to prevent or reduce the incidence of fraudulent activity such as charging unknowing consumers for new parts when the parts are used or rebuilt, and to enable consumers to make informed, cost efficient decisions. The one commenter supporting rescinding the Guides, AutoZone, stated that the Guides are duplicative of state law—statutory, regulatory and common—and are no longer needed, especially in light of the written warranties that now often accompany rebuilt parts, assuring their quality.

III. Determination To Retain the Guides

The Commission has determined to retain the Guides for the following reasons. First, the Guides are based on well-established legal and policy grounds. Many prior Commission cases hold that used articles restored to the appearance of new require an affirmative disclosure of prior use. A 1969 Commission Enforcement Policy Statement (34 FR 176) reiterates this principle.

In recent actions, the Commission has continued to protect consumers from sellers passing off used goods as new. For example, the Commission recently announced two consent orders against mattress retailers who claimed that their new-looking used mattresses were all new, but for the springs, when in fact, they were entirely used mattresses but for their new outer covers.[2] In addition, when the Commission amended the Guides for Environmental Marketing in 1998 to allow sellers to use the term ''recycled content'' to described used and reconditioned products, not just products made from recycled raw material, it cautioned that for products that contained used or reconditioned materials, a recycled content claim should be adequately qualified to avoid consumer deception (*i.e.,* generally, recycled alone is insufficient; used or reconditioned materials must be so identified). 16 CFR 260.7(e) and Example 12.

Second, various states also prohibit misrepresenting used merchandise as new, either by specific statute or by common law, and some rely on the Commission's Guides to complement their laws and enhance their enforcement efforts.[3] For example, some states have statutes or regulations requiring automobile service garages and mechanics to inform a vehicle owner whenever a used part is installed during the course of a repair.[4] The garages and other mechanics need information from their vendors regarding prior use or refurbishing to be able to comply with these requirements. The Guides provide members of the rebuilding industry with clear guidance that assists them in determining what disclosures regarding prior use or refurbishing they should make to consumers and other purchasers, including vendors who resell the products to consumers, and how they should make them in a consistent manner.

Third, there are no private, industry-wide standards covering the use of terms such as ''rebuilt'' or ''remanufactured'' in the sale of used automobile parts generally. This

[1] AutoZone, a retailer/distributor; CarQuest, a retailer/distributor; five trade groups speaking as one: the Automotive Parts and Accessories Association (APAA), the Automotive Service Industry Association (ASIA), the Automotive Parts Rebuilders Association (APRA), the Automotive Engine Rebuilders Association (AERA), and the Heavy Duty Distribution Association (HDDA); Charles P. Schwartz, Jr., an individual who is a former APRA chairman; the late United States Senator John Chafee; Consumers Union, a national consumer group; and, commenting as one, the state Attorneys General of Connecticut, Illinois, Iowa, Nevada, New York, Pennsylvania, and Tennessee. These comments have been placed on the public record as Document Nos. B2365600001–008, respectively, and are available for inspection and copying at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

[2] *See* FTC Press Release, *Consumers Can Rest Easy Following FTC Settlements with Two Used Mattress Resellers* (June 14, 2000).

[3] AutoZone, at 2.

[4] APRA/AERA, at 7.

industry is not in a good position to set its own standards because there are many very small, ''mom and pop'' type rebuilding companies that are not members of the major industry trade associations. These associations, however, use the FTC Guides to educate and police industry members about potentially deceptive practices.

It can be argued that if the Commission were to repeal these Guides, section 5, FTC Act would still protect the public from the deceptive practice of passing off used goods as new.[5] However, should that happen, states and industry associations would lack a tool that they currently find helpful. Thus, on balance, these guides provide sufficient benefits that are not outweighed by costs to merit their retention.

IV. Determinations Regarding Revisions to the Guides

A number of commenters suggested changes to the Guides, which are discussed below. The Commission has determined to update the list of commonly rebuilt used automobile parts contained in section 20.0 of the Guides and to clarify that the Guides apply to advertising in electronic format, such as on the Internet. In addition, the Commission has updated and streamlined certain language in the Guides to conform to current FTC practices.

A. Further Defining the Standards Set Out in the Guides

CarQuest and the state Attorneys General[6] suggested that consumers might benefit from wider ranging and more specifically written standards describing the various levels of dismantling and reconstructing that take place in the industry. For example, the Guides use the terms ''rebuilt,'' and ''remanufactured'' interchangeably, but to some in the industry the term ''remanufactured'' denotes a higher level of reconstruction than does the term ''rebuilt.''[7] Similarly, ''reconditioned,'' may connote a level somewhat lower than ''rebuilt,'' and ''refurbished'' might connote a product that has received very little use in the first place or little additional work before resale in the second. These commenters suggest that the Commission specifically define each of the terms used in the Guides. The state Attorneys General suggest further that the general procedure used in rebuilding or remanufacturing, etc. also be spelled out in label disclosures to consumers.

The descriptive terms used in the Guides are fluid to accommodate the wide range of rebuilding that takes place. All commenters agree that the standard contained in the Guides seems to have worked well. In addition, the Commission has no substantive basis in the record of this review proceeding to define the terms differently or more precisely.The Commission, therefore, has determined not to revise the Guides to adopt more specific standards or procedures than those currently contained in the Guides. The Commission, on the other hand, welcomes industry-sponsored measures to provide more information to consumers through voluntary standards specifying more precise terms, or defining meanings for the various terms, so long as those standards would not mislead consumers about the extent of prior use or the amount of reconstructing that has been done.

B. Modifying the Guides to Specifically Include Foreign Rebuilders

Several commenters suggested that the Commission revise the Guides and take other actions to make clear that foreign rebuilders and importers of used auto parts, rebuilt and otherwise, are covered by the Guides.[8] Some comments suggested that the Commission educate U.S. Customs officials about the Guides; others that the Commission require country-of-origin markings on foreign rebuilt parts packaged in boxes bearing the brand name of a United States distributor.

The Commission has determined that it is not necessary to revise the Guides to address these concerns. First, the Commission has jurisdiction over entities conducting business in the United States regardless of the country of origin of the original new product or of the reconstructed or otherwise used product. The Guides, therefore, currently cover foreign rebuilders and importers of used auto parts who distribute or sell used auto parts in the United States. Second, the Commission's staff can ensure that the U.S. Customs Service is aware of the Guides; no revision to the Guides is required to do so. Finally, the Commission does not ordinarily require country of origin disclosures; it only prohibits false ''made in U.S.A.'' claims. Ordinarily the Commission will not consider a marketer's use of an American brand name or trademark, or the listing of a company's U.S. address in a nonprominent manner, without more, to constitute a U.S. origin claim.[9]

C. Requiring Original Equipment Manufacturers to Cooperate With Rebuilders

Two commenters[10] suggested that original equipment manufacturers (''OEMs'') should be prohibited from limiting the ability of independent rebuilders to obtain parts for rebuilding and should be required to share product design specifications, which would enhance the efficiency of the rebuilding process. It also was suggested that the Commission prohibit OEMs from requiring rebuilders to grind off or otherwise remove model numbers, part numbers and other identifying information.[11] These marks, according to two commenters, often help identify the application for that particular part.

The Commission has determined not to revise the Guides to require the cooperation suggested by the comments. The Auto Parts Guides concern the disclosures regarding prior use or reconstruction of used automobile parts that are necessary to avoid misleading consumers. These other issues, while relevant to the marketplace for used automobile parts in general, have little to do with the disclosures suggested by the Guides.

D. Requiring Repair Facilities To Disclose the Installation of Used or Rebuilt Parts

Three comments[12] reiterated the suggestions of a 1995 National Association Of Attorneys-General Auto Repair Task Force that service technicians and repair garages should be required to disclose whenever used parts have been installed in a customer's vehicle. These comments suggested that

[5] Civil case law also tends to protect consumers. *Champion Spark Plug Co.* v. *Sanders,* 331 U.S. 125 (1947), a trademark infringement suit, held that Champion, a spark plug manufacturer, could not prohibit Sanders, a spark plug rebuilder, from marketing his rebuilt Champion spark plugs so long as he clearly labeled the products as having been rebuilt and clearly identified himself—not Champion—on the label as the rebuilder.

[6] CarQuest, at 3; State Attorneys General, at 4.

[7] This distinction appears to be common in the industry. For example, Ford Motor Company's website cautions consumers that a rebuilt part merely has had its broken components repaired while a ''remanufactured'' part has undergone a much more thorough reconstruction. Ford Motor Company Website, ''Genuine Parts. The Difference Between Remanufactured and Rebuilt'' (http://www/ford.com/customerservice/genuine/versus.html, March 11, 1999) (copy on file at the Federal Trade Commission, East Central Regional Office).

[8] APRA/AERA, at 3, 4; Schwartz, at 3; Consumers Union, at 4.

[9] Enforcement Policy Statement on U.S. Origin Claims, 62 FR 63756, at 63768 (1997).

[10] Schwartz, at 3; CarQuest, at 4.

[11] Schwartz, at 4; APRA/AERA, at 6.

[12] Consumers Union, at 3; CarQuest, at 3; state Attorneys General at 3.

the Guides should be changed to more clearly reflect such recommendation.

No modification of the Guides in this regard is necessary. The Guides already apply to all who sell or distribute industry products. Mechanics and service garages nearly always both sell and install the parts needed to repair a consumer's automobile and are therefore included under the Guides.

E. Updating the List of Commonly Rebuilt Auto Parts and Components

Several commenters suggested that the list of commonly rebuilt automobile parts included in section 20.0 of the Guides should be updated to reflect modern practices. The Commission agrees and has revised the Guides accordingly.

F. Prohibiting the Use of the Word ''Recycled'' Alone To Describe Unreconstructed Used Auto Parts

Three commenters suggested that the Commission should revise the Guides to make it clear that the term ''Recycled,'' by itself, is not adequate to disclose the used nature of used automobile parts which have received little or no reconstruction.

The Commission has already responded to this issue in its Environmental Marketing Guides, 16 CFR part 260. Section 260.7(e) states that the word ''recycled,'' used by itself, cannot substitute for the words ''used,'' ''rebuilt,'' ''reconditioned,'' and other similar descriptors except when the environment in which the product is being offered for sale makes the used nature of the product clear, for example, a used part offered for sale at a junkyard. Therefore, a cross reference to the Environmental Marketing Guides has been added as a footnote to section 20.1(b) of the Used Auto Parts Guides.

List of Subjects in 16 CFR Part 20

Advertising, Motor vehicles, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends 16 CFR chapter I as follows:

PART 20—GUIDES FOR THE REBUILT, RECONDITIONED AND OTHER USED AUTOMOBILE PARTS INDUSTRY

1. The authority citation for 16 CFR part 20 is revised to read as follows:

Authority: 15 U.S.C. 41–58.

2. Section 20.0 is revised to read as follows:

§ 20.0 Scope and purpose of the guides.

The Guides in this part apply to the manufacture, sale, distribution, marketing and advertising (including advertising in electronic format, such as on the Internet) of used parts and assemblies containing used parts designed for use in automobiles, trucks, motorcycles, tractors, or similar self-propelled vehicles whether or not such parts or assemblies have been reconstructed in any way (hereinafter ''industry products''). Such automotive parts and assemblies include, but are not limited to, anti-lock brake systems, air conditioners, alternators, armatures, air brakes, brake cylinders, ball bearings, brake shoes, heavy duty vacuum brakes, calipers, carburetors, cruise controls, cylinder heads, clutches, crankshafts, constant velocity joints, differentials, drive shafts, distributors, electronic control modules, engines, fan clutches, fuel injectors, fuel pumps, front wheel drive axles, generators, master cylinders, oil pumps, power brake units, power steering gears, power steering pumps, power window motors, rack and pinion steering units, rotors, starter drives, speedometers, solenoids, smog pumps, starters, stators, throttle body injectors, torque convertors, transmissions, turbo chargers, voltage regulators, windshield wiper motors, and water pumps. Tires are not included. (Tires are covered by the Tire Advertising and Labeling Guides, 16 CFR Part 228.)

3. Section 20.1 is revised to read as follows:

§ 20.1 Deception generally.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product or part of an industry product is new or unused when such is not the fact, or to misrepresent the current condition, or extent of previous use, reconstruction or repair of any industry product.

(b) It is unfair or deceptive to offer for sale or sell any industry product unless a clear and conspicuous disclosure that such product has been used or contains used parts is made in advertising, sales promotional literature and invoices and on product packaging. Additionally, it is unfair or deceptive to offer for sale or to sell any rebuilt, remanufactured, reconditioned, or otherwise new-appearing industry product unless such disclosure using appropriate descriptive terms is made on the product itself with sufficient permanency to remain visible for a reasonable period of time after installation. Examples of appropriate descriptive terms include, but are not limited to ''Used,'' ''Secondhand,'' ''Repaired,'' ''Remanufactured,'' ''Reconditioned,'' ''Rebuilt,'' or ''Relined.'' [1] On invoices to the trade only, the disclosure may be made by use of any number, mark, or other symbol that is clearly understood by industry members as meaning that the products or parts identified on the invoices have been used.

(c) It is unfair or deceptive to place any means or instrumentality in the hands of others so that they may mislead consumers as to the previous use of industry products or parts.

4. Section 20.2 revised to read as follows:

§ 20.2 Deception as to identity of rebuilder, remanufacturer, reconditioner or reliner.

(a) It is unfair or deceptive to misrepresent the identity of the rebuilder, remanufacturer, reconditioner or reliner of an industry product.

(b) In connection with the sale or offering for sale of an industry product, if the identity of the original manufacturer of the product, or the identity of the manufacturer for which the product was originally made, is revealed and the product was rebuilt, remanufactured, reconditioned or relined by someone else, it is unfair or deceptive to fail to disclose such fact wherever the original manufacturer is identified in advertising and sales promotional literature concerning the product, on the container in which the product is packed, and on the product, in close conjunction with, and of the same permanency and conspicuousness as, the disclosure of previous use of the product described by this section. Examples of such disclosures include:

(1) Disclosure of the identity of the rebuilder:

Rebuilt by John Doe Co.

(2) Disclosure that the product was rebuilt by an independent rebuilder:

Rebuilt by an Independent Rebuilder.

(3) Disclosure that the product was rebuilt by someone other than the manufacturer so identified:

Rebuilt by other than XYZ Motors.

(4) Disclosure that the product was rebuilt for the identified manufacturer, if such is the case:

Rebuilt for XYZ Motors.

5. Section 20.3 is revised to read as follows:

[1] If the term ''recycled'' is used, it should be used in a manner consistent with the requirements for that term set forth in the Guides for the Use of Environmental Marketing Claims, 16 CFR 260.7(e).

§ 20.3 Misrepresentation of the terms ''rebuilt,'' ''factory rebuilt,'' ''remanufactured,'' etc.

(a) It is unfair or deceptive to use the words ''Rebuilt,'' ''Remanufactured,'' or words of similar import, to describe an industry product which, since it was last subjected to any use, has not been dismantled and reconstructed as necessary, all of its internal and external parts cleaned and made rust and corrosion free, all impaired, defective or substantially worn parts restored to a sound condition or replaced with new, rebuilt (in accord with the provisions of this paragraph) or unimpaired used parts, all missing parts replaced with new, rebuilt or unimpaired used parts, and such rewinding or machining and other operations performed as are necessary to put the industry product in sound working condition.

(b) It is unfair or deceptive to represent an industry product as ''Factory Rebuilt'' unless the product was rebuilt as described in paragraph (a) of this section at a factory generally engaged in the rebuilding of such products. (See also § 20.2.)

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–5127 Filed 3–4–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 250

Guides for the Household Furniture Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule; rescission of the guides for the household furniture industry.

SUMMARY: The Commission published a **Federal Register** document initiating the regulatory review of the Federal Trade Commission's (''Commission'') Guides for the Household Furniture Industry (''Furniture Guides'' or ''Guides''). The Commission has now completed its review, and determined to rescind the Furniture Guides.

EFFECTIVE DATE: March 5, 2002.

ADDRESSES: Requests for copies of the **Federal Register** document should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The document is available on the Internet at the Commission's website, *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Ingrid E. Whittaker-Ware, Attorney, Federal Trade Commission, 225 Peachtree Street, NE., Suite 1500, Atlanta, GA 30303, (404) 656–1390, e-mail <*Iwware@ftc.gov*>.

SUPPLEMENTARY INFORMATION: The Furniture Guides, promulgated by the Commission in 1973, provide guidance for industry members in the manufacture, sale, distribution, labeling and advertising of household furniture products. The Guides generally advise members of the furniture industry to make affirmative disclosures of product facts, which if known by a purchaser, might influence the purchasing decision. The specific disclosures concern identification of the types of wood and outer coverings or stuffings used in furniture. These disclosures were designed to protect consumers from being misled that the product is different from that which is actually being offered.

The Guides advise affirmative disclosure of the composition of a furniture item and specifies where and how the disclosure should be made. For example, Section 250.1(b) advises that a tag or label affirmatively describing the product be permanently affixed to the product until consummation of sale to a consumer, and that the same information be included in advertising for the product. The Guides also provide examples of deceptive and non-deceptive descriptions of wood and wood imitations to ensure that prospective purchasers are not misled by a product's appearance. In addition, the Guides provide that wood names or trade names not be used to describe materials that simulate the appearance of wood without clearly disclosing that such names are merely descriptive of color or other simulated finish.

The Commission has determined, as part of its oversight responsibilities, to review rules and industry guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. The Commission solicited comments on the Furniture Guides in the **Federal Register** on April 10, 2000, 65 FR 18933. The comment period which was originally scheduled to end on June 9, 2000, was extended to July 10, 2000, at the request of members of the furniture industry.

The Commission received one comment. This comment was submitted by the American Furniture Manufacturers Association (''AFMA''). The AFMA expressed concern that the Guides, as currently written, have little practical use to members of the furniture industry due to significant changes in technology and terminology since the Guides were first promulgated. It noted that

> [T]he existing Guides are almost thirty years old, and fail to reflect current manufacturing processes, materials usage, terminology and the expectations of today's consumers. As currently drafted, the Guides may indeed frustrate good faith efforts to inform the consumer and therefore produce unintended anti-competitive and anti-consumer consequences.

AFMA Comments to the Federal Trade Commission on Guides for the Household Furniture Industry, July 10, 2000, at 3

The AFMA also suggests that it was the consensus of members of the industry that if the Guides were to be retained it would be necessary that they undergo significant modifications. The Commission received no comments from any consumer group.

In the almost thirty years since the Guides were issued, the Commission has not received any complaints relating to practices covered by these Guides. Further, within the last ten years the Commission has not had need to initiate any enforcement action relating in any way to these Guides. Moreover, the Commission's unfettered ability to pursue actions against members of this industry for engaging in unfair and deceptive acts and practices under section 5 of the FTC Act, 15 U.S.C. 45, should deter manufacturers and sellers from misleading consumers in the future in the labeling, advertising or sale of household furniture products. If, in the future, deceptive practices prove to be a problem in this industry, however, the Commission may pursue enforcement actions as needed on a case-by-case basis.

For the reasons explained in this notice, the Commission has determined not to revise the Furniture Guides substantially in order to bring them up to date, but instead to rescind the Guides because they are no longer necessary.

List of Subjects in 16 CFR Part 250

Forest and forest products, Furniture industry, Trade practices.

PART 250—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends Chapter 1 of Title 16 of the Code of Federal Regulations by removing Part 250.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–5126 Filed 3–4–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 259

Guide Concerning Fuel Economy Advertising for New Automobiles

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has completed its review of the Guide Concerning Fuel Economy Advertising for New Automobiles (''Fuel Guide''), and announces its decision to retain the Guide.

EFFECTIVE DATE: March 5, 2002.

ADDRESSES: Requests for copies of this document should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. The document is available on the Internet at the Commission's website, *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Willie L. Greene, Investigator, Federal Trade Commission, East Central Region, 1111 Superior Avenue—Suite 200, Cleveland, Ohio 44114, telephone number (216) 236–3406, e-mail <*wgreene@ftc.gov*>.

SUPPLEMENTARY INFORMATION: As part of the Commission's review of its rules and guides, the Commission published a **Federal Register** Notice seeking comments about the Fuel Guide's overall costs and benefits, and the continuing need for the Guide.[1] The Fuel Guide, adopted in 1975 and subsequently revised twice,[2] provides guidance to automobile manufacturers to prevent deceptive advertising and to facilitate the use of fuel economy information in advertising. The Guide advises vehicle manufacturers and dealers how to disclose the established fuel economy of a vehicle, as determined by the Environmental Protection Agency's rules pursuant to the Automobile Information Disclosure Act (15 U.S.C. 2996), in advertisements that make representations regarding the fuel economy of a new vehicle. The disclosure is tied to the claim made in the advertisement. If both city and highway fuel economy claims are made, both city and highway EPA figures should be disclosed. A claim regarding either city or highway fuel economy should be accompanied by the corresponding EPA figure. A general fuel economy claim would trigger disclosure of the EPA city figure, although the advertiser would be free to state the highway figure as well.

The Commission received three comments in response to the **Federal Register** Notice.[3] All three of the comments recommended that the Commission retain the Fuel Guide. Two of the comments supported this recommendation by asserting that the Fuel Guide prevents deceptive or misleading fuel economy advertising and provides consumers with fuel economy numbers that can be used in making comparisons among vehicle models.[4] One comment also noted that the expense to automobile manufacturers of implementing the Guide is minimal.[5]

After review of the Fuel Guide and its effect on the new vehicle industry and purchasers of new vehicles, the Commission concludes that the Fuel Guide is useful to both consumers and the new vehicle industry. The Guide affords clarity in the advertising of fuel economy and therefore should be retained. Price escalation in gasoline and diesel fuels has caused considerable interest and concern in the fuel industry and among consumers. The Commission believes that consumers will continue to benefit from accurate information in the advertising of fuel economy for new vehicles.

The Fuel Guide has been a benefit to consumers, providing fuel economy numbers in advertising that allow meaningful comparisons of different vehicle models. While the benefit to consumers has been great, the cost to vehicle manufacturers of complying with the Guide's provisions has been minimal.

Based on its review, the Commission has concluded that there is a continuing need for the Fuel Guide, which has benefitted both consumers and the new vehicle industry. The Commission therefore has decided to retain the Fuel Guide.

List of Subjects in 16 CFR Part 259

Advertising, Fuel economy, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–5125 Filed 3–4–02; 8:45 am]

BILLING CODE 6750–01–M

[1] 64 FR 19729 (Apr. 22, 1999).

[2] 40 FR 42003 (Sept. 10, 1975); 43 FR 55747 (Nov. 29, 1978); 60 FR 56230 (Nov. 8, 1995).

[3] The Commission's request for public comment elicited comments from: (1) Josephine S. Cooper, Alliance of Automobile Manufacturers, Washington, DC (''AAM''), #00001; (2) James C. Minnis, National Automobile Dealers Association, McLean, VA (''NADA''), #00002 and (3) David Sokol, Houston, TX (''Sokol'') #00003. These comments are on the public record in file number P004243 as document numbers B25589500001 through B25589500003. The comments are available for viewing in Room 130 at the Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, from 8:30 a.m. to 5:00 p.m., Monday–Friday.

[4] AAM, #00001; NADA, #00002.

[5] AAM, #00001.

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1315

New Restrictions on Lobbying

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its rules regarding restrictions on lobbying to make inflation adjustments in the range of civil monetary penalties it may assess against persons who violate these rules. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

EFFECTIVE DATE: March 5, 2002.

FOR FURTHER INFORMATION CONTACT: Clifford L. Beach, Jr., Attorney, 865–632–4146, Office of the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10A, Knoxville, Tennessee 37902–1401.

SUPPLEMENTARY INFORMATION: Section 4 of the ''Federal Civil Penalties Inflation Adjustment Act of 1990'' (Public Law 101–410), as amended by the ''Debt Collection Improvement Act of 1996'' (Public Law 104–134), requires each Federal agency with statutory authority to assess a civil monetary penalty (CMP) to adjust each CMP by the inflation adjustment described in section 5 of the Act. Such adjustment is to be made by regulation published in the **Federal Register**. Agencies are to make inflation adjustments by regulation at least once every four years. Any increase in a CMP made pursuant to the Act applies only to violations that occur after the date the increase takes effect.

TVA's only statutory authority to assess a CMP is found at 31 U.S.C. 1352(c), which describes the range of penalties TVA may impose for a violation of that statute's prohibition against use of appropriated funds to pay any person for influencing or attempting to influence a Federal official in connection with any Federal action and for a failure to file a declaration or a declaration amendment as required by that statute. The penalties to be imposed

for such violations and failures to file range from $11,000 to not more than $110,000. Based on application of the standard inflation adjustment formula in the Act, TVA is amending its rules at 18 CFR 1315.400(a), (b), and (e) to increase the minimum CMP it may assess under 31 U.S.C. 1352(c) to $12,000 and the maximum CMP it may assess under the statute to $120,000.

Matters of Regulatory Procedures

Notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it implements a definitive statutory formula mandated by the Act.

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 18 CFR Part 1315

Administrative practice and procedures, Penalties.

Accordingly, for the reasons set out in the preamble, 18 CFR part 1315 is amended as follows:

PART 1315—NEW RESTRICTIONS ON LOBBYING

1. The authority citation for part 1315 is revised to read as follows:

Authority: 16 U.S.C. 831–831ee; 31 U.S.C. 1352.

2. Section 1315.400 is amended by removing the figure ''$11,000'' and adding in its place ''$12,000'' each time it appears in paragraphs (a) and (b); by removing the figure ''$110,000'' and adding in its place ''$120,000'' each time it appears in paragraphs (a) and (b); by removing the figure ''$10,000'' and adding in its place ''$12,000'' each time it appears in paragraph (e); and by removing the figure ''$100,000'' and adding in its place ''120,000'' in paragraph (e).

Dated: February 6, 2002.

Clifford L. Beach, Jr.,

Attorney.

[FR Doc. 02–5014 Filed 3–4–02; 8:45 am]

BILLING CODE 8120–08–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–300; MM Docket No. 01–18; RM–10026; RM–10098]

Radio Broadcasting Services; Arriba, Bennett, Brush and Pueblo, CO; Pine Bluffs, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of February 22, 2002, a document concerning updating the FM Table of Allotments for Section 73.202(b). The effective date was published incorrectly. This document corrects the effective date.

DATES: Effective March 25, 2002.

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

SUPPLEMENTARY INFORMATION: On February 22, 2002, the Commission published a document (67 FR 8205) amending § 73.202(b), the Table of FM Allotments by adding Channel 240A to Arriba, Colorado, Channel 296C to Bennett, Colorado, Channel 295C2 to Pueblo, Colorado, and Channel 238C3 to Pine Bluffs, Wyoming. In addition, the document removed Channel 296C1 from Brush, Colorado[1] and Channel 296C2 from Pueblo, Colorado. The correct effective date is March 25, 2002.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–5162 Filed 3–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–368; MM Docket No. 01–183; RM–10192]

Radio Broadcasting Services; Rule, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239C2 to Rule, Texas, as that community's first local aural transmission service, in response to a petition for rule making filed by Katherine Pyeatt. See 66 FR 42621, August 14, 2001. The allotment of Channel 239C2 at Rule, Texas, requires a site restriction 12.7 kilometers (7.9 miles) east of the community, utilizing coordinates 33–13–01 NL and 99–45–45 WL.

DATES: Effective April 8, 2002. A filing window for Channel 239C2 at Rule, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 239C2 at Rule, Texas, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–183, adopted February 6, 2002, and released February 22, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Rule, Channel 239C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–5163 Filed 3–4–02; 8:45 am]

BILLING CODE 6712–01–P

[1] 47 CFR parts 70 to 79, revised October 1, 2000, at Section 73.202(b) under Colorado, reflects the allotment of Channel 296A at Brush, Colorado. However, that allotment was modified in the context of MM Docket No. 88–605, adopted September 11, 1989, to specify Channel 296C1.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–2002–11675 (HM–145M)]

RIN 2137–AD65

Hazardous Materials: Revisions to the List of Hazardous Substances and Reportable Quantities

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

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR) by revising the ''List of Hazardous Substances and Reportable Quantities'' that appears in the table, ''Hazardous Substances other than Radionuclides''. This action is required by the Superfund Amendments and Reauthorization Act (SARA) of 1986, which amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). These laws require RSPA to regulate all hazardous substances designated by the Environmental Protection Agency (EPA). This final rule will enable shippers and carriers to identify the affected CERCLA hazardous substances, comply with all applicable HMR requirements, and make the required notifications if a discharge of a hazardous substance occurs.

DATES: This amendment is effective on October 1, 2002. However, immediate compliance with the regulations as amended in this final rule is authorized.

FOR FURTHER INFORMATION CONTACT: Michael Johnsen (202) 366–8553, Office of Hazardous Materials Standards, RSPA, 400 7th Street, SW, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA) at the RCRA/Superfund hotline at (800) 424–9346 or, in Washington, DC, (202) 382–3000.

SUPPLEMENTARY INFORMATION:

Background

Section 202 of SARA (Public Law 99–499) amended Section 306(a) of CERCLA (Public Law 96–510), 42 U.S.C. 9656(a), by requiring the Secretary of Transportation to list and regulate hazardous substances, listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5127). The Research and Special Programs Administration (RSPA, we) carries out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law, 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a), as amended by Section 202 of SARA.

In carrying out that statutory mandate, we have no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. RSPA did not issue a notice of proposed rulemaking prior to issuing this final rule. RSPA lacks discretion concerning the regulation of hazardous substances under the HMR, therefore, under the Administrative Procedure Act notice would serve no purpose and thus is unnecessary.

Therefore, under the CERCLA scheme, EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQs, before RSPA can amend its list of hazardous substances. In the preamble to a final rule on this subject issued under Docket HM–145F (51 FR 42174; November 21, 1986), RSPA included the following statement:

> ''It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQ's in the Appendix as adjustments are made by EPA.''

This final rule adjusts the ''List of Hazardous Substances and Reportable Quantities'' that appears in Table 1 of Appendix A to § 172.101, based on the following EPA final rules that added or removed entries to the EPA table—List of Hazardous Substances and Reportable Quantities under CERCLA in 40 CFR 302.4:

(1) March 17, 2000, rule (65 FR 14472) removed two listings (2,4,6-Tribromophenol and K140);

(2) November 8, 2000, rule (65 FR 67068) added two waste codes generated from the chlorinated aliphatics industry (K174 and K175); and

(3) November 20, 2001, rule (66 FR 57258) added three waste codes from petroleum refining (K176, K177 and K178).

In addition, this final rule corrects several errors to the ''List of Hazardous Substances and Reportable Quantities'' that appears in Table 1 of Appendix A to § 172.101:

(1) The group of waste codes (K156, K157, K158, K169, K170, K171, and K172) that appear in the table under ''2,4,6-Tribromophenol'' is moved to the end of the list with the other K waste codes; and

(2) The RQs for ''Chloromethyl methyl ether'', ''Dichloromethyl ether'', ''Methane, chloromethoxy-'' and ''Methane, oxybis(chloro-'' from 1 pound to 10 pounds.

This final rule will enable shippers and carriers to identify CERCLA hazardous substances, comply with all applicable HMR and EPA requirements, and make required notifications if a discharge of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a discharge of a hazardous substance is subject to EPA reporting requirements under 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard under 33 CFR 153.203.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements but does not adopt any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to

hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), and (3) above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This rule is required by law. Federal hazardous materials transportation law provides at Sec. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for these requirements is June 3, 2002.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments, does not impose substantial direct compliance costs, and is required by law, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act applies only to final rules that are preceded by notices of proposed rulemaking. Because this rule was not preceded by an NPRM, no assessment is required. EPA addressed the Regulatory Flexibility Act when it made the hazardous substances designations and changes reflected in this rule.

E. Paperwork Reduction Act

This final rule does not impose any new information collection burdens.

F. Regulation Identifier Number (RIN)

A regulation identifier 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.

G. Unfunded Mandates Reform Act

This final rule imposes no mandates and, thus, does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Environmental Assessment

The revisions in this final rule to the list of hazardous substances regulated under the HMR are based on EPA rulemakings that modified the EPA list of hazardous substances and reportable quantities required by CERCLA. Readers should consult the EPA rulemaking dockets for detailed information on the expected environmental impacts of these changes.

List of Subjects in 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, Title 49, part 172 of the Code of Federal Regulations, is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In Appendix A to § 172.101, Table 1 is amended by removing, revising, and adding, in alphanumeric order, the following entries to read as follows:

Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
[REMOVE].	
* * * * *	
Dichloromethyl ether	1(0.454)
* * * * *	
2,4,6–Tribromophenol	100
K140	100
K156	1
K157	1
K158	1
K169	10
K170	1
K171	1
K172	1
* * * * *	
[REVISE].	
* * * * *	
Chloromethyl methyl ether	10 (4.54)
* * * * *	
Dichloromethyl ether	10 (4.54)
* * * * *	
Methane, chloromethoxy-	10 (4.54)
* * * * *	
Methane, oxybis(chloro-	10 (4.54)
* * * * *	
[ADD].	
* * * * *	
K156	1 (0.454)
K157	1 (0.454)
K158	1 (0.454)
K169	10 (4.54)
K170	1 (0.454)
K171	1 (0.454)
K172	1 (0.454)
K174	1 (0.454)
K175	1 (0.454)
K176	1 (0.454)
K177	5000 (2270)
K178	1 (0.454)

* * * * *

Issued in Washington, DC on February 22, 2002, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator, Research and Special Programs Administration.

[FR Doc. 02–5089 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 021402B]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the IFQ Program

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

ACTION: Announcement of fishing season dates.

SUMMARY: NMFS announces the opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) program. The season will open 1200 hrs, Alaska local time (A.l.t.), March 18, 2002, and will close 1200 hrs, A.l.t., November 18, 2002. This period is the same as the 2002 IFQ and Community Development Quota season for Pacific halibut adopted by the International Pacific Halibut Commission (IPHC). The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

DATES: Effective 1200 hrs, A.l.t., March 18, 2002, until 1200 hrs, A.l.t., November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) with fixed gear in the IFQ regulatory areas defined in § 679.2 has been managed under the IFQ program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ program will open 1200 hrs, A.l.t., March 18, 2002, and will close 1200 hrs, A.l.t., November 18, 2002. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

The Assistant Administrator for Fisheries, NOAA, finds that coordinating the opening of the IFQ sablefish fishery with the IFQ halibut fishery will allow full use of the sablefish allocated to the fixed gear managed under the IFQ program. Halibut and sablefish are fished primarily by the same people using the same gear. This action responds to the best available information recently obtained from the IPHC. Pursuant to the Northern Pacific Halibut Treaty, the opening and closing dates of the halibut season were determined by the IPHC during the week of January 24, 2002. Failure to coordinate the two seasons by having a halibut fishery without a concurrent sablefish season could result in unacceptable levels of sablefish bycatch. Accordingly, the need to implement this action prior to the IFQ halibut season opening constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement this action prior to the IFQ halibut season opening constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

Dated: February 27, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–5233 Filed 3–4–02; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 67, No. 43
Tuesday, March 5, 2002

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–02–03]

Tobacco Inspection; Producer Referenda on Mandatory Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule and notice of referenda.

SUMMARY: This rule establishes procedures which the U.S. Department of Agriculture (USDA) will use in conducting a referenda among producers of each kind of tobacco that is eligible for price support to determine whether they favor mandatory grading of that kind of tobacco. Currently, tobacco that is not sold at auction is not subject to mandatory grading.

DATES: *Effective Date:* March 6, 2002.

Referenda Dates: The voting periods for the producer referenda will be March 11–15, 2002, for flue-cured tobacco, types 11, 12, 13, 14; and burley tobacco, type 31; and March 18–22, 2002, for Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250–0280; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: Section 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Public Law 107–76) (Appropriations Act) requires USDA to conduct referenda among producers of each kind of tobacco that is eligible for price support under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) to determine whether a majority of producers of a kind of tobacco voting in the referendum favor the mandatory grading of that kind of tobacco. The referenda should be conducted by March 31, 2002. If a majority of the producers voting in a referendum favor the mandatory grading of that kind, USDA is directed to ensure that the kind of tobacco is graded at the time of sale for the 2002 and subsequent marketing years. The USDA is also directed to establish user fees for any such inspections. To the maximum extent practicable, these fees would be established in the same manner as user fees for the grading of tobacco sold at auction authorized under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Regulations for tobacco inspection, including fees and charges, appear in Subpart B of 7 CFR part 29.

The USDA published in the **Federal Register** on February 1, 2002 (67 FR 4926) a proposed rule to establish procedures for referenda among producers of each kind of tobacco that is eligible for price support to determine whether they favor the mandatory grading of that kind of tobacco. The USDA requested comments on the proposal which expired on February 11, 2002. One comment was received from a major tobacco manufacturing company. This respondent stated that a copy of a sample ballot indicates that a grower only votes ''yes'' or ''no'' for mandatory grading and that the ballot does not notify the grower that user fees for grading which would be a consequence of the referendum passing. AMS does not believe that the ballot is the appropriate place for notices of this kind. Tobacco producers will, of course, be informed that if mandatory grading is adopted, user fees will be established for non-auction inspections and that these fees would be established in the same manner and be comparable to user fees for the grading of tobacco sold at auction. These fees are chargeable to the grower consigning the tobacco for sale.

The respondent also stated that only growers who would directly pay the mandatory grading fees should be eligible to vote in the referenda. Such a limitation, however, is not permissible under the statute, which provides that the referenda shall be conducted among tobacco producers.

Provisions are included for the method of conducting the referendum, eligibility for voting, a one vote limitation, form and distribution of ballots, filing and tabulation of ballots, and confidentiality. As provided for in the Appropriations Act, separate referenda will be conducted among the producers of each kind of tobacco eligible for price support. These kinds are flue-cured tobacco, types 11, 12, 13, 14; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; burley tobacco, type 31; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55, as set forth at 7 CFR 1464.2.

Producers of each kind of tobacco will be eligible to vote in the referendum for that kind. Under USDA's price support program, periodic referenda are conducted among producers of specific commodities, including tobacco, to determine whether they favor the continuation of quotas. Voting eligibility is governed by 7 CFR 717.3. This final rule will follow those provisions as they apply to tobacco producers and will determine eligibility to vote in the same or similar way. In general, the persons eligible to vote in a referendum for a particular kind of tobacco would be the farmers engaged in the production of the crop of such tobacco harvested in the immediately preceding crop-year prior to the holding of the referendum. This includes any person who is entitled to share in a crop of the commodity, or the proceeds thereof because he or she shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper, but would not include a landlord whose return from the crop is fixed regardless of the amount of the crop produced.

This rule will administer the Appropriations Act requirements in accordance with USDA voting procedures with which the affected producers are familiar. The AMS Mandatory Grading Referenda program, producer eligibility, and procedural requirements will be governed by 7 CFR part 717, Holding of Referenda, and the

definitions contained in §§ 718.2 and 723.104 of that same chapter which govern USDA, Farm Service Agency (FSA) referenda for tobacco producer quotas. This avoids development of redundant requirements, besides, quota holders are familiar with these procedures. A copy of these regulations, a referendum ballot, and voting procedures are available for review in any USDA Service Center.

This final rule establishes procedures for conducting the producer referenda. The voting periods for the producer referenda will be March 11–15, 2002, for flue-cured tobacco, types 11, 12, 13, 14; and burley tobacco, type 31; and March 18–22, 2002, for Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55.

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** in order to fulfill the requirements of the statute that the referenda be conducted by March 31, 2002.

Executive Order 12866 and 12988

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), consideration has been given to the potential economic impact upon small business. There are approximately 450,000 tobacco producers who would be eligible to vote in the referenda. Pursuant to criteria established under the Regulatory Flexibility Act, most of the tobacco producers would be considered small entities. This rule will not substantially affect tobacco growers. Voting in the referendum is voluntary. As discussed in the following section on the Paperwork Reduction Act, the public reporting burden is minimal, an estimated 5 minutes per response. Voting will be conducted by mail. The overall impact of this rule should be minimal on tobacco growers because this rule provides for referenda procedures only and relies on, to a great extent, existing procedures. Accordingly, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collections will be carried out using the referenda procedures of the Farm Service Agency and Form FSA MQ–5, Referendum Ballot. This rule will add no additional burden to that currently approved by OMB and assigned OMB Control Number 0560–0182 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

Accordingly, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B is revised to read as follows:

Authority: 7 U.S.C. 511m and 511r. Section 29.74a is also issued under sec. 759, Pub. L. 107–76, 115 Stat. 741 (7 U.S.C. 511s).

2. A new § 29.74a is added to read as follows:

§ 29.74a Producer referenda on mandatory grading.

(a)(1) *Method of conducting.* Referenda shall be conducted among producers who were engaged in the production of the following types of tobacco harvested in the immediately preceding crop year: flue-cured tobacco, types 11, 12, 13, 14; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; burley tobacco, type 31; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55. A referendum will be conducted for each kind of tobacco and the results will apply to each individual kind. A producer is eligible to vote in referenda for each kind of tobacco they produce.

(2) *Farmers engaged in the production of tobacco.* For purposes of the referenda, persons engaged in the production of tobacco includes any person who is entitled to share in a crop of the tobacco or the proceeds thereof because he or she shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper (a landlord whose return from the crop is fixed regardless of the amount of the crop produced is excluded) on a farm on which such crop is planted in a workmanlike manner for harvest: Provided, That any failure to harvest the crop because of conditions beyond the control of such person shall not affect his or her status as a person engaged in the production of the crop. In addition, persons engaged in the production of tobacco also includes each person who it is determined would have had an interest as a producer in the crop on a farm for which a farm allotment under the quota program (7 CFR part 723, subpart B) for the crop was established and no acreage of the crop was planted but an acreage of the crop was regarded as planted for history acreage purposes under the applicable Farm Service Agency commodity regulations of the Department of Agriculture.

(3) *One vote limitation.* Each person eligible to vote in a particular referendum shall be entitled to only one vote in such referendum regardless of the number of farms in which such person is interested or the number of communities, counties, or States in which farms are located in which farms such person is interested: Provided, That:

(i) The individual members of a partnership shall each be entitled to one vote, but the partnership as an entity shall not be entitled to vote;

(ii) An individual eligible voter shall be entitled to one vote even though he or she is interested in an entity (including but not limited to a corporation) which entity is also eligible to vote;

(iii) A person shall also be entitled to vote in each instance of his or her capacity as a fiduciary (including but not limited to a guardian, administrator, executor or trustee) if in such fiduciary capacity he or she is eligible to vote but the person for whom he or she acts as a fiduciary shall not be eligible to vote.

(4) *Joint and family interest.* Where several persons, such as members of a family, have participated or will participate in the production of tobacco under the same lease or cropping agreement, only the person or persons who signed the lease or agreement, or agreed to an oral lease or agreement, shall be eligible to vote. Where two or more persons have produced or will produce tobacco as joint tenants, tenants in common, or owners of community property, each such person shall be

entitled to one vote if otherwise eligible. The eligibility of one spouse does not affect the eligibility of the other spouse.

(5) *Minors.* A minor shall be entitled to one vote if he or she is otherwise eligible and is 18 years of age or older when he or she votes.

(6) *Interpretation.* In the case of tobacco on a farm where no acreage of tobacco is actually planted but an acreage of the commodity is regarded as planted under applicable regulations of the Department of Agriculture, persons on the farm who it is determined would have had an interest in the commodity as a producer if an acreage of the commodity had been actually planted shall be eligible to vote in the referendum.

(b) *Referenda procedures.* See part 717 of chapter VII of this title for eligibility criteria and the procedures to be used in carrying out mandatory grading referenda. Where not inconsistent with this part, the definitions contained in parts 717, 718 and 723 of this title will govern administration of these referenda. A copy of the regulations in parts 717, 718, and 723 of this title, a referendum ballot, and voting procedures are available for review in any USDA Service Center.

Dated: February 28, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–5228 Filed 3–1–02; 10:49 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 907 and 908

[No. 2002–03]

RIN 3069–AB03

Rules of Practice and Procedure

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to implement the provisions of Title VI of the Gramm-Leach-Bliley Act, Pub. L. 106–102 (1999) and to establish rules of practice and procedure governing hearings on the record in certain administrative enforcement actions. The final rule is intended to provide Finance Board personnel, the Federal Home Loan Banks (Banks), the Office of Finance (OF) and the directors and executive officers of the Banks and OF, as well as any other interested parties, with sufficient notice and guidance to fully utilize the procedures. The Finance Board is also making certain conforming amendments to its existing rules.

EFFECTIVE DATE: April 4, 2002.

FOR FURTHER INFORMATION CONTACT: Charlotte A. Reid, Special Counsel, Office of General Counsel, 202/408–2510, *reidc@fhfb.gov.* Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Federal Home Loan Bank Act, *as amended,* 12 U.S.C. 1421–1449 (Act), the Federal Housing Finance Board (Finance Board),[1] regulates the twelve Federal Home Loan Banks (Banks).[2] Section 2A of the Act sets forth the duties of the Finance Board and provides that the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that duty, the Act requires the Finance Board to supervise the Banks, ensure that they carry out their housing finance mission, and ensure that the Banks remain adequately capitalized and able to raise funds in the capital markets. 12 U.S.C. 1422a(a)(3)(A), (B). To ensure that the Banks operate in a safe and sound manner and comply with applicable laws and regulations, section 2B of the Act grants broad authority to the Finance Board to supervise the Banks and to promulgate and enforce such regulations and orders as are necessary to carry out the provisions of the Act. 12 U.S.C. 1422b(a)(1).[3]

In 1999, with the enactment of section 606 of Title VI of the Gramm-Leach-Bliley Act,[4] the Finance Board received substantially enhanced civil administrative enforcement powers under section 2B(a)(5) of the Act. *See* 12 U.S.C. 1422b(a)(5). Section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) establishes the cease and desist authority of the agency, and adopts certain enforcement powers set out in subtitle C of Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act),[5] as well as the authority to require affirmative corrective action under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, *as amended* (codified at 12 U.S.C. 1818(b)(6) and (7)). Additionally, a new section 2B(a)(7) of the Act confers authority on the agency to act in its own name by and through its own attorneys to enforce any provision of the Act or any regulation promulgated under the Act.[6]

Section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) establishes the civil administrative enforcement authority of the Finance Board in four parts. First, section 2B(a)(5) of the Act expressly authorizes the Finance Board to issue and enforce cease and desist orders based upon three broad grounds: an unsafe or unsound practice in conducting the business of a Bank; any conduct that violates any provision of the Act or any law, order, rule, or regulation; or any conduct that violates any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by a Bank, or any written agreement entered into by a Bank with the Finance Board. *See* 12 U.S.C. 1422b(a)(5). Thus, among other things, section 2B(a)(5) of the Act authorizes the Finance Board to issue a notice of charges if it determines that a Bank or an executive officer or director of a Bank ''is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the Bank, executive officer, or director is about to engage in an unsafe or unsound practice.'' 12 U.S.C. 1422b(a)(5).

Second, section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) adopts the procedural provisions for initiating a cease and desist proceeding that govern

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[1] The Finance Board, an independent agency in the executive branch of the Federal government, was created by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. 101–73, § 702, 103 Stat. 412 (FIRREA). 12 U.S.C. 1422a(a)(2).

[2] The Banks, together with the Office of Finance, which is a joint office of the Banks as provided in 12 U.S.C. 1422b(2)(b), comprise the Federal Home Loan Bank System. 12 CFR 985.1. In accordance with section 985.4(a) of the Finance Board's regulations, the Finance Board has the same regulatory and enforcement authority over the Office of Finance and its officers, directors, employees and agents as the agency has with respect to each of the Banks and their respective officers, directors, employees and agents. *See* 12 CFR 985.4(a).

[3] Additionally, section 20 of the Act authorizes the Finance Board to conduct examinations of the Banks (12 U.S.C. 1440) and section 6 of the Act requires the Finance Board to establish uniform capital requirements for the Banks and directs the Banks to submit conforming capital plans (12 U.S.C. 1426).

[4] Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999) (GLB Act) (Title VI of the GLB Act is known as the Federal Home Loan Bank System Modernization Act of 1999).

[5] The Subtitle C enforcement powers are codified at 12 U.S.C. 4631–4641.

[6] Section 2B(a)(7) also authorizes the Finance Board to act in its own name and through its own attorneys in any action, suit, or proceeding to which the Finance Board is a party that involves the agency's regulation or supervision of any Bank. 12 U.S.C. 1422b(a)(7).

the process by which the Office of Federal Housing Enterprises Oversight (OFHEO) may issue a cease and desist order, which are set forth in sections 1371(c) and (f) of the Safety and Soundness Act.[7] Importantly, these two provisions in section 1371 of the Safety and Soundness Act (12 U.S.C. 4631(c) and (f)), which govern the process for initiating a cease and desist proceeding, are the only provisions in that section that apply to the Finance Board in accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)). As stated, the Finance Board's cease and desist authority is expressly stated in section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)). Thus, the Finance Board's cease and desist authority is independent of, and unrestricted by, OFHEO's cease and desist authority under section 1371 of the Safety and Soundness Act (12 U.S.C. 4631).

Third, section 2B(a)(5) of the Act provides that the Finance Board shall have all other powers to enforce the Act that OFHEO has under sections 1372 through 1379B of the Safety and Soundness Act, 12 U.S.C. 4632–4641, including the grounds and authority to issue and enforce temporary cease and desist orders (12 U.S.C. 4632) and civil money penalty assessment orders (12 U.S.C. 4636), and the authority to issue subpoenas and subpoenas *duces tecum* (12 U.S.C. 4641). To implement this authority the provision adopts OFHEO's statutory authority and procedures governing hearings on the record, subject matter jurisdiction and judicial review of final orders, as well as the enforcement of final orders. Finally, section 2B(a)(5) of the Act also incorporates the same authority to require affirmative action to correct violations and conditions as the appropriate Federal banking agencies have with respect to insured depository institutions under 12 U.S.C. 1818(b)(6) and (7). *See* 12 U.S.C. 1422b(a)(5).

II. Synopsis of the Final Rule

On December 18, 2000, the Finance Board published for notice and comment a proposed rule (65 FR 78944) to implement the enforcement powers set forth in the GLB Act amendments and establish the necessary hearing procedures.[8] The comment period ended on January 17, 2001 and the Finance Board received comment letters from seven of the twelve Banks. The Banks' comments generally favor adoption of rules of practice and procedures consistent with those of other banking regulatory agencies. All of the comment letters provide suggestions for revising certain provisions in the rule. The proposed rule has been revised to respond to certain comments, to improve the organization or clarity of the final rule, and to conform the text of subpart B of the final rule as closely as possible to the statutory authority upon which it is based. By way of example, all of the references in the proposed rule to the Office of Finance and its executive officers and directors have been deleted from the final rule. A section-by-section analysis of the final rule follows.[9]

Subpart A of the final rule, which has been revised for improved organization prescribes the scope and authority of the regulation, defines certain terms appearing in this part, and relates the general rules of construction. Some of the commenters suggest that the definition of ''violation'' be revised to clarify that ''policy'' means ''written policy.'' The Finance Board has determined that the term ''policy,'' which was intended to refer to directives issued pursuant the Finance Board's supervisory and enforcement authority under the Act, should be deleted in favor of the term ''order'' in the definition of ''violation.'' Thus, as used in the final rule, ''violation'' is intended to refer to any violation of ''any provision of [the] Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement entered into by the Bank with the agency,'' as set forth in section 2B(a)(5) of the Act. 12 U.S.C. 1422b(a)(5).

The proposed definition of ''adjudicatory proceeding or hearing'' has been simplified in the final rule to indicate that a hearing means an adjudicatory proceeding conducted under part 908. The definition of ''decisional employee'' has been revised to exclude Finance Board employees in the Office of General Counsel to allow for the agency and agency head to obtain the assistance of counsel in such proceedings. ''Notice'' is defined to mean a written notice of charges or a written notice of assessment of a civil money penalty, with an exception carved out for the common usage of the word in phrases such as 'reasonable notice.' The definition of ''party'' has been revised to allow for the common use of the term in the rule, except that for purposes of subparts C through F, party means the Finance Board or respondent. Similarly, the definition of ''respondent'' has been revised in the final rule to mean any person named in a notice of charges or a notice of assessment of a civil money penalty. Consistent with its effort to conform the rule to the statutory authority, the Finance Board declines to adopt a commenter's request to adopt the definition of ''executive officer,'' in section 1303(7) of the Safety and Soundness Act (12 U.S.C. 4502(7)). The proposed definition, which excludes directors, is inconsistent with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)), which expressly provides that the Finance Board shall have such enforcement authority over ''any executive officer or director'' of a Bank. Finally, several commenters request that the term ''unsafe and unsound'' be expressly defined in subpart A. The Finance Board declines to do so, for the reasons stated in the discussion of subpart B, below.

Subpart B of the final rule specifies the scope of the Finance Board's enforcement authority with respect to the Banks or any executive officer or director of a Bank, including issuing a notice of charges or a notice of assessment of a civil money penalty, and enforcing cease and desist orders, temporary cease and desist orders, assessment of civil money penalty orders. The rule also specifies the process for judicial review of final orders and public disclosure of final orders. Additionally, the final rule states that there is no implied private right of action created by the provision pursuant to section 1378 of the Safety and Soundness Act (12 U.S.C. 4638). The final rule also provides for the service of a notice of charges on a former executive officer or director of a Bank, within two years of the person's departure from the Bank, as is provided

[7] OFHEO's enforcement powers extend to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (enterprises) and their executive officers (as defined in 12 U.S.C. 4502(7)). Sections 1371(c) and (f) of the Safety and Soundness Act are codified at 12 U.S.C. 4631(c) and (f).

[8] Section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) incorporates the hearing on the record requirement from section 1373(a)(3) of the Safety and Soundness Act, 12 U.S.C. 4633(a)(3). These procedures serve a dual purpose to both implement and supplement the procedural requirements for such hearings provided in the Administrative Procedure Act, 5 U.S.C. 551, 553–59, 701–06, 1305, 3344, 5372, 7521 (APA).

[9] The Finance Board's authority to proceed under Part 908 of the Finance Board's regulations is distinct from, and is not contingent procedurally upon, the internal review procedures set forth in Part 907 of the Finance Board's regulations. Thus, no civil administrative enforcement proceeding undertaken pursuant to Part 908 is contingent upon the issuance of an examination finding, any order or directive concerning safety and soundness or compliance, or any other order of the Finance Board that may be reviewed in accordance with part 907.

in section 1377 of the Safety and Soundness Act (12 U.S.C. 4637).

Section 908.4 of the final rule contains the Finance Board's authority to issue a notice of charges and the grounds for a cease and desist order as set forth in section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)). Specifically, section 2B(a)(5) states that the Finance Board shall have the power to issue and serve a notice of charges upon a Bank, or upon any executive officer or director of a Bank, if in the determination of the Finance Board, the subject individual or Bank:

> is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the Bank, executive officer, or director is about to engage in an unsafe or unsound practice in conducting the business of the bank, or any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement entered into by the Bank with the agency, in accordance with the procedures provided in subsection (c) or (f) of section 1371 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. § 4631(c) and (f)].

12 U.S.C. 1422b(a)(5).

One commenter suggests that the final rule should establish a definition of ''unsafe and unsound'' as follows: ''Unsafe or unsound practice means a practice that is contrary to prudent standards of operation and is likely to have a material adverse impact on the financial condition of the Bank or on the ability of any Bank or the OF to raise funds in the capital markets.'' The Finance Board has studied the issue and concludes that the proposed definition is inconsistent with generally accepted interpretations of the meaning of ''unsafe and unsound practices.'' First, ''material adverse impact'' would unnecessarily establish a higher standard relative to the risk of possible loss than traditional definitions of unsafe and unsound practices cited by many courts. Second, the concept of ''unsafe and unsound,'' by design, is intended to be flexible. Historically, the term ''unsafe and unsound'' has been broadly interpreted to adapt to the ever-changing nature of banking and finance practices. Finally, the fact that the concept is not defined in the Act supports the conclusion that the Finance Board, as the agency in which Congress has invested exclusive supervisory oversight, is authorized to make judgments concerning safety and soundness issues because it best suited to do so on a case-by-case basis.

In 1966, Mr. John Horne, the Chairman of the Federal Home Loan Bank Board (FHLBB), the Finance Board's predecessor, provided a useful definition of the phrase ''unsafe and unsound practices'' in hearings before Congress prior to the adoption of the Financial Institutions Supervisory Act of 1966, Pub. L. No. 89–695 (Supervisory Act of 1966). Chairman Horne stated: ''Generally speaking, an 'unsafe or unsound practice' embraces any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds.'' (Financial Institutions Supervisory Act of 1966: Hearings on S. 3158 and S. 3695 before the House Committee on Banking and Currency, 89th Cong., 2d Sess. 49–50.) The Supervisory Act of 1966 gave the federal banking regulatory agencies ''authority to issue cease and desist orders or suspension or removal orders * * * as intermediate powers short of conservatorship or withdrawal of insurance, in order to prevent violations of law or regulations and unsafe and unsound practices which otherwise might adversely affect the Nation's financial institutions, with resulting harmful consequences to the growth and development of the Nation's economy.'' (S. Rep. No. 89–1482, 89th Cong., 2d Sess. 2 (August 18, 1966) (reprinted in 1966 U.S.C.C.A.N. 3532, 3533)).

The interpretation of ''unsafe or unsound practice'' offered by the commenter departs from this tested model. The courts have interpreted the phrase ''as a flexible concept which gives the administering agency the ability to adapt to changing business problems and practices in the regulation of the banking industry.'' *Seidman* v. *OTS,* 37 F.3d 911, 927 (3rd Cir. 1994) (citing *Groos Nat'l Bank* v. *Comptroller of the Currency,* 573 F.2d 889, 897 (5th Cir. 1978) (''The phrase 'unsafe or unsound banking practice' is widely used in the regulatory statutes and in case law, and one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies.'')). Therefore, the Finance Board has determined that the final rule should not contain a definition of ''unsafe and unsound practices.''

The Finance Board's authority to issue cease and desist orders under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)), which incorporates the provisions of sections 8(b)(6) and (7) of the Federal Deposit Insurance Act,[10] includes the authority to issue an order requiring a Bank, or any executive officer or director of a Bank, to take affirmative action to correct or remedy any condition resulting from any violation or practice with respect to which such order was issued.[11] Accordingly, as set forth section 908.4(b)(2)(iv) of the final rule [proposed 908.4(b)(1)(iv)], the Finance Board may require such party to, among other things, rescind any agreement or contract. Three commenters support deleting this provision from the final rule. One of those commenters suggests that the provision might create uncertainty for the Banks when they enter the capital markets to raise funds regarding the enforcability of capital market agreements, and suggests that if the provision is not deleted it should be amended to exclude such contracts. The Finance Board is not persuaded that any such risk is presented and declines to adopt that recommendation.

One commenter opposes the rescission provision on the ground that it could seriously jeopardize the Banks' ability to enter binding, enforceable contracts. Another commenter argues that the provision might impair the ability of a Bank to set employees' compensation, rights, and pension or profit-sharing terms by employment contract and suggests amending the provision to exclude employment contracts, change in control agreements, pension or profit sharing plans, or similar employment agreements. This rationale is unavailing. Congress, as the legislative body with exclusive authority to define the extent of the Finance Board's supervisory and oversight authority, has required the Finance Board, as its ''primary duty'' to ''ensure'' that the Banks are run in a ''financially safe and sound manner'' (*see* 12 U.S.C. 1422a(a)(3)(A)). Congress expressly incorporated into the Act the contract rescission authority under section 8(b)(6) of the FDI Act (12 U.S.C. 1818(b)(6)) as a tool to achieve this mandate. In fact, the banking regulatory agencies have had the identical authority since 1989, with no known negative effect on the regulated financial institutions. Such decisions are, as they should be, made by the banking regulatory agency on a case-by-case basis taking into account many factors that may not be anticipated in a rulemaking. The Finance Board finds no justification for the suggestion that the agency should otherwise interpret the

[10] *See* 12 U.S.C. 1818(b)(6) and (7).

[11] The Finance Board derives this authority from 12 U.S.C. 1818(b)(6)(D).

clear intent of Congress with respect to such oversight of the Banks. Moreover, this supervisory model ultimately may strengthen the Finance Board's ability to ensure that the Banks remain adequately capitalized and able to access the capital markets, and able to fulfill their housing finance mission, as required under section 2A of the Act. Therefore, the Finance Board has retained this oversight power in the final rule.

Section 908.5 of the final rule revises the proposed rule to clarify that a temporary cease and desist order may be issued only in connection with a notice of charges issued and served by the Finance Board to initiate cease and desist proceedings in accordance with section 2B(a)(5) of the Act. 12 U.S.C. 1422b(a)(5). Pursuant to section 2B(a)(5) of the Act, the statutory authority for the Finance Board to issue a temporary cease and desist order derives from and is governed by section 1372 of the Safety and Soundness Act (12 U.S.C. 4632). Accordingly, the final rule reorders the provisions in sections 908.5(a)(1) and (a)(2) of the proposed rule and restates these provisions in sections 908.5(a) and (b) of the final rule in order to more clearly delineate the separate grounds and authority to issue a temporary cease and desist order. Section 908.5(a) of the final rule consolidates the grounds for a temporary cease and desist order based on conduct or violation or threatened conduct or violation likely to cause insolvency or a significant depletion of capital together with the authority to issue a temporary cease and desist order requiring a Bank or individual respondent to cease and desist from such conduct or violation and to take affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of the cease and desist hearing. Similarly, the revision set forth in section 908.5(b) of the final rule combines in one provision the Finance Board's authority to base a temporary cease and desist order on a Bank's incomplete or inaccurate books and records and the Finance Board's authority to issue a temporary cease and desist order that would require a respondent to cease and desist from conduct that caused or contributed to the incompleteness of the books and records and to require affirmative action to restore the books to a complete and accurate state. Additionally, in light of the improvements to section 908.5 in the final rule, section 908.5(a)(3) of the proposed rule was deleted in the final rule in response to a comment to make the provisions consistent with the statutory authority.

In accordance with section 1372(d) of the Safety and Soundness Act (12 U.S.C. 4632(d)), which confers subject matter jurisdiction on the United States District Court for the District of Columbia (district court), section 908.5(f) of the final rule [proposed 908.5(c)] describes how a respondent may seek injunctive relief from a temporary cease and desist order. Specifically, a respondent may petition the district court to issue an injunction setting aside, limiting, or suspending the enforcement, operation, of effectiveness of the order pending completion of the hearing pursuant to the notice of charges. In accordance with sections 2B(a)(5) and (7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and sections 1372(d) and 1375(b) of the Safety and Soundness Act (12 U.S.C. 4632(d) and 4635(b)), the district court's jurisdiction is limited to granting the injunctive relief requested. In effect, the district court lacks subject matter jurisdiction to consider any substantive challenge to the notice of charges, such as an action for judicial review under the Administrative Procedure Act. The means of obtaining judicial review of final orders of the Board of Directors is described separately in § 908.10 of the final rule, in accordance with section 1374 of the Safety and Soundness Act (12 U.S.C. 4634). Under section 908.5(g) of the final rule [proposed 908.5(d)], the district court has subject matter jurisdiction, which is based on sections 2B(a)(5) and (7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1372(e) of the Safety and Soundness Act (12 U.S.C. 4632(e)), to enforce a temporary cease and desist order if a respondent violates, threatens to violate, or fails to obey such order. Certain commenters contended that the Finance Board cannot confer or limit the jurisdiction of federal courts by regulation. The references to jurisdiction in the proposed rule were intended only to reflect what Congress has provided by statute, and the final rule has been revised to make that point clear.

Section 908.6 of the final rule states the authority of the Finance Board to initiate civil money penalty enforcement proceedings in accordance with section 1376 of the Safety and Soundness Act (12 U.S.C. 4636). As proposed, section 908.6(a)(4) of the rule included unsafe or unsound practices and breaches of fiduciary duty as grounds for assessing a civil money penalty. The Finance Board has deleted these terms from the text of the final rule solely to conform the rule text to that of section 1376(a)(4) of the Safety and Soundness Act (12 U.S.C. 4636(a)(4)). The Finance Board, as the safety and soundness regulator of the Banks, has explicit statutory authority under the Act to determine whether any acts or omissions may constitute an unsafe or unsound practice, a violation of law, order or regulation, or is likely to result in a loss. One commenter opposes the use of the term ''loss'' in proposed section 908.6(a)(4) of the rule, which provides that the agency may impose a civil money penalty if a Bank or any executive officer or director of a Bank ''engages in any conduct that causes or is likely to cause a loss to a Bank.'' The commenter argues that the term ''loss'' is too broad and should be deleted from the rule. The Finance Board disagrees and has retained the provision in section 908.6(a)(4) of the final in as much as it is an exact recitation of the statutory authority in section 1376(a)(4) of the Safety and Soundness Act (12 U.S.C 4636(a)(4)). The Finance Board concludes that any determination of whether or not a ''loss'' is presented under this provision is to be made on a case-by-case basis and factually established in a hearing on the record. The Finance Board believes that the final rule provides ample procedural safeguards. There is no credible likelihood to suppose, as one commenter suggests, that a determination of ''loss'' could be made on the basis of shifting market values, or that the provision could make Bank directors guarantors of all Bank activities.

Section 908.6(d) of the final rule [proposed 908.6(c)] lists certain factors to be considered by the Finance Board in assessing a civil money penalty. On its face, the list is not exclusive because it states ''such factors as.'' One commenter urges the Finance Board to adopt additional factors, taking a page from comments submitted by Freddie Mac and Fannie Mae directed to OFHEO in a recent rulemaking. The Finance Board is not persuaded that it is necessary to encumber section 908.6(d) by inserting ''any other factors the [agency] may determine by regulation to be appropriate.'' The change would only add redundancy to the rule, which currently permits the Board of Directors to look to other appropriate factors as needed on a case-by-case basis.

One commenter argues that the Finance Board lacks authority to provide in section 908.6(f)(4) of the rule that, in an action brought by the Finance Board in the district court to enforce a civil money penalty assessment order, the court would not have subject matter jurisdiction to review the validity and appropriateness of the order. The commenter calls for the provision to be

deleted on the ground that due process rights are abridged. This claim lacks merit. Section 908.6(f)(4) of the final rule, as proposed, is based on and faithfully applies the applicable provisions in the Safety and Soundness Act. The Finance Board is bound by the jurisdictional limitations on the district court set by Congress. Sections 1376(c)(3), 1376(d) and 1375(b) of the Safety and Soundness Act (12 U.S.C. 4636(c)(3), 4636(d) and 4635(b)) together provide the district court with exclusive jurisdiction to enforce a civil money penalty assessment order and expressly bar judicial review of such orders in the district court. Section 1374 of the Safety and Soundness Act (12 U.S.C. 4634) vests jurisdiction to review the validity and appropriateness of a civil money penalty assessment order or a cease and desist order exclusively in the United States Court of Appeals for the District of Columbia Circuit (court of appeals). Therefore, the Finance Board has declined to delete section 908.6(f)(4) from the final rule.

One commenter suggests that section 908.6(i) of the proposed rule should be eliminated or, at a minimum, the bar against indemnification of directors and executive officers should be limited to tier 3 violations for knowing conduct that caused or is likely to cause a substantial loss. The Finance Board agrees with the commenter that the rule should state the statutory authority and has revised the indemnification provision in § 908.6(i) of the final rule accordingly.

Section 908.6(k) of the proposed rule set forth the obligation of the Finance Board periodically to adjust the statutory civil money penalty amounts pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104–134, Title III, § 31001(s)(2), April 26, 1996, 110 Stat. 1321–373, and Pub. L. 105–362, Title XIII, § 1301(a)(1), Nov. 19, 1988, 112 Stat. 3293 (collectively, the Inflation Adjustment Act) (*codified* at 28 U.S.C. 2461 note). The Finance Board is required to adjust each civil money penalty set forth herein by a prescribed cost-of-living adjustment at least once every four years.

The adjustment is based on the formula prescribed in the Inflation Adjustment Act. Section 5(a) of the Inflation Adjustment Act prescribes that the inflation adjustment for each maximum monetary civil penalty (or the range of minimum and maximum civil monetary penalties) shall be determined by the cost-of-living adjustment and shall be rounded to the nearest multiple of a specified dollar amount as set forth in that provision. Section 5(b) of the act defines the term cost-of-living adjustment to mean ''the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.'' The agencies are required to use the Consumer Price Index for All Urban Consumers (CPI–U), which is compiled by the Bureau of Statistics of the Department of Labor. [12] Section 908.6(k) is included in the final rule for comprehensiveness and clarity.

Section 908.7 of the proposed rule included provisions for the suspension and removal of officers, directors, employees and agents of the Banks under section 2B(a)(2) of the Act (12 U.S.C. 1422b(a)(2)). Numerous comments on the removal provision argue that the agency lacks authority to adopt the rule and challenge whether the rule met the constitutional requirements of due process. The Finance Board has deleted the removal provision from the final rule because section 2B(a)(2) of the Act (12 U.S.C. 1422b(a)(2)) predated the GLB Act, thus it is not logically a necessary element of this rulemaking, the purpose of which is to implement the GLB Act amendments. Moreover, because section 2B(a)(2) of the Act (12 U.S.C. 1422b(a)(2)) does not require that a hearing on the record be held to remove or suspend an officer, director, employee or agent of a Bank, it raises additional and disparate administrative law issues. Section 908.7 of the proposed rule established different procedures than those applicable to cease and desist and civil money penalty proceedings under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)). In order to eliminate any potential confusion that may arise from addressing these very different remedies in the same rulemaking, the Finance Board has determined to undertake a separate rulemaking in the future to provide a full and fair opportunity for comment and to respond to such comments in detail at that time. Instead, section 908.7 of the final rule establishes in accordance with section 1379A of the Safety and Soundness Act (12 U.S.C. 4640) that any notice (e.g., notice of charges or notice of civil money penalty assessment) to be served on a respondent under the rule may be served by registered mail or other appropriate manner reasonably calculated to give actual notice to the respondent as the Finance Board may by regulation or otherwise provide.

The Finance Board has adopted several provisions in the final rule pertinent to certain administrative requirements in the Safety and Soundness Act. Briefly, section 908.8 of the rule as proposed was adopted with an additional section that specifies the fees and expenses to be paid witnesses subpoenaed under the provision, in accordance with section 1379B of the Safety and Soundness Act (12 U.S.C. 4641). Section 908.9 of the final rule sets forth the requirement under sections 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and 1373 of the Safety and Soundness Act (12 U.S.C. 4633) that hearings conducted pursuant to section 908.4 and 908.6 of the rule are to be held on the record and in the District of Columbia. Section 908.13 of the final rule provides that such hearings shall be public in accordance with section 1379(b) of the Safety and Soundness Act (12 U.S.C. 4639(b)). Section 908.10 of the final rule adopts the provision as proposed, but with certain clarifications. The reference to Rule 4 of the Federal Rules of Procedure [proposed 908.10(b)] has been eliminated. Judicial review of a final order of the Board of Directors (whether a cease and desist order or an order assessing a civil money penalty) is governed by the applicable federal law and appellate court rules. Section 1374 of the Safety and Soundness Act (12 U.S.C. 4634) provides that the petition seeking review must be filed within 30 days after the date of service of the final order with the court of appeals. Rule 15(c) of the Federal Rules of Appellate Procedure (FRAP) and Rule 15 of the United States Court of Appeals, District of Columbia Circuit (Local Rules) require the clerk of the court to transmit a copy of the petition to the Finance Board, in a manner prescribed by FRAP Rule 3(d). Sections 908.10(a) and (b) of the rule have been amended accordingly. Similarly, section 908.10(c) has been amended to clarify that the Finance Board shall file the hearing record with the clerk of the court of appeals in accordance with FRAP 17 and Local Rule 17 as provided in section 2112 of Title 28 of the United States Code. Additional language in the remaining paragraphs clearly states the statutory authority for subject matter

[12] By way of example, most recently in October 2000, the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC) each published a final rule adjusting the civil money penalty amounts in their respective regulations pursuant to the Inflation Adjustment Act. *See* 65 FR 61260 (Oct. 17, 2000) (OTS) and 65 FR 64884 (Oct. 31, 2000) (FDIC).

jurisdiction or other appropriate statutory authority underlying these provisions of the final rule. Finally, section 908.12 of the final rule sets out the Finance Board's authority under section 1377 of the Safety and Soundness Act (12 U.S.C. 4637) to issue a notice of charges or a notice of assessment of a civil money penalty to an individual within two years of separation from a Bank.

Subpart C of the final rule provides the general rules that govern the process and specifies the authority of the Finance Board and the Board of Directors and the presiding officer, an Administrative Law Judge (ALJ) or other neutral, qualified individual who is appointed by the Finance Board to preside over the hearing and file with the Board of Directors a recommended decision and order, which shall be based on the record of the hearing, for a final decision and order to be issued by the Board of Directors. The Board of Directors may intervene in any matter to perform, direct the performance of, or waive the performance of any authorized action of the presiding officer. The presiding officer is authorized to: change the hearing date, time or place; issue or modify subpoenas or subpoenas *duces tecum;* issue protective orders; administer oaths and affirmations; regulate the course of the hearing and hold conferences to address issues arising in the hearing; and rule on non-dispositive motions.

All hearings are open to the public, unless the Finance Board determines that an open hearing would be contrary to the public interest or a party moves for a closed hearing and the Board of Directors orders the hearing closed. Because the presiding officer is fully authorized to regulate the course of the hearing, he or she may limit public and media access to any hearing the Finance Board has determined will be a public hearing. Additionally, the Finance Board may file any document or portion of a document under seal and the presiding officer is required to take all appropriate steps to preserve the confidentiality of such document(s) or parts thereof.

The final rule provides that every filing or submission of record shall be signed by at least one representative of record to certify that the document has been read and that to the best of the representative's knowledge it is supported in fact and is not made for any improper purpose. *Ex parte* communications are prohibited. Any party or representative who makes or elicits an *ex parte* communication may be subject to appropriate sanctions. The Finance Board anticipates that in the future, under applicable law, the agency will have the necessary technological ability to enable the parties to submit documents by electronic media, and may specify the conditions for such electronic transmission. Until further notice, for purposes of this regulation, all papers filed by the parties shall be filed in accordance with the requirements set out in § 908.25(c) of the final rule.

Any respondent may submit a settlement proposal to the Finance Board in accordance with section 908.30 of the final rule. Submission of a settlement offer does not provide a basis for delaying a proceeding, and no settlement offer is admissible in evidence in the adjudicative proceeding or any court. Nothing in the rule prohibits or restricts the authority of the Finance Board to conduct any examination or inspection of any Bank, or to conduct or to continue any form of investigation authorized by the Act.

Under subpart D, the Finance Board commences proceedings by issuing and serving a notice of charges or a notice of assessment of a civil money penalty on a respondent. During the course of a hearing, the presiding officer controls virtually all aspects of the proceeding. The presiding officer: determines the hearing schedule; presides over any pre-hearing conferences; rules on motions, discovery, and evidentiary issues; and ensures that the proceeding is fair, equitable, and impartial. The presiding officer does not, however, have the authority to make a ruling that disposes of the proceeding. Only the Board of Directors has the authority to dismiss the proceeding or to make a final determination on the merits of the proceeding following a hearing on the record or a negotiated disposition.

Subpart E of the final rule governs hearings and post-hearing proceedings. Section 908.60 of the final rule provides that hearings shall be conducted in accordance with the APA. The parties to the proceeding have the right to present evidence and witnesses at the hearing and to examine and cross-examine the witnesses. At the completion of the hearing, the parties may submit proposed findings of fact and conclusions of law and a proposed order. The presiding officer then submits the complete record to the Board of Directors for consideration and action. The record includes the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order. The record also includes all pre-hearing and hearing transcripts, exhibits, rulings, motions, briefs and memoranda, and all supporting papers filed in connection with the hearing. The Board of Directors shall issue a final ruling within 90 days of the date the presiding officer serves notice on the parties that the record is complete and the case has been submitted to the Board of Directors for final decision, or at such time as is practicable within the discretion of the Board of Directors.

Subpart F, ''Rules of Practice Before the Finance Board,'' governs the parties and their representatives appearing before the Finance Board under this rule and provides for the imposition of disciplinary sanctions—censure, suspension or disbarment—by the presiding officer or the Board of Directors against parties or their representatives. This subpart covers parties and individuals that appear before the Finance Board in a representational capacity; covered representation may include, but is not limited to, the practice of attorneys and accountants. The presiding officer may decide what notice and responses are appropriate where sanctions are at issue for conduct arising in an adjudicatory proceeding or hearing. The final rule prescribes when sanctions may be imposed, and what those sanctions may be. Employees of the Finance Board are not subject to disciplinary proceedings under this subpart. The Finance Board may also apply these qualification and disciplinary rules to parties or representatives in an administrative proceeding under part 907 of the Finance Board's rules and regulations (12 CFR part 907).

III. Regulatory Impact

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications, that is, regulations or actions 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 between Federal and State Government. The Finance Board has determined that this rule has no federalism implications that warrant consultation with the states or the preparation of a federalism summary impact statement in accordance with Executive Order 13132.

Executive Order 12866, Regulatory Planning and Review

In order to make the regulatory process more efficient, Executive Order 12866 requires the centralized review of regulatory action. The Finance Board has determined that this rule is not a

significant regulatory action as such term is defined in Executive Order 12866, has so indicated to the Office of Management and Budget (OMB), and was not notified by OMB that the rule must be reviewed by OMB.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. This rule meets the applicable standards of sections 3(a) and 3(b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires for any rule that includes a Federal mandate that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million, that an agency prepare an assessment statement of the anticipated costs and benefits of the Federal mandate. *See* 2 U.S.C. 1532(a). The rule does not include such a Federal mandate, and, therefore, it does not warrant the preparation of such an assessment statement.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities must include a regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, when promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act seeks to minimize the paperwork burden for individuals, small businesses, and other entities resulting from the collection of information by or for the Federal government. *See* 44 U.S.C. 3501 *et seq.* This rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. 44 U.S.C. 3502(3). Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 907

Administrative practice and procedure, Federal Home Loan Banks.

12 CFR Part 908

Administrative practice and procedure, Penalties.

For the reasons stated in the preamble, the Finance Board amends 12 CFR parts 907 and 908 as follows:

PART 907—PROCEDURES

1. The authority citation for part 907 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1).

2. Add § 907.16 to read as follows:

§ 907.16 Rules of practice.

In connection with any matter initiated or pending pursuant to this part, petitioners, requestors or intervenors, or their representatives, shall be subject to the provisions of subpart F of 12 CFR part 908. No other provision of part 908 shall apply under this part.

3. Add part 908 to read as follows:

PART 908—RULES OF PRACTICE AND PROCEDURE IN HEARINGS ON THE RECORD

Subpart A—Introduction

Sec.
908.1 Scope.
908.2 Definitions.
908.3 Rules of construction.

Subpart B—Scope and Authority—Enforcement Proceedings

908.4 Cease and desist proceedings.
908.5 Temporary cease and desist orders.
908.6 Civil money penalties.
908.7 Service of notice.
908.8 Subpoenas.
908.9 Hearings on the record.
908.10 Judicial review.
908.11 Jurisdiction and enforcement.
908.12 Notice after separation.
908.13 Public disclosure of final orders.
908.14 No implied private right of action.
908.15–908.19 [Reserved]

Subpart C—General Rules

908.20 Authority of the Board of Directors.
908.21 Authority of the presiding officer.
908.22 Public hearings.
908.23 Good faith certification.
908.24 Ex parte communications.
908.25 Filing of papers.
908.26 Service of papers.
908.27 Computing time.
908.28 Change of time limits.
908.29 Witness fees and expenses.
908.30 Settlement or other dispute resolution.
908.31 Right to supervise the Banks.
908.32 Collateral attacks on proceedings under this part.
908.33–908.39 [Reserved]

Subpart D—Pre-Hearing Proceedings

908.40 Commencement of proceeding and contents of notices.
908.41 Answer.
908.42 Amended pleadings.
908.43 Failure to appear.
908.44 Consolidation and severance of actions.
908.45 Motions.
908.46 Discovery.
908.47 Request for document discovery from parties.
908.48 Document subpoenas to nonparties.
908.49 Deposition of witness unavailable for hearing.
908.50 Interlocutory review.
908.51 Summary disposition.
908.52 Partial summary disposition.
908.53 Scheduling and prehearing conferences.
908.54 Pre-hearing submissions.
908.55 Hearing subpoenas.
908.56–908.59 [Reserved]

Subpart E—Hearing and Post-hearing Proceedings

908.60 Conduct of hearings.
908.61 Evidence.
908.62 Post-hearing filings.
908.63 Recommended decision and filing of record.
908.64 Exceptions to recommended decision.
908.65 Review by Board of Directors.
908.66 Exhaustion of administrative remedies.
908.67 Stay of final decision and order pending judicial review.
908.68–908.69 [Reserved]

Subpart F—Rules of Practice Before the Finance Board

908.70 Scope.
908.71 Practice before the Finance Board.
908.72 Appearances and practice in proceedings before the Finance Board.
908.73 Conflicts of interest.
908.74 Sanctions.
908.75 Censure, suspension, disbarment and reinstatement.

Authority: 12 U.S.C. 1422b(a)(5), 4631(c) and (f), and 4632–4641. Section 908.4 is also authorized by 12 U.S.C. 1818(b)(6) and (7).

Subpart A—Introduction

§ 908.1 Scope.

This part prescribes rules of practice and procedure applicable to any hearing with regard to:

(a) Cease and desist proceedings under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)); or

(b) Civil money penalty assessment proceedings under section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)).

§ 908.2 Definitions.

For purposes of this part—

Decisional employee means any employee of the Finance Board, except

the Office of General Counsel, or any member of the presiding officer's staff who has not engaged in an investigative or prosecutorial role in connection with the subject cease and desist or civil money penalty proceedings and who may assist the Board of Directors or the presiding officer, respectively, in preparing orders, recommended decisions, decisions and other documents under this part.

Hearing means an adjudicatory proceeding conducted pursuant to this part;

Notice means a written notice of charges or notice of assessment of a civil money penalty so titled that served by the Finance Board upon a respondent, which conforms to § 908.40 and describes the alleged violations with sufficient specificity to put the respondent on notice of the nature and scope of the charges being brought against him, except in the context of the plain meaning of the word notice in a provision, such as reasonable notice or actual notice.

Party means, for purposes of subparts C through F of this part only, the Finance Board or respondent.

Person means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency, Bank, or other entity or organization with the exception of the Finance Board.

Presiding officer means an administrative law judge or other qualified, neutral individual who is appointed by the Finance Board under applicable law, and, pursuant to Title 5 of the United States Code, may conduct a hearing or adjudicatory proceeding under this part.

Representative of record means an individual who is authorized to represent a respondent (and includes a respondent who represents himself) at a hearing conducted under this part and who has filed a notice of appearance in accordance with § 908.72.

Respondent means any person named in a notice of charges or notice of determination to impose civil money penalties issued by the Finance Board.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501–4641) (Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550).

Violation includes any act or omission by any person, undertaken alone or with one or more others, that causes directly or indirectly, counsels, participates in, or otherwise furthers, aids or abets a violation of the Act, other applicable law, regulation, or order of the Finance Board.

§ 908.3 Rules of construction.

For purposes of this part—

(a) Any term in the singular includes the plural and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(c) Unless the context requires otherwise, a party's representative of record, if any, may, on behalf of that party, take any action required to be taken by the party.

Subpart B—Scope and Authority—Enforcement Proceedings

§ 908.4 Cease and desist proceedings.

(a) *Notice of Charges.* (1) *Grounds.* The Finance Board may issue and serve a notice of charges upon a Bank or any executive officer or director of a Bank if the Finance Board determines that such party is engaging or has engaged in, or, if the Finance Board has reasonable cause to believe is about to engage in:

(i) An unsafe or unsound practice in conducting the business of the Bank;

(ii) Any conduct that violates any provision of the Act or any applicable law, order, rule or regulation; or

(iii) Any conduct that violates any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement between the Bank and the Finance Board.

(2) *Content of notice of charges.* A notice of charges shall contain a statement of the facts constituting the alleged conduct or violation and otherwise shall conform to the requirements set forth in § 908.40.

(b) *Cease and desist order.* (1) *Issuance of order.* An order to cease and desist shall be issued in writing and only after the respondent has been given the opportunity for a hearing on the record in accordance with the requirements set forth in § 908.9. If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of charges has been established or if a respondent consents (or is deemed to have consented pursuant to § 908.43), the Board of Directors may issue and serve upon the respondent an order requiring the respondent to cease and desist from any such practice, violation or conduct, to take affirmative action to correct or remedy the conditions resulting from any such practice, violation or conduct, or to comply with such limitations on activities or functions as may be prescribed therein.

(2) *Affirmative action.* The authority of the Board of Directors to issue and serve a cease and desist order that requires a respondent to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require a respondent to—

(i) Make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(A) The respondent was unjustly enriched in connection with the violation, conduct or practice described in the order; or

(B) The violation, conduct or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Finance Board;

(ii) Restrict the growth of the Bank;

(iii) Dispose of any loan or asset involved;

(iv) Rescind any agreement or contract;

(v) Employ qualified officers or employees (who may be subject to approval by the Finance Board, as directed by the Finance Board); and

(vi) Take such other action as the Finance Board determines to be appropriate.

(3) *Authority to limit activities.* The authority of the Board of Directors to issue and serve a cease and desist order includes the authority to place limitations on the activities or functions of a respondent.

(c) *Effective date of order.* An order issued under paragraph (b) of this section shall become effective upon the expiration of the 30-day period beginning on the date of service of the order upon the respondent, (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Board of Directors or otherwise as provided for in this part.

§ 908.5 Temporary cease and desist orders.

(a) *Grounds.* Whenever the Board of Directors determines that any conduct or violation, or threatened conduct or violation, specified in a notice of charges issued and served upon a respondent, or the continuation of such conduct or violation, is likely to cause insolvency, a significant depletion of total capital, or irreparable harm to a Bank prior to the completion of the cease and desist proceeding, the Board of Directors may issue a temporary order requiring the respondent to cease and

desist from any such conduct or violation, or such threatened conduct or violation, and to take affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings. Such order may include any requirement authorized under § 908.4(b)(2).

(b) *Incomplete records.* If a notice of charges specifies that the books and records of a Bank are so incomplete or inaccurate that the Finance Board is unable, through the normal supervisory process, to determine the financial condition of the Bank or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of a Bank, the Finance Board may issue a temporary order requiring a respondent to:

(1) Cease and desist from any activity or practice that caused or contributed to, whether in whole or in part, the incomplete or inaccurate state of the books or records of a Bank; or

(2) Take affirmative action to restore the books or records to a complete and accurate state.

(c) *Effective date.* Any temporary order issued pursuant to this section shall become effective upon service upon the respondent.

(d) *Effective period.* (1) Any temporary order issued under paragraph (a) of this section, unless set aside, limited, or suspended by a court in a proceeding under paragraph (e) of this section, shall remain in effect and enforceable pending the completion of the proceeding on the notice of charges and shall remain effective until the Board of Directors dismisses the charges specified in the notice of charges or it is superceded by a cease and desist order.

(2) Any temporary order issued under paragraph (b) of this section, unless set aside, limited, or suspended by a court in proceedings pursuant to paragraph (e) of this section, shall remain in effect and enforceable until the earlier of the completion of the proceeding on the notice of charges, or the date that the Finance Board determines, by examination or otherwise, that the books and records of the Bank are accurate and reflect the financial condition of the Bank.

(e) *Judicial relief.* As authorized by section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and sections 1372(d) and 1375(b) of the Safety and Soundness Act (12 U.S.C. 4632(d) and 4635(b)), a respondent that has been served with a temporary order may apply to the United States District Court for the District of Columbia within ten days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the hearing pursuant to the notice of charges.

(f) *Enforcement of temporary order.* If a respondent violates, threatens to violate, or fails to obey, a temporary order issued pursuant to this section, the Finance Board may bring an action in the United States District Court for the District of Columbia for an injunction to enforce such temporary order, as authorized by sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1372(e) of the Safety and Soundness Act (12 U.S.C. 4632(e)).

§ 908.6 Civil money penalties.

(a) *Notice of assessment.* (1) *Grounds.* The Finance Board may issue and serve a notice of assessment of a civil money penalty on any Bank or any executive officer or director of a Bank that:

(i) Violates any provision of the Act, or any order, rule, or regulation issued under the Act;

(ii) Violates any final or temporary cease and desist order issued by the Finance Board pursuant to the Act;

(iii) Violates any written agreement between a Bank and the Finance Board; or

(iv) Engages in any conduct that causes or is likely to cause a loss to a Bank.

(2) *Content of notice.* A notice of assessment of a civil money penalty shall contain a statement of the facts constituting the alleged conduct or violation and otherwise conform to the requirements set forth in § 908.40.

(b) *Order assessing penalty.* An order assessing a civil money penalty shall be issued in writing and only after the respondent has been given the opportunity for a hearing on the record in accordance with the procedures set forth in § 908.9. If the Board of Directors finds, based on the record of the hearing, that any conduct or violation specified in the notice of assessment of a civil money penalty has been established or if a respondent consents (or is deemed to have consented pursuant to § 908.43), the Board of Directors may issue and serve upon the respondent an order assessing a civil money penalty.

(c) *Amount of penalty.* (1) The Finance Board may impose a civil money penalty under paragraph (b) of this section against a Bank for a violation described in paragraph (a)(i) through (iii) of this section in an amount not to exceed $5,000.00 for each day that such violation continues;

(2) The Finance Board may impose a civil money penalty on an executive officer or director of a Bank in an amount not to exceed $10,000.00, or on a Bank in an amount not to exceed $25,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct:

(i) Is part of a pattern of misconduct; or

(ii) Involved recklessness and caused or would be likely to cause a material loss to a Bank; or

(3) The Finance Board may impose a civil money penalty on an executive officer or director of a Bank in an amount not to exceed $100,000.00, or on a Bank in an amount not to exceed $1,000,000.00, for each day that a violation or conduct described in paragraph (a) of this section continues, if the Finance Board finds that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to a Bank.

(d) *Factors in determining the amount of the penalty.* In determining the amount of the civil money penalty to be assessed under this section, the Finance Board shall consider such factors as the gravity of the violation, any history of prior violations, the good faith of the officer or director of a Bank, the effect of the penalty on promoting or protecting the safety and soundness of a Bank or the Bank System, any injury to members of the subject Bank or to the public at large, any benefits received, and the potential for the deterrence of future violations.

(e) *Judicial relief.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1376(c)(3) of the Safety and Soundness Act (12 U.S.C. 4636(c)(3)), an order of the Board of Directors imposing a civil money penalty under this subsection shall not be subject to judicial review except as otherwise provided in § 908.10, in accordance with section 1374 of the Safety and Soundness Act (12 U.S.C. 4634).

(f) *Judicial enforcement of an order imposing a penalty.* Pursuant to sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1376(d) of the Safety and Soundness Act (12 U.S.C. 4636(d)), if a Bank, or an executive officer or director of a Bank, fails to comply with an order of the Board of Directors imposing a civil money penalty, the Finance Board may seek to enforce the order as follows:

(1) After the order is final and no longer subject to judicial review under § 908.10, the Finance Board may bring an action in the United States District

Court for the District of Columbia to obtain a monetary judgment against a Bank or the executive officer or director of a Bank;

(2) The Finance Board may, in addition, seek such other relief as may be available from the District Court;

(3) The monetary judgment may, in the discretion of the District Court, include any attorneys fees and other expenses incurred by the Finance Board in connection with the action; and

(4) The validity and appropriateness of the Board of Directors' order assessing a civil money penalty shall not be subject to review of the United States District Court for the District of Columbia.

(g) *Board of Directors' authority to review.* The Board of Directors may:

(1) Review any order to assess a civil money penalty or any interlocutory ruling arising from a hearing on the record, or

(2) Settle, modify, or remit in whole or in part, any civil money penalty, which may be or may have been assessed under this section.

(h) *Availability of other remedies.* Any civil money penalty assessed under this section shall be in addition to any other available civil remedy and may be assessed whether or not the Finance Board imposes other administrative sanctions pursuant to this part.

(i) *Prohibition of reimbursement or indemnification.* A Bank shall not reimburse, indemnify, or otherwise compensate directly or indirectly any executive officer or director for any penalty imposed against such individual under paragraph (c)(3) of this section.

(j) *Applicability.* Any penalty under this part may be imposed only for conduct or violations occurring after November 12, 1999.

(k) *Adjustment of civil money penalties by the rate of inflation.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, Pub. Law No. 104–134 (1996) (collectively, the Inflation Adjustment Act) (to be codified at 28 U.S.C. 2461 note), the Finance Board is required to adjust each civil money penalty set forth herein by a prescribed cost-of-living adjustment at least once every four years. The adjustment is based on the formula prescribed in section 5(b) of the Inflation Adjustment Act (28 U.S.C. 2461 note).

§ 908.7 Service of notice.

In accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1379A of the Safety and Soundness Act (12 U.S.C. 4640), any service required or authorized to be made by the Finance Board under this part may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Finance Board may by regulation or otherwise provide.

§ 908.8 Subpoenas.

(a) *Authority.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1379B of the Safety and Soundness Act (12 U.S.C. 4641), the Finance Board, in the course of or in connection with a hearing under this part, shall have the authority:

(1) To administer oaths and affirmations;

(2) To take and preserve testimony under oath;

(3) To issue subpoenas and subpoenas *duces tecum*; and

(4) To revoke, quash, or modify subpoenas and subpoenas *duces tecum* issued by the Finance Board pursuant to this part.

(b) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) *Enforcement.* The Finance Board may file an action in the United States district court for the judicial district where the proceeding is being conducted or where the witness resides or conducts business, or in the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena *duces tecum* issued pursuant to this section. Such courts shall have jurisdiction over such actions and power to order and require compliance with such subpoenas and subpoenas *duces tecum*.

(d) *Fees and Expenses.* Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by a Bank may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses shall be paid by the Bank or from its assets.

§ 908.9 Hearings on the record.

(a) *Requirements.* (1) *Venue and record.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1373 of the Safety and Soundness Act (12 U.S.C. 4633), any hearing conducted pursuant to §§ 908.4 or 908.6 shall be held on the record and in the District of Columbia.

(2) *Timing.* Any hearing shall be set for a date not earlier than thirty (30) days nor later than sixty (60) days after service of a notice, unless an earlier or a later date is set by the presiding officer at the request of the party served.

(3) *Procedure.* Any hearing held pursuant to §§ 908.4 or 908.6 shall be conducted in accordance with chapter 5 of Title 5 of the United States Code.

(4) *Failure to appear.* If a respondent fails to appear at a hearing individually or through a duly authorized representative, the respondent shall be deemed to have consented to the issuance of a cease and desist order or an order assessing a civil money penalty for which the hearing is held.

(5) *Open to the public.* All hearings on the record with respect to any notice issued by the Finance Board shall be open to the public, unless the Board of Directors, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(b) *Issuance of final order.* After a hearing on the record has been concluded, and within 90 days after the parties have been notified that the case has been submitted to the Board of Directors for final decision, the Board of Directors shall render the final decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding a final order or orders consistent with the provisions.

(c) *Judicial review and modification of final orders.* Judicial review of any such final decision and order shall be exclusively as provided for in § 908.10, pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and sections 1373 and 1374 of the Safety and Soundness Act (12 U.S.C. 4633 and 4634). Unless a petition for review is timely filed as provided in § 908.10, and thereafter until the record in the proceeding has been filed as so provided, the Board of Directors may at any time modify, terminate, or set aside any such final decision and order, upon such notice and in such manner as the Board of Directors, in its sole discretion, considers proper. Upon such filing of the record, the Board of Directors may modify, terminate, or set aside any such final decision and order with permission of the court.

§ 908.10 Judicial review.

(a) *Authority.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374 of the Safety and Soundness Act (12 U.S.C. 4634), any party to a hearing may obtain judicial review of a final decision and

order issued under §§ 908.4 or 908.6 exclusively by filing a written petition in the United States Court of Appeals for the District of Columbia Circuit within thirty (30) days after the date of service of the final decision and order, requesting the court to modify, terminate or set aside the final decision and order.

(b) *Filing of record.* Upon receiving a copy of the petition from the clerk of the court of appeals, the Finance Board shall file the hearing record with the clerk, as provided in section 2112 of Title 28 of the United States Code (28 U.S.C. 2112).

(c) *Jurisdiction.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(c) of the Safety and Soundness Act (12 U.S.C. 4634(c)), upon the filing of a petition, the court of appeals shall have jurisdiction, which upon the filing of the record by the Finance Board (except as otherwise provided in § 908.9) shall be exclusive, to affirm, modify, terminate or set aside, in whole or in part, a final decision and order of the Board of Directors.

(d) *Review.* Review by the court of appeals of a final decision and order of the Board of Directors and the record of any hearing conducted pursuant to this part shall be governed by chapter 7 of Title 5 of the United States Code (5 U.S.C. 701 *et seq.*).

(e) *Order to pay civil money penalty.* In connection with its review of a final order pursuant to this part, the court of appeals shall have authority in accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(e) of the Safety and Soundness Act (12 U.S.C. 4634(e)), to order payment of any civil money penalty imposed by the Finance Board.

(f) *No automatic stay.* In accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(f) of the Safety and Soundness Act (12 U.S.C. 4634(f)), the commencement of an action for judicial review of a final decision and order of the Board of Directors under this section shall not operate as a stay of any such order, unless the court of appeals specifically orders a stay of the order in whole or in part.

§ 908.11 Jurisdiction and enforcement.

(a) *Enforcement.* In accordance with sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1375(a) of the Safety and Soundness Act (12 U.S.C. 4635(a)), the Finance Board may bring an action in the United States District Court for the District of Columbia for the enforcement of any effective order issued by the Board of Directors under this part. Such court shall have jurisdiction and power to order and require compliance with such order.

(b) *Limitation on jurisdiction.* In accordance with sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1375(b) of the Safety and Soundness Act (12 U.S.C. 4635(b)), and except as otherwise provided in the Act, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any order issued by the Board of Directors under this part, or to review, modify, suspend, terminate, or set aside any such notice or order.

§ 908.12 Notice after separation.

The resignation, termination of employment or participation, or separation of a director or executive officer of a Bank shall not affect the jurisdiction and authority of the Finance Board to issue any notice and proceed under this part against any such director or executive officer, if such notice is served before the end of the two-year period beginning on the date such director or executive officer ceases to be associated with the Bank.

§ 908.13 Public disclosure of final orders.

(a) *In general.* The Finance Board shall make available to the public—

(1) Any written agreement or other written statement for which a violation may be redressed by the Finance Board or any modification to or termination thereof, unless the Finance Board in its discretion, determines that public disclosure would be contrary to the public interest;

(2) Any order that is issued by the Board of Directors and that has become final in accordance with this part; and

(3) Any modification to or termination of any final order made public pursuant to this part.

(b) *Delay of public disclosure under exceptional circumstances.* If the Finance Board determines in writing that the public disclosure, pursuant to paragraph (a) of this section, of any final decision and order of the Board of Directors would seriously threaten the financial health or security of a Bank, the Finance Board may delay the public disclosure of such decision and order for a reasonable time.

(c) *Documents filed under seal.* The Finance Board may file any document or part thereof under seal in any hearing commenced by the Finance Board under this part, if it determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Finance Board shall keep and maintain a record, for not less than six years, of all documents described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Finance Board under this part or any other law.

(e) *Disclosure to Congress.* This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

§ 908.14 No implied private right of action.

This part shall not create any private right of action on behalf of any person against a Bank or any director or executive officer of a Bank or impair any existing private right of action under applicable law.

§ 908.15—908.19 [Reserved]

Subpart C—General Rules

§ 908.20 Authority of the Board of Directors.

The Board of Directors may, at any time during the pendency of a proceeding under this part, perform, direct the performance of, or waive the performance of any act that could be done or ordered by the presiding officer.

§ 908.21 Authority of the presiding officer.

(a) *General rule.* All cease and desist or civil money penalty proceedings governed by this subpart shall be conducted in a hearing on the record in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 551–559. The presiding officer shall have complete charge of the hearing, conduct a fair and impartial hearing, avoid unnecessary delay, and assure that a record of the hearing is made.

(b) *Powers.* The presiding officer shall have all powers necessary to conduct the hearing in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding, including settlement conferences, mediation or other consensual methods of dispute resolution;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, subpoenas *duces tecum*, and protective orders, as authorized by this part, and to revoke, quash, or modify such subpoenas;

(6) Take and preserve testimony under oath;

(7) Rule on motions and other procedural matters appropriate in a hearing, except that only the Board of Directors shall have the power to grant any motion to dismiss a cease and desist or civil money penalty proceeding or to make a final determination on the merits of such proceedings;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, exclude, limit, or otherwise rule on evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Recuse herself/himself upon motion made by a party or on her or his own motion;

(14) Prepare and present to the Board of Directors a recommended decision as provided in this part;

(15) Establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(16) Do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 908.22 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Finance Board, in its discretion, determines that holding an open hearing would be contrary to the public interest. The Finance Board may make such determination *sua sponte* at any time by written notice to all parties.

(b) *Motion for closed hearing.* Within twenty (20) days of service of a notice, any party or respondent may file with the presiding officer a motion for a non-public hearing and any party may file a pleading in reply to the motion. The presiding officer shall forward the motion and any reply, together with a recommended decision on the motion, to the Board of Directors, who shall make a final determination. Such motions and replies shall be governed by § 908.45.

(c) *Filing documents under seal.* The Finance Board, in its discretion, may file any document, or any part of any document, under seal if the agency makes a written determination that disclosure of the document would be contrary to the public interest. The presiding officer shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 908.23 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice by the Finance Board shall be signed by at least one representative of record in her or his individual name and shall state that representative's address and telephone number and the names, addresses and telephone numbers of all other representatives of record for the person making the filing or submission.

(b) *Effect of signature.* (1) By signing a document, the representative of record or party certifies that—

(i) The representative of record or party has read the filing or submission of record;

(ii) To the best of her or his knowledge, information and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal of existing law, regulation or Finance Board policy or order; and

(iii) The filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the presiding officer shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any representative or party shall constitute a certification that to the best of her or his knowledge, information, and belief, formed after reasonable inquiry, such expressions or statements are well-grounded in fact and are warranted by existing law or a good faith, non-frivolous argument for the extension, modification, or reversal of existing law, regulation, or Finance Board policy or order, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 908.24 Ex parte communications.

(a) *Definition.* (1) *Ex parte* communication means any material oral or written communication relevant to the merits of a cease and desist or civil money penalty proceeding under this part that was neither on the record nor on reasonable prior notice to all parties that takes place between—

(i) An interested person outside the Finance Board (including the person's representative); and

(ii) The presiding officer handling the proceeding, the Board of Directors or any member thereof, a decisional employee of the Finance Board assigned to that proceeding, or any other person who is or may reasonably be expected to be involved in the decisional process.

(2) A communication that does not concern the merits of a proceeding under this part, such as a request for status of the proceeding, does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications.* From the time that a notice commencing a proceeding under this part is issued by the Finance Board until the date that the Board of Directors issues its final decision pursuant to § 908.65, no person referred to in paragraph (a)(1)(i) of this section shall knowingly make or cause to be made an *ex parte* communication. The Board of Directors, any member thereof individually, the presiding officer, or an employee of the Finance Board, shall not knowingly make or cause to be made an *ex parte* communication.

(c) *Procedure upon occurrence of ex parte communication.* If an *ex parte* communication is received by any person identified in paragraph (a) of this section, that person promptly shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within ten days of receipt of service of the *ex parte* communication or the written record of an oral communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or representative for a party who makes an *ex parte* communication, or who encourages or solicits another person or entity to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Board of Directors or the presiding officer, including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue that is the subject of the prohibited communication.

(e) *Consultations by presiding officer.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the presiding officer may not consult a person or party on

any matter relevant to the merits of a proceeding, unless on notice and opportunity for all parties to participate.

(f) *Separation of functions.* An employee or agent engaged in the performance of investigative or prosecuting functions for the Finance Board in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or Board of Directors' review of the recommended decision under § 908.65, except as a witness or counsel in a hearing.

§ 908.25 Filing of papers.

(a) *Filing.* Any papers required to be filed shall be addressed to the presiding officer and filed with the Finance Board, 1777 F Street, NW., Washington, DC 20006.

(b) *Manner of filing.* Unless otherwise specified by the Finance Board or the presiding officer, filing shall be accomplished by:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media upon any conditions specified by the Finance Board or the presiding officer. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.* (1) *Form.* All papers must set forth the name, address and telephone number of the representative or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ × 11-inch paper and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 908.23.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Finance Board and of the filing party, the title and docket number of the proceeding and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Finance Board or the presiding officer, an original and one copy of all documents, papers, transcripts of testimony, and exhibits shall be filed.

§ 908.26 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers or serving a subpoena shall serve a copy upon the representative of record for each party to the proceeding so represented and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivery to the U.S. Postal Service or to a reliable commercial delivery service for same day or overnight delivery;

(3) Mailing by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 908.25(c).

(c) *By the Finance Board or the presiding officer.* (1) All papers required to be served by the Finance Board or the presiding officer upon a party who has appeared in the proceeding in accordance with § 908.72 may be served by any means specified in paragraph (b) of this section.

(2) If a notice of appearance has not been filed in the proceeding for a party in accordance with § 908.72, the Finance Board or the presiding officer shall make service upon such party by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Subject to applicable provisions in this part, service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method reasonably calculated to give actual notice.

(e) *Area of service.* Service in any State, commonwealth, possession, territory of the United States or the District of Columbia on any person doing business in any State, commonwealth, possession, territory of the United States or the District of Columbia, or on any person as otherwise permitted by law, is effective without regard to the place where the hearing is held.

(f) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is taken thereon. The proof of service, which shall serve as prima facie evidence of the fact and date of service, shall show the date and manner of service and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of a representative of record. However, failure to file proof of service contemporaneously with the papers shall not affect the validity of actual service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 908.27 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday or Federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is ten (10) days or less, not including any additional time allowed for in paragraph (c) of this section, intermediate Saturdays, Sundays and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective—

(i) In the case of personal service or same day reliable commercial delivery service, upon actual service;

(ii) In the case of U.S. Postal Service or reliable commercial overnight delivery service, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection; or

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing in the case of filing, and as agreed among the parties in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Finance Board or the presiding officer in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers*. Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits shall be calculated as follows:

(1) If service was made by first class, registered, or certified mail, or by delivery to the U.S. Postal Service for longer than overnight delivery service, add three (3) calendar days to the prescribed period for the responsive filing.

(2) If service was made by U.S. Postal Service or reliable commercial overnight delivery service, add one (1) calendar day to the prescribed period for the responsive filing.

(3) If service was made by electronic media transmission, add one (1) calendar day to the prescribed period for the responsive filing, unless otherwise determined by the Board of Directors or the presiding officer in the case of filing, or by agreement among the parties in the case of service.

§ 908.28 Change of time limits.

Except as otherwise provided by law, the presiding officer may, for good cause shown, extend the time limits prescribed above or prescribed by any notice or non-dispositive order issued under this part. After the referral of the case to the Board of Directors pursuant to § 908.63, the Board of Directors may grant extensions of the time limits for good cause shown. Extensions may be granted on the motion of a party after notice and opportunity to respond is afforded all nonmoving parties, or on the Board of Directors' or the presiding officer's own motion.

§ 908.29 Witness fees and expenses.

Witnesses (other than parties) subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid to witnesses pursuant to the Federal Rules of Civil Procedure (title 28 of the U.S. Code) governing proceedings in the United States district courts, in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage shall be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Finance Board is the issuer of the subpoena. The Finance Board shall not be responsible for or required to pay any fees to or expenses of any witness not subpoenaed by the Finance Board.

§ 908.30 Settlement or other dispute resolution.

Any respondent may, at any time in a cease and desist or civil money penalty proceeding, unilaterally submit to the Finance Board's counsel of record written offers or proposals for settlement of such proceeding in whole or in part without prejudice to the rights of any of the parties. Any such offer or proposal shall be made exclusively to the Finance Board. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. Any party to a proceeding under this part may request a neutral individual preside over settlement negotiations. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding under this part or any court.

§ 908.31 Right to supervise the Banks.

Nothing contained in this part shall limit in any manner the right of the Finance Board to conduct any examination, inspection, or visitation of any Bank, or the right of the Finance Board to conduct or continue any form of investigation authorized by law. Nothing set forth in this part shall restrict or be deemed to restrict the authority of the Finance Board to supervise the Banks or to issue or enforce orders or directives pursuant to section 2B(a)(1), or any other provision, of the Act (12 U.S.C. 1422b(a)(1)).

§ 908.32 Collateral attacks on proceedings under this part.

If a respondent files in any court a collateral attack that purports to challenge all or any portion of a proceeding under this part, the hearing on the merits shall continue without regard to the pendency of any such challenge action. No default or other failure to act as directed in the hearing within the times prescribed in this subpart shall be excused based on the pendency of any such challenge action.

§ 908.33—908.39 [Reserved]

Subpart D—Pre-Hearing Proceedings

§ 908.40 Commencement of proceeding and contents of notices.

Proceedings under this part are commenced by the issuance of a notice of charges or a notice of assessment of a civil money penalty (notice). A notice that is served by the Finance Board upon a respondent in accordance with § 908.7 shall state all of the following:

(a) The legal authority for the proceeding and for the Finance Board's jurisdiction over the proceeding;

(b) A statement of the matters of fact or law showing that the Finance Board is entitled to relief;

(c) A proposed order or prayer for an order granting the requested relief;

(d) The time, place and nature of the hearing;

(e) The time within which to file an answer;

(f) The time within which to request a hearing; and

(g) The address for filing the answer and/or request for a hearing.

§ 908.41 Answer.

(a) *Deadline for filing answer*. Unless otherwise specified by the Finance Board in the notice, respondent shall file an answer within twenty (20) days of service of the notice.

(b) *Content of answer*. An answer shall respond specifically to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice that is not denied in the answer is deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer shall set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*. Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of such respondent's right to appear and contest the allegations in the notice. If no timely answer is filed, the Finance Board's counsel of record may file a motion for entry of an order of default. Upon a finding that no good cause has been shown for the failure to

file a timely answer, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Board of Directors based upon a respondent's failure to answer shall be deemed to be an order issued upon consent.

§ 908.42 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented by the Finance Board prior to the scheduling conference held in accordance with § 908.53, or at any stage of the proceeding with the permission of the presiding officer for good cause shown. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten (10) days after service of the amended notice, whichever period is longer, unless the Board of Directors or the presiding officer orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the notice or answer, and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 908.43 Failure to appear.

Failure of a respondent to appear in person or by a duly authorized representative at the hearing constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice.

§ 908.44 Consolidation and severance of actions.

(a) *Consolidation.* On the motion of any party, or on the Finance Board's or the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the pre-hearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of the Finance Board or any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 908.45 Motions.

(a) *Written motions.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions shall state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally and on the record at a hearing, unless the presiding officer directs that such motion be reduced to writing and filed with the presiding officer. Oral motions must be made a part of the record of the hearing, and accompanied by a proposed order.

(c) *Filing of motions.* Motions shall be filed with the presiding officer, except that following the filing of a recommended decision with the Board of Directors, motions must be filed with the Board of Directors in accordance with § 908.64.

(d) *Responses.* (1) Except as otherwise provided herein, any party may file a written response to a motion within ten days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Board of Directors. The presiding officer shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions shall be governed by §§ 908.51 and 908.52.

§ 908.46 Discovery.

(a) *Limits on discovery.* Subject to the limitations set out in paragraphs (b), (d), and (e) of this section, any party to a hearing under this part may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term *documents* may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(b) *Relevance.* A party may obtain document discovery regarding any matter not privileged provided that the information sought has a logical connection to consequential facts (i.e., material) or may tend to prove or disprove a matter in issue (i.e., relevant) related to the merits of the pending action. Any request to produce documents that calls for irrelevant or immaterial information, or that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents, shall be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requestor's written agreement to pay in advance for the copying, in accordance with § 908.47.

(c) *Forms of discovery.* Document discovery shall be limited to requests for production of documents for inspection and copying. No other form of discovery shall be allowed. Discovery by use of interrogatories may be permitted. This paragraph shall not be interpreted to require the creation of a document.

(d) *Privileged matter.* Privileged documents shall not be discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law.

(e) *Time limits.* All discovery, including all responses to discovery requests, shall be completed within the time set by the presiding officer, but in no case later than ten (10) days prior to the service deadline for pre-hearing submissions in accordance with § 908.54. No exception to this time limit shall be permitted, unless the presiding officer finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 908.47 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. Copies of the request shall be served on all other parties. The request must identify the documents to be produced either by individual item or by category and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or they shall be labeled and organized to correspond with the categories in the request.

(b) *Production or copying.* The request shall specify a reasonable time, place and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests more than 250 pages of copying, the requesting party shall pay for copying and shipping charges. Copying charges are at the current rate per page imposed by the Finance Board at § 910.9(g) of this chapter for requests for documents filed under the Freedom of Information Act, 5 U.S.C. 552. The party to whom the request is addressed may require payment in advance before producing the documents.

(c) *Obligation to update responses.* A party who has responded to a discovery request is not required to supplement the response, unless:

(1) The responding party learns that in some material respect the information disclosed is incomplete or incorrect, and

(2) The additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(d) *Motions to strike or limit discovery requests.* (1) Any party that objects to a discovery request may, within ten (10) days of being served with such request, file a motion in accordance with the provisions of § 908.45 requesting the presiding officer order the request be stricken or otherwise limited. If an objection is made to only a portion of an item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and § 908.45 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five (5) days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The presiding officer has discretion to determine when the identification by category is insufficient.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within (10) ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 908.45 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may, within five (5) days of service of a motion for the issuance of a subpoena compelling production, file a written response to the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses to motions pursuant to this section has expired, the presiding officer shall rule promptly on all such motions. If the presiding officer determines that a discovery request or any of its terms calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he or she may deny or modify the request and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the presiding officer. Notwithstanding any other provision in this part, the presiding officer may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the presiding officer its intention to file a timely motion for interlocutory review of the presiding officer's order to produce the documents, until the motion for interlocutory review has been decided.

(h) *Enforcing discovery subpoenas.* If the presiding officer issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the presiding officer against a party who fails to produce or induces another to fail to produce subpoenaed documents.

§ 908.48 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the presiding officer for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for production in response to the subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 908.46(e) and in accordance with § 908.47. The party requesting the document subpoena is

responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any State, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The presiding officer shall promptly issue any document subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be determined by the presiding officer.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena shall be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 908.47 and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with any part of the subpoena that the presiding officer has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who induces a failure to comply with subpoenas issued under this section.

§ 908.49 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) A party desiring to preserve that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section to the presiding officer for the issuance of a subpoena, including a subpoena *duces tecum,* requiring the attendance of the witness at a deposition. The presiding officer may issue a deposition subpoena under this section upon a showing that—

(i) The testimony is reasonably expected to be material; and

(ii) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed anywhere within the United States and its possessions and territories in which that witness resides or has a regular place of employment or such other convenient place as the presiding officer shall fix.

(3) A subpoena shall be promptly issued upon request, unless the presiding officer determines that the request fails to set forth a valid basis under this section for its issuance. The presiding officer shall make a determination that there is a valid basis for issuing the subpoena. The presiding officer may require a written response from the party requesting the subpoena or require attendance at a conference to determine whether there is a valid basis upon which to issue the requested subpoena.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the presiding officer orders otherwise, no deposition under this section shall be taken on fewer than ten (10) days' notice to the witness and all parties. Deposition subpoenas may be served anywhere within the United States or its possessions or territories on any person doing business anywhere within the United States or its possessions or territories, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion under § 908.45 with the presiding officer to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten (10) days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section shall accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena shall be duly sworn and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for objection might have been avoided if the objection had been presented timely. All questions, answers and objections must be recorded.

(2) Any party may move before the presiding officer for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence that, during the deposition, the witness has refused to submit.

(3) The deposition shall be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or with any order of the presiding officer made upon motion under paragraph (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the presiding officer has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the presiding officer on a party who fails to comply with or induces a failure to comply with a subpoena issued under this section.

§ 908.50 Interlocutory review.

(a) *General rule.* The Board of Directors may review a ruling of the presiding officer prior to the certification of the record to the Board of Directors only in accordance with the procedures set forth in this section.

(b) *Procedure.* Any motion for interlocutory review shall be filed by a party with the presiding officer within ten (10) days of his ruling. Upon the expiration of the time for filing all responses, the presiding officer shall refer the matter to the Board of Directors for final disposition. In referring the matter to the Board of Directors, the presiding officer may indicate

agreement or disagreement with the asserted grounds for interlocutory review of the ruling in question.

(c) *Scope of review.* The Board of Directors may exercise interlocutory review of a ruling of the presiding officer if it finds that—

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Board of Directors under this section suspends or stays the proceeding unless otherwise ordered by the presiding officer or the Board of Directors.

§ 908.51 Summary disposition.

(a) *In general.* The presiding officer shall recommend that the Board of Directors issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that—

(1) There is no genuine issue as to any material fact; and

(2) The movant is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within twenty (20) days after service of such motion or within such time period as allowed by the presiding officer, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of material facts as to which the movant contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, written interrogatory responses, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the movant contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the movant. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his own motion, the presiding officer may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the presiding officer shall determine whether the movant is entitled to summary disposition. If the presiding officer finds that the moving party is not entitled to summary disposition, the presiding officer shall make a ruling denying the motion. If the presiding officer determines that summary disposition is warranted, the presiding officer shall submit a recommended decision to that effect to the Board of Directors under § 908.63.

§ 908.52 Partial summary disposition.

If the presiding officer determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision to the Board of Directors as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the presiding officer has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 908.53 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within thirty (30) days of service of the notice or order commencing a proceeding or at such other time as the parties may agree, the presiding officer shall direct representatives for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a ''scheduling conference.'' The identification of potential witnesses, the time for and manner of discovery and the exchange of any pre-hearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Pre-hearing conference.* The presiding officer may, in addition to the scheduling conference, on his own motion or at the request of any party, direct representatives for the parties to meet with him (in person or by telephone) at a pre-hearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The presiding officer, in his discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at such party's expense.

(d) *Scheduling or pre-hearing orders.* Within a reasonable time following the conclusion of the scheduling conference or any pre-hearing conference, the presiding officer shall serve on each party an order setting forth any agreements reached and any procedural determinations.

§ 908.54 Pre-hearing submissions.

(a) *Service deadline.* Within the time set by the presiding officer, but in no case later than 10 (ten) days before the start of the hearing, each party shall serve on every other party the serving party's:

(1) Pre-hearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such

witness or exhibit is not listed in the pre-hearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 908.55 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general materiality or relevance and reasonableness of scope of the testimony or other evidence sought, the presiding officer may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any State, commonwealth, possession, territory of the United States, or the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of or during a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the presiding officer.

(3) The presiding officer shall promptly issue any hearing subpoena applied for under this section; except that, if the presiding officer determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena or may issue the subpoena in a modified form upon any conditions consistent with this subpart. Upon issuance by the presiding officer, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but no more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the presiding officer that directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 908.8(c). A party's right to seek court enforcement of a hearing subpoena shall in no way limit the sanctions that may be imposed by the presiding officer on a party who fails, or induces a failure, to comply with any subpoena issued under this section.

§§ 908.56–908.59 [Reserved]

Subpart E—Hearing and Post-hearing Proceedings

§ 908.60 Conduct of hearings.

(a) *General rules.* (1) *Hearings.* Hearings shall be conducted in accordance with chapter 5 of Title 5 of the United States Code (5 U.S.C. 501–559) and other applicable law, so as to provide a fair and expeditious presentation of the relevant disputed issues. Except as limited by this subpart, each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross-examination of witnesses as may be required for full disclosure of the facts.

(2) *Order of hearing.* The Finance Board shall present its case-in-chief first, unless otherwise ordered by the presiding officer or unless otherwise expressly specified by law or regulation. The Finance Board shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order or presentation of their cases, but if they do not agree, the presiding officer shall fix the order.

(3) *Examination of witnesses.* Only one representative for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the presiding officer may permit more than one representative for the party presenting the witness to conduct the examination. A party may have one representative conduct the direct examination and another representative conduct re-direct examination of a witness, or may have one representative conduct the cross examination of a witness and another representative conduct the re-cross examination of a witness.

(4) *Stipulations.* Unless the presiding officer directs otherwise, all documents that the parties have stipulated as admissible shall be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing shall be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The presiding officer shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the presiding officer's own motion.

§ 908.61 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551–559) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence (*see generally,* 28 U.S.C.) is admissible in a proceeding conducted pursuant to this subpart.

(3) The presiding officer may admit evidence, which otherwise would be inadmissible under the Federal Rules of Evidence (28 U.S.C.), upon a finding made on the record that the evidence is relevant, material, probative and reliable, and would not prejudice the rights of or cause an undue burden to any party to the proceeding.

(b) *Official notice.* (1) Official notice may be taken of any material fact that may be judicially noticed by a United States district court and any material information in the official public records of any Federal or State government agency.

(2) All matters officially noticed by the presiding officer or the Finance Board shall appear on the record.

(3) If official notice is requested of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a)(1) of this section, any document, including a report of examination, oversight activity, inspection, or visitation, prepared by the Finance Board or by another Federal or State financial institution's regulatory agency is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the presiding officer's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear in the record.

(2) When an objection to a question or line of questioning is sustained, the examining representative of record may make a specific proffer on the record of what he expected to prove by the expected testimony of the witness. The proffer may be by representation of the representative or by direct interrogation of the witness.

(3) The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record and transmit such exhibits to the Board of Directors.

(4) Failure to object to admission of evidence or to any evidentiary ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing and that witness has testified in a deposition in accordance with § 908.49, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the presiding officer may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 908.62 Post-hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the presiding officer shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the presiding officer proposed findings of fact, proposed conclusions of law and a proposed order within thirty (30) days after the parties have received notice that the transcript has been filed with the presiding officer, unless otherwise ordered by the presiding officer.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document.

(3) Any party is deemed to have waived any issue not raised in proposed findings or conclusions timely filed by that party.

(b) *Reply briefs.* Reply briefs may be filed within fifteen (15) days after the date on which the parties' proposed findings and conclusions and proposed order are due. Reply briefs must be limited strictly to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief shall not file a reply brief.

(c) *Simultaneous filing required.* The presiding officer shall not order the filing by any party of any brief or reply brief supporting proposed findings and conclusions in advance of the other party's filing of its brief.

§ 908.63 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within forty-five (45) days after expiration of the time allowed for filing reply briefs under § 908.62(b), the presiding officer shall file with and certify to the Board of Directors, for decision, the record of the proceeding. The record must include the presiding officer's recommended decision, recommended findings of fact and conclusions of law, and proposed order; all pre-hearing and hearing transcripts, exhibits and rulings; and the motions, briefs, memoranda and other supporting papers filed in connection with the hearing. The presiding officer shall serve upon each party the recommended decision, recommended findings and conclusions, and proposed order.

(b) *Filing of index.* At the same time the presiding officer files with and certifies to the Board of Directors, for final determination, the record of the proceeding, the presiding officer shall furnish to the Board of Directors a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the presiding officer in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

§ 908.64 Exceptions to recommended decision.

(a) *Filing exceptions.* Within thirty (30) days after service of the recommended decision, recommended findings and conclusions, and proposed order under § 908.63, a party may file with the Finance Board written exceptions to the presiding officer's recommended decision, recommended findings and conclusions, or proposed order; to the admission or exclusion of evidence; or to the failure of the presiding officer to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Board of Directors if the party taking exception had an opportunity to raise the same objection, issue, or argument before the presiding officer and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in or omissions from the presiding officer's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the presiding officer's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception and the legal authority relied upon to support each exception. Exceptions and briefs in support shall not exceed a total of 30 pages, except by leave of the Finance Board on motion.

(3) Each party may submit one reply brief within ten (10) days of service of exceptions and briefs in support of

exceptions. Reply briefs shall not exceed 15 pages, except by leave of the Finance Board on motion.

§ 908.65 Review by Board of Directors.

(a) *Notice of submission to the Board of Directors.* When the Board of Directors determines that the record in the proceeding is complete, the Finance Board shall serve notice upon the parties that the proceeding has been submitted to the Board of Directors for final decision and order in accordance with this section.

(b) *Oral argument before the Board of Directors.* Upon the initiative of the Board of Directors or on the written request of any party filed with the Board of Directors within the time for filing exceptions under § 908.64, the Board of Directors may order and hear oral argument on the recommended findings, conclusions, decision and order of the presiding officer. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Board of Directors' final decision and order. Oral argument before the Board of Directors must be transcribed.

(c) *Board of Directors' final decision and order.* (1) Decisional employees may advise and assist the Board of Directors in the consideration and disposition of the case, and in the preparation of the final decision and order. The final decision and order of the Board of Directors will be based upon review of the entire record of the proceeding, except that the Board of Directors may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties in accordance with this part.

(2) The Board of Directors shall render and issue a final decision and order within ninety (90) days after notification of the parties that the case has been submitted to the Board of Directors, unless the Board of Directors orders that the action or any aspect thereof be remanded to the presiding officer for further proceedings in accordance with instructions as may be specified by the Board of Directors. Copies of the final decision and order of the Board of Directors shall be served upon each party to the proceeding and otherwise, as may be required by the Board of Directors in accordance with applicable law.

§ 908.66 Exhaustion of administrative remedies.

To exhaust administrative remedies as to any issue on which a party disagrees with the presiding officer's recommendations, a party must file exceptions with the Board of Directors under § 908.64. A party must exhaust administrative remedies as a precondition to seeking judicial review of any final decision and order, in whole or in part, issued by the Board of Directors under § 908.65.

§ 908.67 Stay of final decision and order pending judicial review.

The commencement of proceedings for judicial review of all or part of a final order issued by the Board of Directors in accordance with § 908.65, as provided in § 908.10 may not, unless specifically ordered by the Board of Directors or a reviewing court, operate as a stay of any order issued by the Board of Directors. The Board of Directors may, in its discretion and on such terms as it finds just, stay the effectiveness of all or any part of an order of the Board of Directors pending a final decision on a petition for judicial review of that order.

§ 908.68–908.69 [Reserved]

Subpart F—Rules of Practice Before the Finance Board

§ 908.70 Scope.

This subpart contains rules governing practice by parties or their representatives in any proceeding before the Finance Board. In particular, these rules of practice shall apply to any appearances before the Board of Directors under this part or part 907 of this chapter. This subpart also shall govern the imposition of sanctions by the Finance Board or a presiding officer against parties or their representatives in a hearing under this part or a proceeding under part 907 of this chapter. In the sole discretion of the Finance Board, §§ 908.74 and 908.75 may be applied to persons who appear in a representational capacity in any hearing under this part or any proceeding under part 907 of this chapter, or in any other matter that involves contacting the Finance Board as a principal or agent with respect to asserting the rights, privileges, or liabilities of an individual or entity, including presentations to or communications with the Board of Directors or any member of the Board of Directors. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of the Finance Board are not subject to disciplinary proceedings under this subpart.

§ 908.71 Practice before the Finance Board.

Practice before the Finance Board for the purposes of this subpart, includes, but is not limited to, transacting any business with the Finance Board as counsel, representative or agent for any other person, unless the Finance Board orders otherwise. Practice before the Finance Board also includes the preparation of any statement, opinion, or other paper by a counsel, representative or agent that is filed with the Finance Board in any request, certification, notification, application, report, or other document, with the consent of such counsel, representative or agent. Practice before the Finance Board does not include work prepared for a Bank solely at the request of the Bank for use in the ordinary course of its business.

§ 908.72 Appearances and practice in proceedings before the Finance Board.

(a) *Appearances in proceedings before the Finance Board.* (1) *By attorneys.* A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, commonwealth, possession, territory of the United States, or the District of Columbia and who is not currently suspended or disbarred from practice before the Finance Board.

(2) *By non-attorneys.* An individual may appear on his own behalf. A member of a partnership may represent the partnership and a duly authorized officer, board of director member, employee, or other agent of any corporation or other entity not specifically listed herein may represent such corporation or other entity; provided that such officer, board of director member, employee, or other agent is not currently suspended or disbarred from practice before the Finance Board. A duly authorized officer or employee of any Government unit, agency, or authority may represent that unit, agency, or authority.

(b) *Notice of appearance.* Any person appearing in a representative capacity on behalf of a party, including the Finance Board, shall execute and file a notice of appearance with the presiding officer at or before the time such person submits papers or otherwise appears on behalf of a party in a hearing under this part. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraphs (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing

a notice of appearance on behalf of a party in a hearing under this part, the representative thereby agrees and represents that he is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the presiding officer, continue to accept service until a new representative has filed a notice of appearance or until the represented party indicates that he or she will proceed on a *pro se* basis. Unless the representative filing the notice is an attorney, the notice of appearance shall also be executed by the person represented or, if the person is not an individual, by the chief executive officer, or duly authorized officer of that person.

§ 908.73 Conflicts of interest.

(a) *Conflict of interest in representation.* No representative shall represent another person in an adjudicatory proceeding if it reasonably appears that such representation may be limited materially by that representative's responsibilities to a third person or by that representative's own interests. The presiding officer may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel or other representative represents two or more parties in a proceeding under this part or also represents a nonparty on a matter relevant to an issue in the proceeding, that representative must certify in writing at the time of filing the notice of appearance required by § 908.72:

(1) That the representative has personally and fully discussed the possibility of conflicts of interest with each such party and nonparty;

(2) That each such party and nonparty waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 908.74 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed during the course of any proceeding when any party or representative of record has acted or failed to act in a manner required by applicable statute, regulation, or order, and that act or failure to act—

(1) Constitutes contemptuous conduct. Contemptuous conduct includes dilatory, obstructionist, egregious, contumacious, unethical, or other improper conduct at any phase of any proceeding, hearing, or appearance before the Board of Directors;

(2) Has caused some other party material and substantive injury, including, but not limited to, incurring expenses including attorney's fees or experiencing prejudicial delay;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has delayed the proceeding unduly.

(b) *Sanctions.* Sanctions that may be imposed include, but are not limited to, any one or more of the following:

(1) Issuing an order against a party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that may be just; or

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) The presiding officer, on the motion of any party, or on his own motion, and after such notice and responses as may be directed by the presiding officer, may impose any sanction authorized by this section. The presiding officer shall submit to the Board of Directors for final ruling any sanction that would result in a final order that terminates the case on the merits or is otherwise dispositive of the case.

(2) Except as provided in paragraph (d) of this section, no sanction authorized by this section, other than refusing to accept late papers, shall be imposed without prior notice to all parties and an opportunity for any representative or party against whom sanctions would be imposed to be heard. The presiding officer shall determine and direct the appropriate notice and form for such opportunity to be heard. The opportunity to be heard may be limited to an opportunity to respond verbally immediately after the act or inaction in question is noted by the presiding officer.

(3) For purposes of interlocutory review, motions for the imposition of sanctions by any party and the imposition of sanctions shall be treated the same as motions for any other ruling by the presiding officer.

(4) Nothing in this section shall be read to preclude the presiding officer or the Finance Board from taking any other action or imposing any other restriction or sanction authorized by any applicable statute or regulation.

(d) *Sanctions for contemptuous conduct.* If, during the course of any proceeding, a presiding officer finds any representative or any individual representing himself to have engaged in contemptuous conduct, the presiding officer may summarily suspend that individual from participating in that or any related proceeding or impose any other appropriate sanction.

§ 908.75 Censure, suspension, disbarment and reinstatement.

(a) *Discretionary censure, suspension and disbarment.* (1) The Finance Board may censure any individual who practices or attempts to practice before it or suspend or revoke the privilege to appear or practice before the Finance Board of such individual if, after notice of and opportunity for a hearing in the matter, that individual is found by the Finance Board—

(i) Not to possess the requisite qualifications or competence to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have caused unfair and material injury or prejudice to another party, such as prejudicial delay or unnecessary expenses including attorney's fees;

(iv) To have engaged in, or aided and abetted, a material and knowing violation of the Act or the rules or regulations issued under the Act or any other law or regulation governing Bank operations;

(v) To have engaged in contemptuous conduct before the Finance Board;

(vi) With intent to defraud in any manner, to have willfully and knowingly deceived, misled, or threatened any client or prospective client; or

(vii) Within the last ten years, to have been convicted of an offense involving moral turpitude, dishonesty or breach of trust, if the conviction has not been reversed on appeal. A conviction within the meaning of this paragraph shall be deemed to have occurred when the convicting court enters its judgment or order, regardless of whether an appeal is pending or could be taken and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of

whether a violation is admitted in the consent.

(2) Suspension or revocation on the grounds set forth in paragraphs (a)(1)(ii), (iii), (iv), (v), (vi) and (vii) of this section shall only be ordered upon a further finding that the individual's conduct or character was sufficiently egregious as to justify suspension or revocation. Suspension or disbarment under this paragraph shall continue until the applicant has been reinstated by the Finance Board for good cause shown or until, in the case of a suspension, the suspension period has expired.

(3) If the final order against the respondent is for censure, the individual may be permitted to practice before the Finance Board, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the Finance Board's files.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any State, commonwealth, possession, territory of the United States or the District of Columbia; any accountant or other licensed expert whose license to practice has been revoked in any State, commonwealth, possession, territory of the United States or the District of Columbia; any person who has been and remains suspended or barred from practice before the Department of Housing and Urban Development, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of Federal Housing Enterprise Oversight, the Farm Credit Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission is also suspended automatically from appearing or practicing before the Finance Board. A disbarment or suspension within the meaning of this paragraph shall be deemed to have occurred when the disbarring or suspending agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken and regardless of whether a violation is admitted in the consent.

(2) A suspension or disbarment from practice before the Finance Board under paragraph (b)(1) of this section shall continue until the person suspended or disbarred is reinstated under paragraph (d)(2) of this section.

(c) *Notices to be filed.* (1) Any individual appearing or practicing before Finance Board who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall file promptly with the Finance Board a copy thereof, together with any related opinion or statement of the agency or tribunal involved.

(2) Any individual appearing or practicing before the Finance Board who is or within the last ten years has been convicted of a felony or of a misdemeanor that resulted in a sentence of prison term or in a fine or restitution order totaling more than $5,000 shall file a notice promptly with the Finance Board. The notice shall include a copy of the order imposing the sentence or fine, together with any related opinion or statement of the court involved.

(d) *Reinstatement.* (1) Unless otherwise ordered by the Finance Board, an application for reinstatement for good cause may be made in writing by a person suspended or disbarred under paragraph (a)(1) of this section at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. An applicant for reinstatement under this paragraph (d)(1) may, in the Finance Board's sole discretion, be afforded a hearing.

(2) An application for reinstatement for good cause by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time, but not less than one (1) year after the applicant's most recent application. An applicant for reinstatement for good cause under this paragraph (d)(2) may, in the Finance Board's sole discretion, be afforded a hearing. However, if all the grounds for suspension or disbarment under paragraph (b)(1) of this section have been removed by a reversal of the order of suspension or disbarment or by termination of the underlying suspension or disbarment, any person suspended or disbarred under paragraph (b)(1) of this section may apply immediately for reinstatement and shall be reinstated upon written application notifying the Finance Board that the grounds have been removed.

(e) *Conferences.* (1) The Finance Board may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, disbarment or suspension, regardless of whether a proceeding for censure, disbarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(2) Resignation or voluntary suspension. In order to avoid the institution of or a decision in a disbarment or suspension proceeding, a person who practices before the Finance Board may consent to censure, suspension or disbarment from practice. At the discretion of the Finance Board, the individual may be censured, suspended or disbarred in accordance with the consent offered.

(f) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this part, provided that in proceedings to terminate an existing suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application supported with proof that the suspension should be terminated. The Finance Board may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment be limited to written submissions. All hearings held under this section shall be closed to the public unless the Finance Board, on its own motion or upon the request of a party, otherwise directs that the hearing be open to the public.

Dated: February 13, 2002.

By the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 02–5094 Filed 3–4–02; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 20

Guides for the Rebuilt, Reconditioned, and Other Used Automobile Parts Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has completed its review of the Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry (''Used Auto Parts Guides'' or ''Guides'') and has determined to retain the Guides with updated language and minor revisions.

EFFECTIVE DATE: March 5, 2002.

ADDRESSES: Requests for copies of this document should be sent to the

Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580. The document is available on the Internet at the Commission's website <*http://www.ftc.gov*>

FOR FURTHER INFORMATION CONTACT: David Plottner, Investigator, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, Ohio 44114, telephone number (216) 263–3409, e-mail <*dplottner@ftc.gov*>.

SUPPLEMENTARY INFORMATION:

Introduction

The Used Auto Parts Guides address claims for automotive parts and assemblies that have been used or contain used parts. These parts or assemblies may have been rebuilt, repaired, reconditioned, etc., since they were last used, and may have been repainted and repackaged in such a way that they could easily be confused with new products. Even used parts that have not been rebuilt are usually cleaned and sometimes repainted before being marketed. The Guides suggest that junk yards, rebuilders, auto parts stores, service garages and others in the distribution chain for these parts or assemblies not mislead purchasers about the prior use and/or the reconstructed nature of the parts and the identity of the rebuilder.

Rebuilt auto parts account for a significant portion of the total automobile replacement parts market. One large retailer/distributor commenting on the Guides reported that such parts account for 20% of its retail sales dollars. Some replacement components, alternators and power steering pumps, for example, are nearly always rebuilt because of the significant cost savings over new parts.

The Guides provide advice regarding the manner in which those who sell used automobile parts can avoid unfair or deceptive acts or practices that may violate section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45. The Guides define industry products broadly to include not only used parts for automobiles, but also used parts and assemblies containing used parts for trucks, tractors, motorcycles and other similar self-propelled vehicles. Industry members are those who sell or distribute any of these parts. The Used Auto Parts Guides advise that industry members not:

(1) Deceive purchasers about the previous use of products;

(2) deceive purchasers about the identity of the rebuilder, remanufacturer, reconditioner or reliner;

(3) misrepresent the condition of products and misuse the terms ''rebuilt,'' ''factory rebuilt,'' ''remanufactured,'' or other similar terms.

II. Regulatory Review of the Guides

As part of its program to review current rules and guides, the Commission published in the **Federal Register** in 1998, a notice seeking comments about the regulatory and economic costs and benefits of the Guides (63 FR 17132 (Apr. 8, 1998)). Eight written comments were received.[1] Seven comments favored keeping the Guides; one favored rescinding the Guides.

The comments in favor of retaining the Guides stated that the Guides provide clear guidance to industry members to assist them in determining what disclosures they should make to consumers about used, rebuilt and reconditioned automobile parts and assemblies, and how to make them in a consistent manner. Those who rebuild industry products especially supported retaining the Guides' clear definitions for the terms ''rebuilt'' and ''remanufactured.'' The state Attorneys General supported retaining the Guides because they clearly advise industry of the disclosures necessary to prevent or reduce the incidence of fraudulent activity such as charging unknowing consumers for new parts when the parts are used or rebuilt, and to enable consumers to make informed, cost efficient decisions. The one commenter supporting rescinding the Guides, AutoZone, stated that the Guides are duplicative of state law—statutory, regulatory and common—and are no longer needed, especially in light of the written warranties that now often accompany rebuilt parts, assuring their quality.

III. Determination To Retain the Guides

The Commission has determined to retain the Guides for the following reasons. First, the Guides are based on well-established legal and policy grounds. Many prior Commission cases hold that used articles restored to the appearance of new require an affirmative disclosure of prior use. A 1969 Commission Enforcement Policy Statement (34 FR 176) reiterates this principle.

In recent actions, the Commission has continued to protect consumers from sellers passing off used goods as new. For example, the Commission recently announced two consent orders against mattress retailers who claimed that their new-looking used mattresses were all new, but for the springs, when in fact, they were entirely used mattresses but for their new outer covers.[2] In addition, when the Commission amended the Guides for Environmental Marketing in 1998 to allow sellers to use the term ''recycled content'' to described used and reconditioned products, not just products made from recycled raw material, it cautioned that for products that contained used or reconditioned materials, a recycled content claim should be adequately qualified to avoid consumer deception (*i.e.,* generally, recycled alone is insufficient; used or reconditioned materials must be so identified). 16 CFR 260.7(e) and Example 12.

Second, various states also prohibit misrepresenting used merchandise as new, either by specific statute or by common law, and some rely on the Commission's Guides to complement their laws and enhance their enforcement efforts.[3] For example, some states have statutes or regulations requiring automobile service garages and mechanics to inform a vehicle owner whenever a used part is installed during the course of a repair.[4] The garages and other mechanics need information from their vendors regarding prior use or refurbishing to be able to comply with these requirements. The Guides provide members of the rebuilding industry with clear guidance that assists them in determining what disclosures regarding prior use or refurbishing they should make to consumers and other purchasers, including vendors who resell the products to consumers, and how they should make them in a consistent manner.

Third, there are no private, industry-wide standards covering the use of terms such as ''rebuilt'' or ''remanufactured'' in the sale of used automobile parts generally. This

[1] AutoZone, a retailer/distributor; CarQuest, a retailer/distributor; five trade groups speaking as one: the Automotive Parts and Accessories Association (APAA), the Automotive Service Industry Association (ASIA), the Automotive Parts Rebuilders Association (APRA), the Automotive Engine Rebuilders Association (AERA), and the Heavy Duty Distribution Association (HDDA); Charles P. Schwartz, Jr., an individual who is a former APRA chairman; the late United States Senator John Chafee; Consumers Union, a national consumer group; and, commenting as one, the state Attorneys General of Connecticut, Illinois, Iowa, Nevada, New York, Pennsylvania, and Tennessee. These comments have been placed on the public record as Document Nos. B2365600001–008, respectively, and are available for inspection and copying at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

[2] *See* FTC Press Release, *Consumers Can Rest Easy Following FTC Settlements with Two Used Mattress Resellers* (June 14, 2000).

[3] AutoZone, at 2.

[4] APRA/AERA, at 7.

industry is not in a good position to set its own standards because there are many very small, ''mom and pop'' type rebuilding companies that are not members of the major industry trade associations. These associations, however, use the FTC Guides to educate and police industry members about potentially deceptive practices.

It can be argued that if the Commission were to repeal these Guides, section 5, FTC Act would still protect the public from the deceptive practice of passing off used goods as new.[5] However, should that happen, states and industry associations would lack a tool that they currently find helpful. Thus, on balance, these guides provide sufficient benefits that are not outweighed by costs to merit their retention.

IV. Determinations Regarding Revisions to the Guides

A number of commenters suggested changes to the Guides, which are discussed below. The Commission has determined to update the list of commonly rebuilt used automobile parts contained in section 20.0 of the Guides and to clarify that the Guides apply to advertising in electronic format, such as on the Internet. In addition, the Commission has updated and streamlined certain language in the Guides to conform to current FTC practices.

A. Further Defining the Standards Set Out in the Guides

CarQuest and the state Attorneys General[6] suggested that consumers might benefit from wider ranging and more specifically written standards describing the various levels of dismantling and reconstructing that take place in the industry. For example, the Guides use the terms ''rebuilt,'' and ''remanufactured'' interchangeably, but to some in the industry the term ''remanufactured'' denotes a higher level of reconstruction than does the term ''rebuilt.''[7] Similarly, ''reconditioned,'' may connote a level somewhat lower than ''rebuilt,'' and ''refurbished'' might connote a product that has received very little use in the first place or little additional work before resale in the second. These commenters suggest that the Commission specifically define each of the terms used in the Guides. The state Attorneys General suggest further that the general procedure used in rebuilding or remanufacturing, etc. also be spelled out in label disclosures to consumers.

The descriptive terms used in the Guides are fluid to accommodate the wide range of rebuilding that takes place. All commenters agree that the standard contained in the Guides seems to have worked well. In addition, the Commission has no substantive basis in the record of this review proceeding to define the terms differently or more precisely.The Commission, therefore, has determined not to revise the Guides to adopt more specific standards or procedures than those currently contained in the Guides. The Commission, on the other hand, welcomes industry-sponsored measures to provide more information to consumers through voluntary standards specifying more precise terms, or defining meanings for the various terms, so long as those standards would not mislead consumers about the extent of prior use or the amount of reconstructing that has been done.

B. Modifying the Guides to Specifically Include Foreign Rebuilders

Several commenters suggested that the Commission revise the Guides and take other actions to make clear that foreign rebuilders and importers of used auto parts, rebuilt and otherwise, are covered by the Guides.[8] Some comments suggested that the Commission educate U.S. Customs officials about the Guides; others that the Commission require country-of-origin markings on foreign rebuilt parts packaged in boxes bearing the brand name of a United States distributor.

The Commission has determined that it is not necessary to revise the Guides to address these concerns. First, the Commission has jurisdiction over entities conducting business in the United States regardless of the country of origin of the original new product or of the reconstructed or otherwise used product. The Guides, therefore, currently cover foreign rebuilders and importers of used auto parts who distribute or sell used auto parts in the United States. Second, the Commission's staff can ensure that the U.S. Customs Service is aware of the Guides; no revision to the Guides is required to do so. Finally, the Commission does not ordinarily require country of origin disclosures; it only prohibits false ''made in U.S.A.'' claims. Ordinarily the Commission will not consider a marketer's use of an American brand name or trademark, or the listing of a company's U.S. address in a nonprominent manner, without more, to constitute a U.S. origin claim.[9]

C. Requiring Original Equipment Manufacturers to Cooperate With Rebuilders

Two commenters[10] suggested that original equipment manufacturers (''OEMs'') should be prohibited from limiting the ability of independent rebuilders to obtain parts for rebuilding and should be required to share product design specifications, which would enhance the efficiency of the rebuilding process. It also was suggested that the Commission prohibit OEMs from requiring rebuilders to grind off or otherwise remove model numbers, part numbers and other identifying information.[11] These marks, according to two commenters, often help identify the application for that particular part.

The Commission has determined not to revise the Guides to require the cooperation suggested by the comments. The Auto Parts Guides concern the disclosures regarding prior use or reconstruction of used automobile parts that are necessary to avoid misleading consumers. These other issues, while relevant to the marketplace for used automobile parts in general, have little to do with the disclosures suggested by the Guides.

D. Requiring Repair Facilities To Disclose the Installation of Used or Rebuilt Parts

Three comments[12] reiterated the suggestions of a 1995 National Association Of Attorneys-General Auto Repair Task Force that service technicians and repair garages should be required to disclose whenever used parts have been installed in a customer's vehicle. These comments suggested that

[5] Civil case law also tends to protect consumers. *Champion Spark Plug Co.* v. *Sanders,* 331 U.S. 125 (1947), a trademark infringement suit, held that Champion, a spark plug manufacturer, could not prohibit Sanders, a spark plug rebuilder, from marketing his rebuilt Champion spark plugs so long as he clearly labeled the products as having been rebuilt and clearly identified himself—not Champion—on the label as the rebuilder.

[6] CarQuest, at 3; State Attorneys General, at 4.

[7] This distinction appears to be common in the industry. For example, Ford Motor Company's website cautions consumers that a rebuilt part merely has had its broken components repaired while a ''remanufactured'' part has undergone a much more thorough reconstruction. Ford Motor Company Website, ''Genuine Parts. The Difference Between Remanufactured and Rebuilt'' (http://www/ford.com/customerservice/genuine/versus.html, March 11, 1999) (copy on file at the Federal Trade Commission, East Central Regional Office).

[8] APRA/AERA, at 3, 4; Schwartz, at 3; Consumers Union, at 4.

[9] Enforcement Policy Statement on U.S. Origin Claims, 62 FR 63756, at 63768 (1997).

[10] Schwartz, at 3; CarQuest, at 4.

[11] Schwartz, at 4; APRA/AERA, at 6.

[12] Consumers Union, at 3; CarQuest, at 3; state Attorneys General at 3.

the Guides should be changed to more clearly reflect such recommendation.

No modification of the Guides in this regard is necessary. The Guides already apply to all who sell or distribute industry products. Mechanics and service garages nearly always both sell and install the parts needed to repair a consumer's automobile and are therefore included under the Guides.

E. Updating the List of Commonly Rebuilt Auto Parts and Components

Several commenters suggested that the list of commonly rebuilt automobile parts included in section 20.0 of the Guides should be updated to reflect modern practices. The Commission agrees and has revised the Guides accordingly.

F. Prohibiting the Use of the Word ''Recycled'' Alone To Describe Unreconstructed Used Auto Parts

Three commenters suggested that the Commission should revise the Guides to make it clear that the term ''Recycled,'' by itself, is not adequate to disclose the used nature of used automobile parts which have received little or no reconstruction.

The Commission has already responded to this issue in its Environmental Marketing Guides, 16 CFR part 260. Section 260.7(e) states that the word ''recycled,'' used by itself, cannot substitute for the words ''used,'' ''rebuilt,'' ''reconditioned,'' and other similar descriptors except when the environment in which the product is being offered for sale makes the used nature of the product clear, for example, a used part offered for sale at a junkyard. Therefore, a cross reference to the Environmental Marketing Guides has been added as a footnote to section 20.1(b) of the Used Auto Parts Guides.

List of Subjects in 16 CFR Part 20

Advertising, Motor vehicles, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends 16 CFR chapter I as follows:

PART 20—GUIDES FOR THE REBUILT, RECONDITIONED AND OTHER USED AUTOMOBILE PARTS INDUSTRY

1. The authority citation for 16 CFR part 20 is revised to read as follows:

Authority: 15 U.S.C. 41–58.

2. Section 20.0 is revised to read as follows:

§ 20.0 Scope and purpose of the guides.

The Guides in this part apply to the manufacture, sale, distribution, marketing and advertising (including advertising in electronic format, such as on the Internet) of used parts and assemblies containing used parts designed for use in automobiles, trucks, motorcycles, tractors, or similar self-propelled vehicles whether or not such parts or assemblies have been reconstructed in any way (hereinafter ''industry products''). Such automotive parts and assemblies include, but are not limited to, anti-lock brake systems, air conditioners, alternators, armatures, air brakes, brake cylinders, ball bearings, brake shoes, heavy duty vacuum brakes, calipers, carburetors, cruise controls, cylinder heads, clutches, crankshafts, constant velocity joints, differentials, drive shafts, distributors, electronic control modules, engines, fan clutches, fuel injectors, fuel pumps, front wheel drive axles, generators, master cylinders, oil pumps, power brake units, power steering gears, power steering pumps, power window motors, rack and pinion steering units, rotors, starter drives, speedometers, solenoids, smog pumps, starters, stators, throttle body injectors, torque convertors, transmissions, turbo chargers, voltage regulators, windshield wiper motors, and water pumps. Tires are not included. (Tires are covered by the Tire Advertising and Labeling Guides, 16 CFR Part 228.)

3. Section 20.1 is revised to read as follows:

§ 20.1 Deception generally.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product or part of an industry product is new or unused when such is not the fact, or to misrepresent the current condition, or extent of previous use, reconstruction or repair of any industry product.

(b) It is unfair or deceptive to offer for sale or sell any industry product unless a clear and conspicuous disclosure that such product has been used or contains used parts is made in advertising, sales promotional literature and invoices and on product packaging. Additionally, it is unfair or deceptive to offer for sale or to sell any rebuilt, remanufactured, reconditioned, or otherwise new-appearing industry product unless such disclosure using appropriate descriptive terms is made on the product itself with sufficient permanency to remain visible for a reasonable period of time after installation. Examples of appropriate descriptive terms include, but are not limited to ''Used,'' ''Secondhand,'' ''Repaired,'' ''Remanufactured,'' ''Reconditioned,'' ''Rebuilt,'' or ''Relined.'' [1] On invoices to the trade only, the disclosure may be made by use of any number, mark, or other symbol that is clearly understood by industry members as meaning that the products or parts identified on the invoices have been used.

(c) It is unfair or deceptive to place any means or instrumentality in the hands of others so that they may mislead consumers as to the previous use of industry products or parts.

4. Section 20.2 revised to read as follows:

§ 20.2 Deception as to identity of rebuilder, remanufacturer, reconditioner or reliner.

(a) It is unfair or deceptive to misrepresent the identity of the rebuilder, remanufacturer, reconditioner or reliner of an industry product.

(b) In connection with the sale or offering for sale of an industry product, if the identity of the original manufacturer of the product, or the identity of the manufacturer for which the product was originally made, is revealed and the product was rebuilt, remanufactured, reconditioned or relined by someone else, it is unfair or deceptive to fail to disclose such fact wherever the original manufacturer is identified in advertising and sales promotional literature concerning the product, on the container in which the product is packed, and on the product, in close conjunction with, and of the same permanency and conspicuousness as, the disclosure of previous use of the product described by this section. Examples of such disclosures include:

(1) Disclosure of the identity of the rebuilder:

Rebuilt by John Doe Co.

(2) Disclosure that the product was rebuilt by an independent rebuilder:

Rebuilt by an Independent Rebuilder.

(3) Disclosure that the product was rebuilt by someone other than the manufacturer so identified:

Rebuilt by other than XYZ Motors.

(4) Disclosure that the product was rebuilt for the identified manufacturer, if such is the case:

Rebuilt for XYZ Motors.

5. Section 20.3 is revised to read as follows:

[1] If the term ''recycled'' is used, it should be used in a manner consistent with the requirements for that term set forth in the Guides for the Use of Environmental Marketing Claims, 16 CFR 260.7(e).

§ 20.3 Misrepresentation of the terms ''rebuilt,'' ''factory rebuilt,'' ''remanufactured,'' etc.

(a) It is unfair or deceptive to use the words ''Rebuilt,'' ''Remanufactured,'' or words of similar import, to describe an industry product which, since it was last subjected to any use, has not been dismantled and reconstructed as necessary, all of its internal and external parts cleaned and made rust and corrosion free, all impaired, defective or substantially worn parts restored to a sound condition or replaced with new, rebuilt (in accord with the provisions of this paragraph) or unimpaired used parts, all missing parts replaced with new, rebuilt or unimpaired used parts, and such rewinding or machining and other operations performed as are necessary to put the industry product in sound working condition.

(b) It is unfair or deceptive to represent an industry product as ''Factory Rebuilt'' unless the product was rebuilt as described in paragraph (a) of this section at a factory generally engaged in the rebuilding of such products. (See also § 20.2.)

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–5127 Filed 3–4–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 250

Guides for the Household Furniture Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule; rescission of the guides for the household furniture industry.

SUMMARY: The Commission published a **Federal Register** document initiating the regulatory review of the Federal Trade Commission's (''Commission'') Guides for the Household Furniture Industry (''Furniture Guides'' or ''Guides''). The Commission has now completed its review, and determined to rescind the Furniture Guides.

EFFECTIVE DATE: March 5, 2002.

ADDRESSES: Requests for copies of the **Federal Register** document should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The document is available on the Internet at the Commission's website, *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Ingrid E. Whittaker-Ware, Attorney, Federal Trade Commission, 225 Peachtree Street, NE., Suite 1500, Atlanta, GA 30303, (404) 656–1390, e-mail <*Iwware@ftc.gov*>.

SUPPLEMENTARY INFORMATION: The Furniture Guides, promulgated by the Commission in 1973, provide guidance for industry members in the manufacture, sale, distribution, labeling and advertising of household furniture products. The Guides generally advise members of the furniture industry to make affirmative disclosures of product facts, which if known by a purchaser, might influence the purchasing decision. The specific disclosures concern identification of the types of wood and outer coverings or stuffings used in furniture. These disclosures were designed to protect consumers from being misled that the product is different from that which is actually being offered.

The Guides advise affirmative disclosure of the composition of a furniture item and specifies where and how the disclosure should be made. For example, Section 250.1(b) advises that a tag or label affirmatively describing the product be permanently affixed to the product until consummation of sale to a consumer, and that the same information be included in advertising for the product. The Guides also provide examples of deceptive and non-deceptive descriptions of wood and wood imitations to ensure that prospective purchasers are not misled by a product's appearance. In addition, the Guides provide that wood names or trade names not be used to describe materials that simulate the appearance of wood without clearly disclosing that such names are merely descriptive of color or other simulated finish.

The Commission has determined, as part of its oversight responsibilities, to review rules and industry guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. The Commission solicited comments on the Furniture Guides in the **Federal Register** on April 10, 2000, 65 FR 18933. The comment period which was originally scheduled to end on June 9, 2000, was extended to July 10, 2000, at the request of members of the furniture industry.

The Commission received one comment. This comment was submitted by the American Furniture Manufacturers Association (''AFMA''). The AFMA expressed concern that the Guides, as currently written, have little practical use to members of the furniture industry due to significant changes in technology and terminology since the Guides were first promulgated. It noted that

> [T]he existing Guides are almost thirty years old, and fail to reflect current manufacturing processes, materials usage, terminology and the expectations of today's consumers. As currently drafted, the Guides may indeed frustrate good faith efforts to inform the consumer and therefore produce unintended anti-competitive and anti-consumer consequences.

AFMA Comments to the Federal Trade Commission on Guides for the Household Furniture Industry, July 10, 2000, at 3

The AFMA also suggests that it was the consensus of members of the industry that if the Guides were to be retained it would be necessary that they undergo significant modifications. The Commission received no comments from any consumer group.

In the almost thirty years since the Guides were issued, the Commission has not received any complaints relating to practices covered by these Guides. Further, within the last ten years the Commission has not had need to initiate any enforcement action relating in any way to these Guides. Moreover, the Commission's unfettered ability to pursue actions against members of this industry for engaging in unfair and deceptive acts and practices under section 5 of the FTC Act, 15 U.S.C. 45, should deter manufacturers and sellers from misleading consumers in the future in the labeling, advertising or sale of household furniture products. If, in the future, deceptive practices prove to be a problem in this industry, however, the Commission may pursue enforcement actions as needed on a case-by-case basis.

For the reasons explained in this notice, the Commission has determined not to revise the Furniture Guides substantially in order to bring them up to date, but instead to rescind the Guides because they are no longer necessary.

List of Subjects in 16 CFR Part 250

Forest and forest products, Furniture industry, Trade practices.

PART 250—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends Chapter 1 of Title 16 of the Code of Federal Regulations by removing Part 250.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–5126 Filed 3–4–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 259

Guide Concerning Fuel Economy Advertising for New Automobiles

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has completed its review of the Guide Concerning Fuel Economy Advertising for New Automobiles (''Fuel Guide''), and announces its decision to retain the Guide.

EFFECTIVE DATE: March 5, 2002.

ADDRESSES: Requests for copies of this document should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. The document is available on the Internet at the Commission's website, *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Willie L. Greene, Investigator, Federal Trade Commission, East Central Region, 1111 Superior Avenue—Suite 200, Cleveland, Ohio 44114, telephone number (216) 236–3406, e-mail <*wgreene@ftc.gov*>.

SUPPLEMENTARY INFORMATION: As part of the Commission's review of its rules and guides, the Commission published a **Federal Register** Notice seeking comments about the Fuel Guide's overall costs and benefits, and the continuing need for the Guide.[1] The Fuel Guide, adopted in 1975 and subsequently revised twice,[2] provides guidance to automobile manufacturers to prevent deceptive advertising and to facilitate the use of fuel economy information in advertising. The Guide advises vehicle manufacturers and dealers how to disclose the established fuel economy of a vehicle, as determined by the Environmental Protection Agency's rules pursuant to the Automobile Information Disclosure Act (15 U.S.C. 2996), in advertisements that make representations regarding the fuel economy of a new vehicle. The disclosure is tied to the claim made in the advertisement. If both city and highway fuel economy claims are made, both city and highway EPA figures should be disclosed. A claim regarding either city or highway fuel economy should be accompanied by the corresponding EPA figure. A general fuel economy claim would trigger disclosure of the EPA city figure, although the advertiser would be free to state the highway figure as well.

The Commission received three comments in response to the **Federal Register** Notice.[3] All three of the comments recommended that the Commission retain the Fuel Guide. Two of the comments supported this recommendation by asserting that the Fuel Guide prevents deceptive or misleading fuel economy advertising and provides consumers with fuel economy numbers that can be used in making comparisons among vehicle models.[4] One comment also noted that the expense to automobile manufacturers of implementing the Guide is minimal.[5]

After review of the Fuel Guide and its effect on the new vehicle industry and purchasers of new vehicles, the Commission concludes that the Fuel Guide is useful to both consumers and the new vehicle industry. The Guide affords clarity in the advertising of fuel economy and therefore should be retained. Price escalation in gasoline and diesel fuels has caused considerable interest and concern in the fuel industry and among consumers. The Commission believes that consumers will continue to benefit from accurate information in the advertising of fuel economy for new vehicles.

The Fuel Guide has been a benefit to consumers, providing fuel economy numbers in advertising that allow meaningful comparisons of different vehicle models. While the benefit to consumers has been great, the cost to vehicle manufacturers of complying with the Guide's provisions has been minimal.

Based on its review, the Commission has concluded that there is a continuing need for the Fuel Guide, which has benefitted both consumers and the new vehicle industry. The Commission therefore has decided to retain the Fuel Guide.

List of Subjects in 16 CFR Part 259

Advertising, Fuel economy, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–5125 Filed 3–4–02; 8:45 am]

BILLING CODE 6750–01–M

[1] 64 FR 19729 (Apr. 22, 1999).

[2] 40 FR 42003 (Sept. 10, 1975); 43 FR 55747 (Nov. 29, 1978); 60 FR 56230 (Nov. 8, 1995).

[3] The Commission's request for public comment elicited comments from: (1) Josephine S. Cooper, Alliance of Automobile Manufacturers, Washington, DC (''AAM''), #00001; (2) James C. Minnis, National Automobile Dealers Association, McLean, VA (''NADA''), #00002 and (3) David Sokol, Houston, TX (''Sokol'') #00003. These comments are on the public record in file number P004243 as document numbers B25589500001 through B25589500003. The comments are available for viewing in Room 130 at the Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, from 8:30 a.m. to 5:00 p.m., Monday–Friday.

[4] AAM, #00001; NADA, #00002.

[5] AAM, #00001.

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1315

New Restrictions on Lobbying

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its rules regarding restrictions on lobbying to make inflation adjustments in the range of civil monetary penalties it may assess against persons who violate these rules. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

EFFECTIVE DATE: March 5, 2002.

FOR FURTHER INFORMATION CONTACT: Clifford L. Beach, Jr., Attorney, 865–632–4146, Office of the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10A, Knoxville, Tennessee 37902–1401.

SUPPLEMENTARY INFORMATION: Section 4 of the ''Federal Civil Penalties Inflation Adjustment Act of 1990'' (Public Law 101–410), as amended by the ''Debt Collection Improvement Act of 1996'' (Public Law 104–134), requires each Federal agency with statutory authority to assess a civil monetary penalty (CMP) to adjust each CMP by the inflation adjustment described in section 5 of the Act. Such adjustment is to be made by regulation published in the **Federal Register**. Agencies are to make inflation adjustments by regulation at least once every four years. Any increase in a CMP made pursuant to the Act applies only to violations that occur after the date the increase takes effect.

TVA's only statutory authority to assess a CMP is found at 31 U.S.C. 1352(c), which describes the range of penalties TVA may impose for a violation of that statute's prohibition against use of appropriated funds to pay any person for influencing or attempting to influence a Federal official in connection with any Federal action and for a failure to file a declaration or a declaration amendment as required by that statute. The penalties to be imposed

for such violations and failures to file range from $11,000 to not more than $110,000. Based on application of the standard inflation adjustment formula in the Act, TVA is amending its rules at 18 CFR 1315.400(a), (b), and (e) to increase the minimum CMP it may assess under 31 U.S.C. 1352(c) to $12,000 and the maximum CMP it may assess under the statute to $120,000.

Matters of Regulatory Procedures

Notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it implements a definitive statutory formula mandated by the Act.

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 18 CFR Part 1315

Administrative practice and procedures, Penalties.

Accordingly, for the reasons set out in the preamble, 18 CFR part 1315 is amended as follows:

PART 1315—NEW RESTRICTIONS ON LOBBYING

1. The authority citation for part 1315 is revised to read as follows:

Authority: 16 U.S.C. 831–831ee; 31 U.S.C. 1352.

2. Section 1315.400 is amended by removing the figure ''$11,000'' and adding in its place ''$12,000'' each time it appears in paragraphs (a) and (b); by removing the figure ''$110,000'' and adding in its place ''$120,000'' each time it appears in paragraphs (a) and (b); by removing the figure ''$10,000'' and adding in its place ''$12,000'' each time it appears in paragraph (e); and by removing the figure ''$100,000'' and adding in its place ''120,000'' in paragraph (e).

Dated: February 6, 2002.

Clifford L. Beach, Jr.,

Attorney.

[FR Doc. 02–5014 Filed 3–4–02; 8:45 am]

BILLING CODE 8120–08–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–300; MM Docket No. 01–18; RM–10026; RM–10098]

Radio Broadcasting Services; Arriba, Bennett, Brush and Pueblo, CO; Pine Bluffs, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of February 22, 2002, a document concerning updating the FM Table of Allotments for Section 73.202(b). The effective date was published incorrectly. This document corrects the effective date.

DATES: Effective March 25, 2002.

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

SUPPLEMENTARY INFORMATION: On February 22, 2002, the Commission published a document (67 FR 8205) amending § 73.202(b), the Table of FM Allotments by adding Channel 240A to Arriba, Colorado, Channel 296C to Bennett, Colorado, Channel 295C2 to Pueblo, Colorado, and Channel 238C3 to Pine Bluffs, Wyoming. In addition, the document removed Channel 296C1 from Brush, Colorado[1] and Channel 296C2 from Pueblo, Colorado. The correct effective date is March 25, 2002.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–5162 Filed 3–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–368; MM Docket No. 01–183; RM–10192]

Radio Broadcasting Services; Rule, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239C2 to Rule, Texas, as that community's first local aural transmission service, in response to a petition for rule making filed by Katherine Pyeatt. See 66 FR 42621, August 14, 2001. The allotment of Channel 239C2 at Rule, Texas, requires a site restriction 12.7 kilometers (7.9 miles) east of the community, utilizing coordinates 33–13–01 NL and 99–45–45 WL.

DATES: Effective April 8, 2002. A filing window for Channel 239C2 at Rule, Texas, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process for Channel 239C2 at Rule, Texas, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–183, adopted February 6, 2002, and released February 22, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Rule, Channel 239C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–5163 Filed 3–4–02; 8:45 am]

BILLING CODE 6712–01–P

[1] 47 CFR parts 70 to 79, revised October 1, 2000, at Section 73.202(b) under Colorado, reflects the allotment of Channel 296A at Brush, Colorado. However, that allotment was modified in the context of MM Docket No. 88–605, adopted September 11, 1989, to specify Channel 296C1.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–2002–11675 (HM–145M)]

RIN 2137–AD65

Hazardous Materials: Revisions to the List of Hazardous Substances and Reportable Quantities

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

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR) by revising the ''List of Hazardous Substances and Reportable Quantities'' that appears in the table, ''Hazardous Substances other than Radionuclides''. This action is required by the Superfund Amendments and Reauthorization Act (SARA) of 1986, which amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). These laws require RSPA to regulate all hazardous substances designated by the Environmental Protection Agency (EPA). This final rule will enable shippers and carriers to identify the affected CERCLA hazardous substances, comply with all applicable HMR requirements, and make the required notifications if a discharge of a hazardous substance occurs.

DATES: This amendment is effective on October 1, 2002. However, immediate compliance with the regulations as amended in this final rule is authorized.

FOR FURTHER INFORMATION CONTACT: Michael Johnsen (202) 366–8553, Office of Hazardous Materials Standards, RSPA, 400 7th Street, SW, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA) at the RCRA/Superfund hotline at (800) 424–9346 or, in Washington, DC, (202) 382–3000.

SUPPLEMENTARY INFORMATION:

Background

Section 202 of SARA (Public Law 99–499) amended Section 306(a) of CERCLA (Public Law 96–510), 42 U.S.C. 9656(a), by requiring the Secretary of Transportation to list and regulate hazardous substances, listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5127). The Research and Special Programs Administration (RSPA, we) carries out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law, 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a), as amended by Section 202 of SARA.

In carrying out that statutory mandate, we have no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. RSPA did not issue a notice of proposed rulemaking prior to issuing this final rule. RSPA lacks discretion concerning the regulation of hazardous substances under the HMR, therefore, under the Administrative Procedure Act notice would serve no purpose and thus is unnecessary.

Therefore, under the CERCLA scheme, EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQs, before RSPA can amend its list of hazardous substances. In the preamble to a final rule on this subject issued under Docket HM–145F (51 FR 42174; November 21, 1986), RSPA included the following statement:

> ''It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQ's in the Appendix as adjustments are made by EPA.''

This final rule adjusts the ''List of Hazardous Substances and Reportable Quantities'' that appears in Table 1 of Appendix A to § 172.101, based on the following EPA final rules that added or removed entries to the EPA table—List of Hazardous Substances and Reportable Quantities under CERCLA in 40 CFR 302.4:

(1) March 17, 2000, rule (65 FR 14472) removed two listings (2,4,6-Tribromophenol and K140);

(2) November 8, 2000, rule (65 FR 67068) added two waste codes generated from the chlorinated aliphatics industry (K174 and K175); and

(3) November 20, 2001, rule (66 FR 57258) added three waste codes from petroleum refining (K176, K177 and K178).

In addition, this final rule corrects several errors to the ''List of Hazardous Substances and Reportable Quantities'' that appears in Table 1 of Appendix A to § 172.101:

(1) The group of waste codes (K156, K157, K158, K169, K170, K171, and K172) that appear in the table under ''2,4,6-Tribromophenol'' is moved to the end of the list with the other K waste codes; and

(2) The RQs for ''Chloromethyl methyl ether'', ''Dichloromethyl ether'', ''Methane, chloromethoxy-'' and ''Methane, oxybis(chloro-'' from 1 pound to 10 pounds.

This final rule will enable shippers and carriers to identify CERCLA hazardous substances, comply with all applicable HMR and EPA requirements, and make required notifications if a discharge of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a discharge of a hazardous substance is subject to EPA reporting requirements under 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard under 33 CFR 153.203.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements but does not adopt any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to

hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), and (3) above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This rule is required by law. Federal hazardous materials transportation law provides at Sec. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for these requirements is June 3, 2002.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments, does not impose substantial direct compliance costs, and is required by law, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act applies only to final rules that are preceded by notices of proposed rulemaking. Because this rule was not preceded by an NPRM, no assessment is required. EPA addressed the Regulatory Flexibility Act when it made the hazardous substances designations and changes reflected in this rule.

E. Paperwork Reduction Act

This final rule does not impose any new information collection burdens.

F. Regulation Identifier Number (RIN)

A regulation identifier 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.

G. Unfunded Mandates Reform Act

This final rule imposes no mandates and, thus, does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Environmental Assessment

The revisions in this final rule to the list of hazardous substances regulated under the HMR are based on EPA rulemakings that modified the EPA list of hazardous substances and reportable quantities required by CERCLA. Readers should consult the EPA rulemaking dockets for detailed information on the expected environmental impacts of these changes.

List of Subjects in 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, Title 49, part 172 of the Code of Federal Regulations, is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In Appendix A to § 172.101, Table 1 is amended by removing, revising, and adding, in alphanumeric order, the following entries to read as follows:

Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
[REMOVE].	
* * * * *	
Dichloromethyl ether	1(0.454)
* * * * *	
2,4,6–Tribromophenol	100
K140	100
K156	1
K157	1
K158	1
K169	10
K170	1
K171	1
K172	1
* * * * *	
[REVISE].	
* * * * *	
Chloromethyl methyl ether	10 (4.54)
* * * * *	
Dichloromethyl ether	10 (4.54)
* * * * *	
Methane, chloromethoxy-	10 (4.54)
* * * * *	
Methane, oxybis(chloro-	10 (4.54)
* * * * *	
[ADD].	
* * * * *	
K156	1 (0.454)
K157	1 (0.454)
K158	1 (0.454)
K169	10 (4.54)
K170	1 (0.454)
K171	1 (0.454)
K172	1 (0.454)
K174	1 (0.454)
K175	1 (0.454)
K176	1 (0.454)
K177	5000 (2270)
K178	1 (0.454)

* * * * *

Issued in Washington, DC on February 22, 2002, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator, Research and Special Programs Administration.

[FR Doc. 02–5089 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 021402B]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the IFQ Program

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

ACTION: Announcement of fishing season dates.

SUMMARY: NMFS announces the opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) program. The season will open 1200 hrs, Alaska local time (A.l.t.), March 18, 2002, and will close 1200 hrs, A.l.t., November 18, 2002. This period is the same as the 2002 IFQ and Community Development Quota season for Pacific halibut adopted by the International Pacific Halibut Commission (IPHC). The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

DATES: Effective 1200 hrs, A.l.t., March 18, 2002, until 1200 hrs, A.l.t., November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) with fixed gear in the IFQ regulatory areas defined in § 679.2 has been managed under the IFQ program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, chosen by the IPHC. The directed fishing season for sablefish with fixed gear managed under the IFQ program will open 1200 hrs, A.l.t., March 18, 2002, and will close 1200 hrs, A.l.t., November 18, 2002. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

The Assistant Administrator for Fisheries, NOAA, finds that coordinating the opening of the IFQ sablefish fishery with the IFQ halibut fishery will allow full use of the sablefish allocated to the fixed gear managed under the IFQ program. Halibut and sablefish are fished primarily by the same people using the same gear. This action responds to the best available information recently obtained from the IPHC. Pursuant to the Northern Pacific Halibut Treaty, the opening and closing dates of the halibut season were determined by the IPHC during the week of January 24, 2002. Failure to coordinate the two seasons by having a halibut fishery without a concurrent sablefish season could result in unacceptable levels of sablefish bycatch. Accordingly, the need to implement this action prior to the IFQ halibut season opening constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement this action prior to the IFQ halibut season opening constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

Dated: February 27, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–5233 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 43
Tuesday, March 5, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[Reg–126485–01]

RIN 1545–BA06

Statutory Mergers and Consolidations; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document cancels the public hearing on proposed regulations that define the term statutory merger or consolidation as that term is used in section 368(a)(1)(A).

DATES: The public hearing originally scheduled for Wednesday, March 13, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Thursday, November 15, 2001 (66 FR 57400), announced that a public hearing was scheduled for Wednesday, March 13, 2002, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 368 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Wednesday, February 20, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, February 26, 2002, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, March 13, 2002, is cancelled.

Cynthia E. Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–5235 Filed 3–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

26 CFR Part 301

[Reg–107366–00]

RIN 1545–AY08

Civil Cause of Action for Damages Caused by Unlawful Tax Collection Actions, Including Actions Taken in Violation of Section 362 or Section 524 of the Bankruptcy Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to civil causes of action for damages caused by unlawful collection actions of officers and employees of the IRS and the awarding of costs and certain fees. The proposed regulations reflect amendments made by the Taxpayer Bill of Rights 2 and the Internal Revenue Service Restructuring and Reform Act of 1998. The proposed regulations affect all persons who suffer damages caused by unlawful collection actions of officers or employees of the IRS.

DATES: Written comments and requests for a public hearing must be received by June 3, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (Reg–107366–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:ITA:RU (Reg–107366–00), room 5226, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Kevin B. Connelly, (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to civil actions for damages caused by unlawful collection actions of officers or employees of the IRS. The Taxpayer Bill of Rights 2 (TBOR2), Public Law 104–168 (110 Stat. 1465), amended section 7433 of the Internal Revenue Code of 1986 (Code) by increasing the maximum amount of damages a taxpayer may be awarded for unlawful collection actions from $100,000 to $1,000,000. TBOR2 also eliminated the jurisdictional requirement that administrative remedies be exhausted before a court may award damages; TBOR2 authorized the court, however, to reduce damages if it determined that the plaintiff did not exhaust administrative remedies. These TBOR2 provisions were effective for actions of IRS officers or employees after July 30, 1996. The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685), although retaining the pre-existing authorization for an award of damages in the case of reckless or intentional disregard of the Code or regulations, amended section 7433 by providing that taxpayers may file actions for damages caused by the negligent disregard of the Code or regulations. In addition, this amendment provided that an action for damages could be brought for the IRS's willful violation of section 362 (relating to the automatic stay) or section 524 (relating to the effect of discharge) of the Bankruptcy Code. The maximum amount of damages that may be awarded for negligent disregard is $100,000. The maximum amount of damages that may be awarded for reckless or intentional disregard or for willful violations of section 362 or 524 of the Bankruptcy Code is $1,000,000. RRA 1998 also reinstated the requirement under section 7433 that the plaintiff must exhaust administrative remedies before a court may award damages. These RRA 1998 provisions are effective for actions of IRS officers or employees after July 22, 1998.

RRA 1998 also added new subsection (h) to section 7426, which authorizes persons who bring wrongful levy actions under section 7426 to sue for

damages caused by the reckless or intentional, or negligent, disregard of any provision of the Code, plus costs of the action. Consistent with section 7433, damages awarded under section 7426(h) are limited to $1,000,000 for reckless or intentional disregard and $100,000 for negligent disregard. In addition, a plaintiff must exhaust administrative remedies before a court may award damages under section 7426(h). The provisions of section 7433 relating to mitigation and the period for bringing an action also apply to actions brought under section 7426(h).

Explanation of Provisions

§ 301.7426–2

RRA 1998 added a new subsection (h) to section 7426. Subsection (h) authorizes persons to sue the United States in federal district court for damages due to a wrongful levy caused by the reckless or intentional, or negligent, disregard of a provision of the Code. Plaintiffs are entitled to recover the lesser of actual direct economic damages and costs of the action or $1,000,000 ($100,000 in the case of negligence). The amendment also provided that the rules of section 7433(d) relating to exhaustion of administrative remedies, mitigation of damages and the period for bringing an action shall apply. The proposed regulations thus adopt rules like those promulgated under section 7433 that plaintiffs must mitigate damages and no damages may be awarded unless the court determines that the plaintiff has exhausted administrative remedies available within the IRS, e.g., by filing an administrative claim for damages. The proposed regulations also provide that any action for damages under this section must be brought within 2 years after the date the action accrues. This two-year limitations period is independent of the nine-month period after the wrongful levy during which the IRS may return, or the third party may make a claim for, wrongfully levied property.

§ 301.7430–8

Section 7430 provides that reasonable administrative costs may be awarded to the prevailing party in an administrative proceeding brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under Title 26. Because, prior to the amendments in RRA 1998, taxpayers generally were not entitled to recover costs for administrative proceedings in connection with collection matters, the current regulations exclude such collection matters, including proceedings under sections 7432 and 7433, from the definition of *administrative proceedings*. To reflect the RRA 1998 amendments, the proposed regulations expand the definition of an administrative proceeding to include any administrative action for damages under section 7433(e) and any procedure or action brought before the IRS seeking relief with respect to a violation by the IRS of section 362 or 524 of the Bankruptcy Code.

The proposed regulations provide that the prevailing party is a party who establishes that, in connection with the collection of his or her federal tax, the IRS has willfully violated a provision of section 362 or 524 of the Bankruptcy Code. The only administrative costs that may be awarded are those incurred after the date of the bankruptcy petition that gave rise to the section 362 stay or section 524 discharge injunction.

A claim with the IRS for administrative costs must be filed within 90 days after the date the IRS mails its decision on the taxpayer's administrative claim for damages under § 301.7433–2(e) or claim for relief from a violation of section 362 or 524 of the Bankruptcy Code.

§ 301.7433–1

Section 3102 of RRA 1998 amended section 7433(a) of the Code by providing that a taxpayer may sue the United States in a district court of the United States for damages caused by the negligent disregard of the Code or regulations in connection with the collection of the taxpayer's tax liability. Section 801 of TBOR2 amended section 7433(b) by increasing the maximum amount of damages that a taxpayer may recover for damages caused by the reckless or intentional disregard of the Code or regulations from $100,000 to $1,000,000. Section 3102 of RRA 1998 caps the amount of damages that a taxpayer may recover for negligent disregard at $100,000. The proposed regulations under § 301.7433–1 reflect these changes.

§ 301.7433–2

RRA 1998 also amended section 7433 by adding a new subsection (e). Subsection (e) gives taxpayers the right to petition the bankruptcy court to recover damages if, in connection with the collection of a federal tax, any officer or employee of the IRS willfully violates section 362 or 524 of the Bankruptcy Code or any regulation promulgated thereunder. Damages in connection with a claim under section 7433(e) are recoverable under section 7433(b) and are subject to the limitations imposed by section 7433(d).

Section 362 relates to the automatic stay, which arises by operation of law when a debtor files a bankruptcy petition. The stay prohibits certain collection actions against the debtor, the debtor's property, and the property of the bankruptcy estate. Prior to enactment of section 7433(e), individuals injured by the IRS's willful violation of the automatic stay could only sue to recover actual damages, including costs and attorneys' fees, under Bankruptcy Code section 362(h). Section 7433(e) provides an alternative cause of action to recover damages, but still permits an individual to recover damages under section 362(h) of the Bankruptcy Code, in lieu of an action under section 7433(e). However, section 7433(e) explicitly provides that administrative and litigation costs incurred in pressing a claim under section 362(h) of the Bankruptcy Code may only be paid pursuant to, and subject to the conditions described in, section 7430 of the Code. Section 7430 authorizes the payment of administrative and litigation costs only if a taxpayer exhausts administrative remedies. The proposed regulations provide that in order to qualify for an award of administrative and litigation costs in an action under section 362(h) of the Bankruptcy Code, a taxpayer must (as in the case of damages actions under section 7433(e)) file an administrative claim with the IRS relating to the violation of the automatic stay.

Section 524 sets forth the effect of a discharge under the Bankruptcy Code. A discharge operates as an injunction against the commencement or continuation of any action to collect a discharged debt as a personal liability of the debtor. Prior to enactment of section 7433(e), a debtor who believed the IRS had willfully violated the discharge injunction could request the Bankruptcy Court under Bankruptcy Code section 105 to hold the IRS in contempt and seek to recover damages under that Bankruptcy Code provision. Section 7433(e) now provides the exclusive remedy for the IRS's willful violation of the discharge injunction.

The proposed regulations set forth procedures relating to these claim and damage allowance provisions. Damages recoverable under section 7433(e) for a violation of the automatic stay or the discharge injunction are limited to (1) the actual, direct economic damages sustained by the taxpayer (and the taxpayer has a duty to mitigate those damages), plus (2) costs of the action. The maximum damage award is $1,000,000. No petition for damages

under section 7433(e) may be filed in a bankruptcy court unless the taxpayer first exhausts administrative remedies within the IRS.

Similar to rules previously adopted with respect to other wrongful collection actions, the proposed regulations define direct, economic damages as actual, pecuniary damages sustained by the taxpayer as a result of the willful violation of section 362 or 524 of the Bankruptcy Code. Injuries such as inconvenience, loss of reputation, and emotional distress, are not compensable except to the extent they result in actual pecuniary loss.

The proposed regulations define costs of the action that are recoverable as damages under section 7433(e) as: (1) Fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of paper necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those enumerated in this paragraph.

Reasonable administrative and litigation costs, including attorneys fees, are not recoverable as direct economic damages. These costs are recoverable, if at all, under section 7430. The taxpayer generally will be entitled to reasonable litigation costs under section 7430 if the taxpayer (1) files an administrative claim with the IRS, (2) establishes that the IRS willfully violated either the automatic stay under Bankruptcy Code Section 362 or the discharge injunction under section 524, (3) substantially prevails with respect to the amount of damages in controversy, and (4) meets the requirements of sections 7430(c)(4)(A)(ii) regarding net worth.

A petition for damages under section 7433 may not be filed in a bankruptcy court unless the taxpayer first files an administrative claim for damages with the IRS. The claim must be made in writing to the Chief, Local Insolvency Unit for the judicial district in which the bankruptcy was filed. The claim must include: (1) The claimant taxpayer's name, taxpayer identification number, current address, current home and work telephone numbers and any convenient times to be contacted; (2) the court and case number of the bankruptcy case in which the violation occurred; (3) a description, in reasonable detail, of the violation (with copies of any available substantiating documentation or correspondence with the IRS); (4) a description of the injuries incurred by the taxpayer filing the claim (with copies of any available substantiating documentation or evidence); (5) the dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (along with any available substantiating documentation or evidence); and (6) the signature of the taxpayer or any duly authorized representative.

The proposed regulations provide that, after an administrative claim for damages has been filed, a petition for damages under section 7433 may not be filed in a bankruptcy court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. Because a taxpayer must petition the bankruptcy court for damages within two years after the cause of action accrues, the proposed regulations contain an exception for claims filed in the last six months before the two-year limitation period expires. In those circumstances, taxpayers may file petitions for damages at any time after they file their administrative claims and before the period of limitations expires. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. Alternatively, taxpayers may submit comments electronically to the IRS Internet at *www.irs.gov/regs.* All comments will be available for public inspection and copying. The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand or to implement. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summons Division, CC:PA:CBS, IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7426–2 is added to read as follows:

§ 301.7426–2 Recovery of damages in certain cases.

(a) *In general.* In addition to remedies related to wrongful levy set forth in § 301.7426–1(b), if a district court of the United States finds in any action brought under section 7426 that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title, the United States shall be liable to the plaintiff for damages. The plaintiff has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000 ($100,000 in the case of negligence), or the sum of—

(1) Actual, direct economic damages as defined in § 301.7433–1(b) sustained as a proximate result of the reckless, intentional, or negligent actions of the officer or employee, reduced by the amount of any damages awarded under § 301.7426–1(b); and

(2) Costs of the action as defined in § 301.7433–1(c).

(b) *Administrative remedies must be exhausted.* The court may not award a judgment for damages under paragraph (a) of this section unless the court determines that the plaintiff has filed an administrative claim pursuant to paragraph (d) of this section, and has satisfied the requirements of paragraph (c) of this section.

(c) *No request for damages in a district court of the United States prior to filing an administrative claim.* (1) Except as provided in paragraph (c)(2) of this section, no request for damages under paragraph (a) of this section shall be maintained in any district court of the United States before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (d) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (d) of this section.

(2) If an administrative claim is filed in accordance with paragraph (d) of this section during the last six months of the period of limitations described in paragraph (f) of this section, the claimant may file an action in a district court of the United States any time after the administrative claim is filed and before the expiration of the period of limitations.

(d) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 ($100,000 in the case of negligence) or actual, direct economic damages as defined in § 301.7433–1(b) shall be sent in writing to the Chief, Local Insolvency Unit for the area in which the levy was made.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address and current home and work telephone numbers (indicating any convenient times to be contacted) of the person making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the damages incurred by the claimant filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(v) The signature of the claimant or duly authorized representative.

(3) *Duly authorized representative.* For purposes of this paragraph (d), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the claimant before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed to the claimant.

(e) *No liability for damages for any sum in excess of the dollar amount sought in the administrative claim.* See § 301.7433–1(f).

(f) *Period of limitations*—(1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in a district court of the United States within 2 years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the plaintiff has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(g) *Recovery of costs under section 7430.* See § 301.7433–1(h).

(h) *Effective date.* This section is applicable on the date final regulations are published in the **Federal Register**.

Par. 3. Section 301.7430–1 is amended by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g) and (h), respectively, and adding a new paragraph (e) to read as follows:

§ 301.7430–1 Exhaustion of administrative remedies.

* * * * *

(e) *Actions involving willful violations of the automatic stay under section 362 of the Bankruptcy Code*—(1) *Section 7433 claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code or the discharge provisions under section 524 of the Bankruptcy Code unless it files an administrative claim for damages or for relief from a violation of section 362 or 524 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the area in which the bankruptcy petition that is the basis for the asserted automatic stay was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 7433.

(2) *Section 362(h) claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code unless it files an administrative claim for relief from a violation of section 362 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the area in which the bankruptcy petition that is the basis for the asserted automatic stay was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 362(h) of the Bankruptcy Code.

* * * * *

§ 301.7430–2 [Amended]

Par. 4. In § 301.7430–2, paragraph (c)(2) is amended by:

1. Adding the language ''except that requests with respect to administrative proceedings defined by § 301.7430–8(c) should be made to the Chief, Local Insolvency Unit'' at the end of the first sentence.

2. Removing the language ''District Director for the district'' and adding ''Internal Revenue Service office'' in its place in the second sentence.

Par. 5. Section 301.7430–3 is amended by:

1. Revising paragraph (a)(4),

2. Paragraph (b) is amended by adding the language ''except those collection actions described by section 7433(e)'' at the end of the last sentence.

The revision reads as follows:

§ 301.7430–3 Administrative proceeding and administrative proceeding date.

(a) * * *

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under section 7432 or 7433, except proceedings brought under section 7433(e) and § 301.7433–2 or proceedings otherwise described in § 301.7430–8(c). See § 301.7430–8.

* * * * *

Par. 6. Section 301.7430–6 is amended by adding a sentence at the end of the section to read as follows: § 301.7430–6 Effective dates.

* * * Sections 301.7430–2(c)(2), 7430–3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 7. Section 301.7430–8 is added to read as follows: § *301.7430–8 Administrative costs incurred in damage actions for violations of section 362 and 524 of the Bankruptcy Code.*

(a) *In general.* The Internal Revenue Service may grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue

Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) *Prevailing party.* A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430–5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and

(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

(c) *Administrative proceeding.* For purposes of this section, an administrative proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under § 301.7433–2(e).

(d) *Costs incurred after filing of bankruptcy petition.* Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) *Time for filing claim for administrative costs.* (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction to the taxpayer.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs within 6 months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia but within an internal revenue district, the term legal holiday also means a statewide legal holiday in the state where such office is located.

(f) *Effective date.* This section is applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 8. Section 301.7433–1 is amended as follows:

1. In paragraph (a) introductory text, in the first sentence, the language ‘‘, or by reason of negligence,’’ is added after the language ‘‘recklessly or intentionally’’. In addition, the language ‘‘$100,000’’ in the third sentence is removed and ‘‘$1,000,000 ($100,000 in the case of negligence)’’ is added in its place.

2. In paragraph (b)(1) the language ‘‘, or negligent,’’ is added after the language ‘‘reckless or intentional’’.

3. In paragraph (e)(1), in the first sentence, the language ‘‘$100,000’’ is removed and ‘‘$1,000,000 ($100,000 in the case of negligence)’’ is added in its place. In addition, the language ‘‘district director (marked for the attention of the Chief, Special Procedures Function) of the district’’ is removed and ‘‘Chief, Local Insolvency Unit in the area’’ is added in its place.

4. In paragraph (h), in the penultimate sentence, the language ‘‘7432(a)’’ is removed and ‘‘7433(a)’’ is added in its place.

5. Revising paragraph (i).

The revision reads as follows:

§ 301.7433–1 Civil cause of action for certain unauthorized collection actions.

* * * * *

(i) *Effective dates.* The portions of this section relating to reckless or intentional acts are applicable to actions taken by Internal Revenue Service officials after July 30, 1996. The portions of this section relating to negligent acts are applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

Par. 9. Section 301.7433–2 is added to read as follows:

§ 301.7433–2 Civil cause of action for violation of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* (1) If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to the automatic stay) or section 524 (relating to discharge) of title 11, United States Code, or any regulation promulgated under the provisions of title 11, United States Code, the taxpayer may file a petition for damages against the United States in federal bankruptcy court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000, or the sum of—

(i) Actual, direct economic damages sustained as a proximate result of the willful actions of the officer or employee; and

(ii) Costs of the action.

(2) An action under this section constitutes the exclusive remedy under the Internal Revenue Code for violations of sections 362 and 524 of the Bankruptcy Code. In addition, taxpayers injured by violations of section 362 of the Bankruptcy Code may maintain actions under section 362(h) of the Bankruptcy Code (relating to an individual injured by a willful violation of the stay).

(b) *Actual, direct economic damages*—(1) *Definition.* See § 301.7433–1(b)(1).

(2) *Litigation costs and administrative costs not recoverable as actual, direct economic damages.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. These costs may be recoverable under section 7430 (see paragraph (h) of this section), or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the costs set forth in § 301.7433–1(c).

(d) *No civil action in federal bankruptcy court prior to filing an administrative claim*—

(1) *In general.* Except as provided in paragraph (d)(2) of this section, no action under paragraph (a)(1) of this section shall be maintained in any bankruptcy court before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) *When administrative claim filed in last six months of period of limitations.* If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the

period of limitations described in paragraph (g) of this section, the taxpayer may petition the bankruptcy court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address, and current home and work telephone numbers (with an identification of any convenient times to be contacted) of the taxpayer making the claim;

(ii) The location of the bankruptcy court in which the underlying bankruptcy case was filed and the case number of the case in which the violation occurred;

(iii) A description, in reasonable detail, of the violation (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iv) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(v) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available documentation or evidence); and

(vi) The signature of the taxpayer or duly authorized representative.

(3) *Duly authorized representative defined.* For purposes of this paragraph (e), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) *No action in bankruptcy court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section may be instituted in federal bankruptcy court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*—(1) *Time for filing.* A petition for damages under paragraph (a) of this section must be filed in bankruptcy court within two years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of litigation costs and administrative costs under section 7430*—(1) *In general.* Litigation costs, as defined in § 301.7433–1(b)(2)(i), including attorneys fees, not recoverable under this section may be recoverable under section 7430 if a taxpayer challenges in whole or in part an Internal Revenue Service denial of an administrative claim for damages by filing a petition in the bankruptcy court. If, following the Internal Revenue Service's denial of an administrative claim for damages, a taxpayer files a petition in the bankruptcy court challenging that denial in whole or in part, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(ii) (relating to net worth and size requirements), the taxpayer will be considered a prevailing party for purposes of section 7430, unless the Internal Revenue Service establishes that the position of the Internal Revenue Service in the proceeding was substantially justified. Such taxpayer will generally be entitled to attorneys' fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph (h), if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that the Internal Revenue Service did not willfully violate Bankruptcy Code section 362 or 524.

(2) *Administrative costs*—(i) *In general.* Administrative costs, as defined in § 301.7433–1(b)(2)(ii), including attorneys' fees, not recoverable under this section may be recoverable under section 7430. See § 301.7430–8.

(ii) *Limitation regarding recoverable administrative costs.* Administrative costs may be awarded only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(i) *Effective date.* This section is applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–5113 Filed 3–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: On January 24, 2002, OSHA re-opened the rulemaking record (67 FR 3465) for 60 days to submit to the record the Agency's final draft risk assessment, peer review reports on the draft final risk assessment, and the National Academy of Sciences/Institute of Medicine (NAS/IOM) report ''Tuberculosis in the Workplace'' and to request comments on these documents. OSHA is extending the deadline for 60 days from March 25, 2002 until May 24, 2002, to allow interested parties additional time for submitting their comments to the record.

DATES: Comments and data must be postmarked no later than May 24, 2002. Comments submitted electronically or by FAX must be submitted by May 24, 2002.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket H–371, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Comments of 10 pages or fewer may be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comments are sent to the Docket Office immediately thereafter.

You may also submit comments electronically to *http://ecomments.osha.gov*. Information such as studies and journal articles cannot be

attached to electronic submissions and must be submitted in duplicate to the Docket Office address listed above. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking, including the peer reviewers' reports, OSHA's draft final risk assessment and the NAS/IOM report, is available for inspection and copying in the Docket Office, Docket H–371, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Amanda Edens, Directorate of Health Standards Programs, Occupational Safety and Health Administration, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693–2270, FAX (202) 693–1678.

SUPPLEMENTARY INFORMATION: On October 17, 1997, OSHA published a proposed standard for Occupational Exposure to TB (62 FR 54160). In the proposal, the Agency made a preliminary determination based on a review of the available data that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures potentially involving exposure to TB.

Many persons submitted comments addressing OSHA's preliminary quantitative risk assessment and suggested that OSHA should use more current data in developing its final quantitative risk assessment. In response to these concerns, OSHA reopened the rulemaking record for 30 days to solicit data and comments with respect to assessing the occupational risk of TB infection and disease (64 FR 34625, June 28, 1999). After reviewing all comments in the expanded record, the Agency revised its preliminary quantitative risk assessment to produce a draft final risk assessment. (Ex. 184) The Agency then chose to have this draft final risk assessment peer reviewed by two experts in the fields of TB epidemiology and risk assessment. The peer reviewers selected were Dr. Richard Menzies and Dr. Mark Nicas. Dr. Menzies, Professor and Director of the Respiratory Epidemiology Unit at McGill University in Montreal, Canada, is a physician experienced in the epidemiology, diagnosis, and treatment of TB and is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to and treatment of TB. Dr. Menzies is also an expert in the use of tuberculin skin testing as a diagnostic test for infection. Dr. Mark Nicas, Professor at the University of California Berkeley and a Certified Industrial Hygienist, is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to TB and the development of mathematical models for TB transmission. These two reviewers evaluated the overall methodology used by OSHA in the draft final risk assessment, the appropriateness of these studies for the exposure scenarios, the adequacy of the mathematical models, the values of the parameters used to estimate the TB case activation and death rates, the use and estimates of state background infection rates, and the uncertainties associated with the OSHA risk estimates. (Exs. 185 and 186)

In 1999, the U.S. Congress requested that the National Academy of Sciences undertake a short-term study of occupational TB (Pub. L. 106–113) including evaluation of the risks to health care workers due to occupational exposure to TB, the extent to which the TB guidelines of the Centers for Disease Control and Prevention are being implemented, and the potential effectiveness of an OSHA TB standard to protect workers from occupational exposure to TB. The report that was prepared by the IOM, the health policy arm of the Academy, was released on January 16, 2001. In view of the significance of this report, OSHA also placed this report in the record for comment. (Ex. 187)

On February 13, 2002, the Association for Professionals in Infection Control and Epidemiology (APIC), the American Health Care Association (AHCA), and the American Society for Microbiology (ASM), requested from the Secretary of Labor a 60 day extension of the deadline for submitting comments. The letter stated that the APIC, AHCA and ASM believed that the current deadline did not provide sufficient time for a thorough examination of the new risk assessment documents OSHA had added to the rulemaking record.

Risk assessment, as well as the other issues addressed in the re-opening of the record, continues to be of concern to OSHA, and the Agency wants to ensure that all interested parties have ample time to submit comments. Therefore, OSHA has decided to extend the deadline for submitting comments an additional 60 days from March 25, 2002 until May 24, 2002.

Authority: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C 655), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of February, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–5160 Filed 3–4–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); Improving the Academic Achievement of the Disadvantaged; Correction

AGENCY: Department of Education.

ACTION: Notice of meeting to conduct a negotiated rulemaking process; correction.

SUMMARY: On February 28, 2002 a notice of meetings to conduct a negotiated rulemaking process relating to improving the academic achievement of the disadvantaged was published in the **Federal Register** (67 FR 9223). This document corrects the address of the meetings, the list of individuals who will participate in negotiated rulemaking, and a Web site address.

FOR FURTHER INFORMATION CONTACT: Susan Wilhelm, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W202, Washington, DC 20202–6132. Telephone (202) 260–0826.

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 person listed in the preceding paragraph.

The meeting site is accessible to individuals with disabilities. If you need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in alternative format), notify the contact person listed in this notice in advance of the scheduled meeting date. We will make every effort to meet any request we receive.

SUPPLEMENTARY INFORMATION: The caption **ADDRESSES** on page 9223, column two, reads ''The five meetings to conduct the negotiated rulemaking process will be held at the U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202.'' It is corrected to read ''The five meetings to conduct the negotiated rulemaking process will be held at the Sheraton Premiere At Tysons Corner, 8661 Leesburg Pike, Vienna, VA 22182.'' The published listing of individuals under the heading *Representing Principals and Teachers* on page 9224, column one, is corrected by adding to the list ''David Sherman, Vice President, UFT, New York City (NY)''. The published listing of individuals under the heading *Representing local Administrators and Local School Boards* on page 9224, column one, is corrected by removing from the list ''Nelson Smith, charter schools, Washington, DC'' and adding, in its place, ''Nelson Smith, Managing Director for New School Services, New American Schools, Arlington (VA); formerly Executive Director of the DC Public Charter School Board''. The published Web site under the heading *Topics Selected for Negotiation* on page 9224, column two, reads ''*www.ed.gov/nelb/*''. It is corrected to read ''*www.ed.gov/nclb/*''.

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: *www.ed.gov/legislation/FedRegister*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office 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*

Dated: February 28, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–5256 Filed 3–1–02; 11:21 am]

BILLING CODE 4001–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Part 457

[CMS–2127–P]

RIN 0938–AL37

State Children's Health Insurance Program; Eligibility for Prenatal Care for Unborn Children

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: In order to provide prenatal care and other health services, this proposed rule would revise the definition of ''child'' under the State Children's Health Insurance Program (SCHIP) to clarify that an unborn child may be considered a ''targeted low-income child'' by the State and therefore eligible for SCHIP if other applicable State eligibility requirements are met. Under this definition, the State may elect to extend eligibility to unborn children for health benefits coverage, including prenatal care and delivery, consistent with SCHIP requirements.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 6, 2002.

ADDRESSES: In commenting, please refer to file code CMS–2127-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2127-P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kathleen Farrell, (410) 786–3285.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195.

I. Background

Section 490l of the Balanced Budget Act, (Public Law 105–33), as amended by Public Law 105–100, added title XXI to the Act. Title XXI authorizes the State Children's Health Insurance Program (SCHIP) to assist State efforts to initiate and expand the provision of child health assistance to uninsured, low-income children. Under title XXI, States may provide child health assistance primarily for obtaining health benefits coverage through (1) a separate child health program that meets the requirements specified under section 2103 of the Act; (2) expanding eligibility for benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of the two approaches. To be eligible for funds under this program, States must submit a State child health plan (State plan), that meets the applicable requirements of title XXI and is approved by the Secretary.

The State Children's Health Insurance Program is jointly financed by the Federal and State governments and is administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligibility groups, benefit packages, payment levels for coverage, and administrative and operating procedures. Under section 2102(b) of the Act, States have discretion to adopt eligibility standards that are related to age, and thus may extend SCHIP eligibility only to certain age groups of targeted low-income children (who must be under age 19). SCHIP provides a capped amount of funds to States on a matching basis for Federal fiscal years (FY) 1998 through 2007. Regulations implementing SCHIP are set forth at 42 CFR part 457.

II. Provisions of the Proposed Regulations

Section 2110 of the Act sets forth the definition of a targeted low-income child. In accordance with this section of

the Act, at § 457.310 we define a targeted low-income child as a child who meets the standards set forth at § 457.310 and the eligibility standards established by the State. The term ''child'' is defined at section 2110(c)(1) of the Act as an individual under 19 years of age. Under this framework and in accordance with the regulations promulgated by the Secretary, a State may elect the age groups of targeted low-income children under age 19 that will be eligible for SCHIP coverage under their State plans. For example, a State plan may permit eligibility of children only through age 12. This statutory definition is currently repeated in the regulations at § 457.10.

For reasons set forth below, in interest of providing necessary pre-natal care to children, we propose in this regulation to clarify and expand the definition of the term ''child'' so that a State may elect to make individuals in the period between conception and birth eligible for coverage as well under their State plan. Specifically, we would expand and revise the definition to clarify that ''child'' means an individual under the age of 19 and may include any period of time from conception to birth through age 19. This clarification of the definition of child will provide States with the option to consider an unborn child to be a targeted low-income child and therefore eligible for SCHIP if other applicable State eligibility requirements are met. This clarification would be consistent with the general statutory flexibility given States to elect the age groups of targeted low income children who must be under 19 years of age. Absent this clarification, under SCHIP there is a significant population of children who would be eligible at birth but who would not have had the benefit of needed prenatal care and delivery services. Currently, a pregnant woman under age 19 could be eligible as a targeted low income child and her child would benefit from needed prenatal care and delivery services by virtue of the mother's eligibility status. Absent this clarification, a pregnant woman over age 19 could not be eligible as a targeted low income child, and her child thus would not necessarily have the benefit of needed prenatal care and delivery services. This clarification would permit States to ensure that these needed services are available to benefit unborn children independent of the mother's eligibility status.

It is anticipated that the children covered by this regulation will become eligible for the SCHIP program after birth. By establishing eligibility prior to birth, the proposed change would improve continuity of care and simply allow states to establish eligibility at an earlier but medically critical point in time.

It is well established that access to prenatal care can improve health outcomes during infancy as well as over a child's life. Prenatal care includes monitoring the health of both the mother and the unborn child. The importance of prenatal care is widely accepted for the reasons summarized in the Department's 1999 report, *Trends in the Well-Being of America's Children and Youth,* ''Receiving prenatal care late in a pregnancy, or receiving no prenatal care at all, can lead to negative health outcomes for mother and child.'' This 1999 report shows that while the percentage of women who receive late prenatal care (defined as seventh month or later) has declined for women in all racial and ethnic groups and ages, there are still significant differences by race and ethnicity and age. For example, five percent of women aged 20 to 24 receive late or no prenatal care compared to 3.9 percent of all women. This proposed rule change would allow states to provide coverage under SCHIP to the unborn children of those pregnant women if other eligibility criteria are met. Since low-income women are less likely to receive prenatal care, this rule would allow states to provide those needed services to a segment of the population that otherwise may not receive them.

The report explains,

> Adequate prenatal care is determined by both the early receipt of prenatal care (within the first trimester) and the receipt of an appropriate number of prenatal care visits for each stage of a pregnancy. Women whose prenatal care fails to meet these standards are at a greater risk for pregnancy complications and negative birth outcomes.

In the 2000 *Trends in the Well-Being of America's Children and Youth,* the Department states,

> Early prenatal care allows women and their health care providers to identify, and when possible, treat or correct health problems and health-compromising behaviors that can be particularly damaging during the initial stages of fetal development. Increasing the percentage of women who receive prenatal care, and who do so early in their pregnancies, can improve birth outcomes and lower health care costs by reducing the likelihood of complications during pregnancy and childbirth.

The 2000 Report explains,

> Babies born weighing less than 2,500 grams face an increased risk of physical and developmental complications and death. These babies account for four-fifths of all neonatal deaths (deaths under 28 days of age) and are 24 times more likely to die during the first year than are heavier infants.

According to the Report, low birthweight infants account for 7.6 percent of all infants born to mothers age 20 to 24 years.

Medical care is continually advancing and offers opportunities for services specifically targeted to the care of the unborn child. ''Fetal medicine'' or ''fetology'' is emerging as a distinct and important medical specialty which includes: obstetrics, maternal-fetal medicine, neonatology, pediatrics and fetal/neonatal pediatric surgery. Physicians specializing in fetal medicine use the pre-partum period to diagnosis potentially life threatening conditions in utero (*e.g.* congenital cystic adenomatoid malformation, congenital diaphragmatic hernia, congenital heart disease, gastroschisis, giant neck masses, hydrocephalus, obstructive uropathy omphalocele, spina bifida, sacrococcygeal teratoma). Once detected, such conditions can often be surgically or medically treated in utero, with beneficial consequences which can include: saving the life of the child; elimination of long neo-natal, post-partum medical care for the child; and ultimately lower post-partum medical care costs for the child and therefore the SCHIP plan. The Secretary would like to permit the States the flexibility to pay for the medical expenses related to unborn children because the Secretary has determined that provision of such services before birth should result in healthier infants, better long-term child growth and development and ultimate cost savings to the SCHIP plans (and the federal government through the SCHIP contribution process) through reduced expenditures for high cost neo-natal care.

This regulatory clarification is intended to benefit both the unborn children and their mothers by promoting continuity of important medical care. Healthy pregnancies should also result in significant savings in public expenditures over a child's lifetime.

In order to protect against the substitution of Title XXI enhanced payments for Medicaid payments, we have added a new subparagraph in section 457.626(a) Prevention of duplicate payments. This subparagraph would clarify that payment is not available under Title XXI when payment may be reasonably expected to be made under Medicaid on the basis of the Medicaid eligibility or enrollment of the pregnant woman. Under section 2105(c)(6)(B) of the SCHIP statute, payment under SCHIP is not available if payment can be reasonably expected under another federally financed health

benefits program. To permit shifting of claims for services that could be covered under Medicaid to the SCHIP program would not be consistent with this provision. The intent of this regulation is to provide prenatal services for unborn children who would otherwise not be covered by Medicaid or other coverage. We want to ensure that Title XXI funds do not substitute for Medicaid funds.

The purpose of the enhanced match in Title XXI is to encourage states to increase eligibility for health insurance coverage. So too is the purpose of this proposed rule. Consistent with congressional intent, the Department will work with states which seek to adopt this definition to ensure that coverage will be expanded beyond current Title XIX and Title XXI levels.

To the extent that a state elects to include unborn children in the SCHIP definition of children, as permitted by this rule, we believe that the state must also apply that same interpretation in assessing compliance with the Medicaid maintenance of effort provision of section 2105(d)(1). Since unborn children receive medical assistance under the Medicaid program through their mothers' status as pregnant women, more restrictive eligibility standards or methodologies for pregnant women in Medicaid would violate this maintenance of effort requirement. This requirement will be considered when state plan amendments to adopt the expanded definition are submitted. For the same reasons, a state that defines children under SCHIP to include unborn children would need to apply the same definition in the screen-and-enroll process described in SCHIP regulations at 42 CFR 457.350. We are proposing to modify these requirements to clarify that, for purposes of the screen and enroll process, individuals are properly enrolled in the appropriate program.

States will continue to have the authority to set eligibility requirements under their State plans, including age limits so long as the age limit is under 19 years of age, and hence States would not be required to extend coverage to this population. States that opt to extend eligibility to unborn children will submit a State plan amendment in accordance with § 457.60.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 457.60 requires a State to submit to CMS for approval an amendment to its approved State plan, whenever necessary, to reflect any changes in; (1) Federal law, regulations, policy interpretations, or court decisions, (2) State law, organization, policy or operation of the program, or (3) the source of the State share of funding. The burden associated with this requirement is the time and effort for a State to prepare and submit any necessary amendments to its State plan to CMS for approval. Based upon CMS's previous experiences with State plan amendments we estimate that on average, it will take a State 8 hours to complete and submit an amendment. We estimate that 13 States/territories will submit an amendment on an annual basis for a total burden of 104 hours.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million.

This proposed rule would revise and clarify the definition of ''child'' under the State Children's Health Insurance Program (SCHIP) to provide that an unborn child may be considered a ''targeted low-income child'' by the State and therefore eligible for SCHIP if other applicable State eligibility requirements are met. We estimate that 13 states will elect to include this definition in their State plans. We also estimate that an additional 30,000 unborn children will benefit by this change. In States that adopt this option, the health status of children will improve to the extent that their mothers receive prenatal care. We estimate that the budget impact will be $320 million over a five-year period. Therefore, the provisions set forth in this proposed rule will not have an impact of $110 million or more annually. These are the best estimates available. However, we are interested in seeking comment from the public on estimates of the impact of this rule. Neither is this rule expected to impose an unfunded mandate on States exceeding $110 million annually. Therefore, we have not prepared an analysis of cost and benefits as required by E.O. 12866 and the Unfunded

Mandates Act for rules with significant economic impacts or that impose significant unfunded mandates on States. Also, we believe the changes being promulgated in this document will have very little direct impact on small entities as defined under the RFA or on small rural hospitals as defined under section 1102(b) of the Social Security Act. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has federalism implications. The option for States to extend coverage to unborn children promulgated in this proposed rule does not meet the criteria for having Federalism implications. This provision would not impose direct costs on states or local governments, nor does it preempt State laws. This new option only increases State flexibility and, therefore, prior consultation is not required. However, we welcome input from State and local governments through the notice and comment process.

List of Subjects in 42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Children's Health Insurance Program, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR part 457 is proposed to be amended as set forth below:

PART 457—ALLOTMENTS AND GRANTS TO STATES

1. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies

2. In § 457.10, the definition of ''Child'' is revised to read as follows:

§ 457.10 Definitions and use of terms.

* * * * *

Child means an individual under the age of 19 including the period from conception to birth.

* * * * *

Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment

3. Amend § 457.350 as follows:

A. Redesignate the text of paragraph (b) following the heading as paragraph (b)(1).

B. Add paragraph (b)(2) to read as follows:

§ 457.350 Eligibility screening and facilitation of Medicaid enrollment.

* * * * *

(b) Screening objectives. (1) * * *

(2) Screening procedures must also identify any applicant or enrollee who would be potentially eligible for Medicaid services based on the eligibility of his or her mother under one of the poverty level groups described in 1902(l) of the Act, section 1931 of the Act or a Medicaid demonstration project approved under section 1115 of the Act.

* * * * *

Subpart F—Payment to States

4. Revise § 457.622(c)(5) to read as follows:

§ 457.622 Rate of FFP for State expenditures.

* * * * *

(c) * * *

(5) The state does not adopt eligibility standards and methodologies for purposes of determining a child's eligibility under the Medicaid State plan that were more restrictive than those applied under policies of the State plan in effect on June 1, 1997. This limitation applies also to more restrictive standards and methodologies for determining eligibility for services for a child based on the eligibility of a pregnant woman.

* * * * *

5. Amend § 457.626 to add a new paragraph (a)(3) to read as follows:

§ 457.626 Prevention of duplicate payments.

(a) * * *

(3) Services are for an unborn child and are payable under Medicaid as a service to an eligible pregnant woman under that program.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: February 18, 2002.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 22, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–5217 Filed 3–1–02; 2:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 28, 109, 122, 131, 169, 185, and 199

[USCG–2001–11118]

RIN 2115–AG28

Liferaft Servicing Intervals

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its commercial vessel regulations to provide consistency in the requirements for servicing of inflatable liferafts and inflatable buoyant apparatus (IBA). We are proposing this rule to eliminate an unnecessary burden on vessel operators and to eliminate confusion among the public and Coast Guard field personnel. The proposed rule would defer the first servicing of a new liferaft or IBA to two years after initial packing on all commercial vessels not certificated under the International Convention for the Safety of Life at Sea (SOLAS).

DATES: Comments and related material must reach the Docket Management Facility on or before May 6, 2002.

ADDRESSES: To make sure that 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–2001–11118), 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 mentioned in this preamble as being available in the 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, contact Kurt Heinz, Coast Guard, telephone 202–267–1444; e-mail *kheinz@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

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–2001–11118), 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 that 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 submit a request for one 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

In 1991, we published a final rule in the **Federal Register** that marked a change—albeit limited to certain vessels—in the timing of initial servicing of liferafts. (56 FR 40364, August 14, 1991). In addition to including first-time requirements that certain uninspected commercial fishing industry vessels must carry inflatable survival craft (inflatable liferafts, or inflatable buoyant apparatus (IBAs)), those safety regulations, at 46 CFR chapter I, subchapter C, part 28, allowed the first servicing of new liferafts or IBAs on these vessels to be deferred to two years from date of manufacture.

Historically, liferafts and IBAs have been required to be serviced annually by an approved servicing facility in order to ensure that they remain in operational condition. This 1991 final rule allowed the first servicing of new liferafts or IBAs on uninspected commercial fishing industry vessels to be deferred to two years, instead of one, to lessen the new rule's initial financial impact on the industry. This was responsive to comments on the NPRM concerning the cost of annually servicing inflatable survival craft as is required for inspected vessels.

The Coast Guard considered this allowance to be low risk for two reasons: The stringent production testing and inspections of new liferafts, and a lack of past operational problems associated with new liferafts. In fact, in the more than 10 years since the final rule was published, the Coast Guard is not aware of any operational problems with liferafts or IBAs related to the deferral of first servicing as permitted by the rule.

Three years after publishing the commercial fishing industry vessel final rule, we published an NPRM (59 FR 52590, October 18, 1994) that proposed a complete revision of the inflatable liferaft regulations in 46 CFR subchapter Q. Unlike subchapter C, these proposed regulations were not tied to a specific type of commercial vessel.

Based on the success of the same allowance in the fishing industry vessel final rule, the 1994 NPRM proposed to allow the first servicing of a new inflatable liferaft to be deferred to two years from the date of manufacture on any ship not certificated under the International Convention for the Safety of Life at Sea, 1974 (SOLAS). (International convention requires that inflatable liferafts on ships certificated under SOLAS be serviced annually.) Because IBAs would be subject to the same servicing requirements as inflatable liferafts, by reference to proposed 46 CFR subpart 160.151 in proposed 46 CFR 160.010–3(c), the proposal would apply to IBAs as well.

In 1997, we published a subchapter Q final rule containing a complete revision of the inflatable liferaft regulations, in a new 46 CFR subpart 160.151. (62 FR 25525, May 9, 1997). These new regulations included the allowance for the first servicing of a new liferaft on a non-SOLAS ship to be deferred to two years from the date of manufacture under certain specified conditions. As stated in the preamble to the final rule at 62 FR 25535, ''The Coast Guard considers this extension to be low-risk in view of the stringent production testing to which new liferafts are subjected, and so these final rules extend its application to new liferafts on all vessels not SOLAS-certificated.''

Unfortunately, the timing of several unrelated and independent rulemaking projects did not permit this clearly stated intent to be reflected in all of the various vessel subparts in 46 CFR. Although the liferaft final rule did include a conforming amendment to the then-recently published interim rule on lifesaving equipment in 46 CFR subchapter W (61 FR 25272, May 20, 1996)—updating 46 CFR 199.190(g)(3)(i) to correctly reference the servicing procedures in the new liferaft regulations—it left intact 46 CFR 199.190(g)(1)(i), which still specifies servicing every 12 months for ''inflatable lifesaving appliances.'' Substantially similar language may be found in subchapter I–A at 46 CFR 109.301(g), subchapter K at 46 CFR 122.730(a), and subchapter T at 46 CFR 185.730(a). The relevant portions of all of these subchapters were in the late stages of various rulemaking projects at the time the new inflatable liferaft regulations were published, and it was not considered feasible to add substantive changes, which had not been included at the NPRM stage.

In addition, although the subchapter W rulemaking replaced all of the lifesaving requirements for public nautical school ships and civilian nautical school vessels in parts 167 and 168 of subchapter R, it did not affect the lifesaving requirements for sailing school vessels in part 169 of that subchapter. Section 169.837(b)(4) in subchapter R still requires that liferafts on sailing school vessels be serviced every 12 months.

Soon after the subchapter Q final rule was published, we were able to amend the liferaft servicing requirement in subchapter L, for offshore supply vessels (62 FR 49308, 49345, September 19, 1997). The following table lists the eight subchapters we have been discussing, along with the current and proposed standards.

CURRENT AND PROPOSED INTERVALS FOR INITIAL SERVICING OF LIFERAFTS ON COMMERCIAL, NON-SOLAS VESSELS

46 CFR, Chapter I, subchapter (and section)	Current first servicing (in months)	Proposed first servicing (in months)
Subchapter C: Uninspected Commercial Fishing Industry Vessels (46 CFR 28.140)	24	
Subchapter I–A: Mobile offshore drilling units (MODUs) (46 CFR 109.301)	12	*24
Subchapter K: Small passenger vessels carrying more than 150 passengers or with overnight accommodations for more than 49 passengers (46 CFR 122.730)	12 months	*24
Subchapter L: Offshore Supply Vessels (46 CFR 131.580)	24	*24
Subchapter Q: Equipment, Construction, and Materials: Specifications and Approval (46 CFR 160.151–57)	24	24
Subchapter R: Part 169, Sailing school vessels (46 CFR 169.837)	12	*24
Subchapter T: Small passenger vessels (under 100 gross tons) (46 CFR 185.730)	12 months	*24
Subchapter W: Lifesaving appliances and arrangements for all inspected U.S. vessels except for (1) offshore supply vessels, (2) MODUs, (3) sailing school vessels, and (4) small passenger vessels (46 CFR 199.190)	* 12	*24

* Servicing may be delayed up to an additional five months until the next scheduled vessel inspection.

Discussion of Proposed Rule

The inconsistency between the servicing interval specified in the liferaft regulations in subchapter Q and those specified in the various vessel subchapters has been the cause of some confusion, and resulted in some cases in new liferafts being serviced unnecessarily. This NPRM proposes to resolve the inconsistencies by harmonizing the servicing intervals specified in subchapters I–A, K, R, T, and W with the general requirement in the liferaft regulations at 46 CFR 160.151–57 in subchapter Q, consistent with the stated intent of that regulation. This would eliminate the confusion caused by ambiguous or conflicting provisions in the various commercial vessel regulations, and reduce the burden on the public by avoiding potential unnecessary servicing of new inflatable liferafts.

In addition, to maintain internal consistency, changes are proposed to sections 169.513(b) and 169.531 in 46 CFR subchapter R to update or remove references to obsolete liferaft regulations. The currently cited regulations no longer exist, and the specified liferafts are no longer approved for manufacture. The proposed changes would require the analogous types of liferafts, that are approved and manufactured under current regulations, but would allow existing liferafts on the vessel to remain in use as long as they are in good and serviceable condition. Also, conforming editorial changes are proposed to the commercial fishing industry vessel regulations in 46 CFR subchapter C, and to subchapter L, to harmonize the specific wording between the various individual vessel subchapters to the extent possible.

Because of its unique structure, subchapter W, which contains liferaft-servicing requirements referenced by various subchapters, necessitates a slightly different approach than the other vessel subchapters. Amendments are being proposed for two sections in subchapter W, 46 CFR 199.190 and 199.620. Included in these changes is a proposed correction to an existing error in table 199.620(a) in section 199.620—changing ''199.621'' to ''199.261'' in the last table entry.

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 benefits and costs under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) 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). A detailed, draft analysis supporting this conclusion is available in the docket as indicated under **ADDRESSES.** A summary of that analysis follows:

Assessment: We analyzed benefits and costs of deferring the first liferaft servicing to 2 years (instead of 1 year) after initial packing for any non-SOLAS vessel subject to the liferaft servicing requirements in subchapters I–A, K, R, T, or W. There are 5,965 vessels that would be affected, for which we assume a zero population growth rate. Furthermore, we assume that vessels would carry 25-person liferafts with an average lifespan of 12 years. Because the vessels have various crew and passenger capacities, the number of liferafts carried by each vessel differs. We assume that vessels subject to the liferaft servicing requirements in subchapters I–A, K, R, T, and W carry one, eight, two, three, and two 25-person liferafts, respectively.

Benefits: The total present value benefit for the proposed rule for the 10-year period would be $7,700,824 (7 percent discount rate). Owners and operators of affected vessels would accrue benefits as reduced operating costs. These benefits are a function of (1) the number of liferafts that would no longer be serviced the first year after manufacture and (2) the fees imposed by the servicing companies.

In addition, we recognize that other benefits of the proposed rule exist but cannot be quantified, particularly the easing of confusion of both the public and Coast Guard personnel caused by vague and conflicting provisions. Furthermore, vessel owners would benefit by eliminating the opportunity cost of time associated with liferaft servicing during the first year after manufacture. Therefore, the total benefits may be higher if the qualitative benefits were represented in monetary terms.

Costs: The proposed rule would not impose costs on vessel owners and operators. No increase in the number of accidents is expected to occur. The revised liferaft servicing allowance is considered low risk in view of the stringent production testing and inspections to which new liferafts are subjected, and there being no history of operational problems associated with new liferafts where servicing has been deferred on commercial fishing industry vessels.

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.

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 because there are no costs to vessel owners/operators associated with the proposed rule.

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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Kurt Heinz at 202–267–1444.

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 Executive Order 13132, Federalism, and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. 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)(d), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This proposed rule would resolve the inconsistencies in inspection intervals for liferaft servicing and therefore would not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 122

Alcohol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 131

Hazardous materials transportation, Marine safety, Navigation (water), Offshore supply vessels, Oil and gas exploration, Operations, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 28, 109, 122, 131, 169, 185, and 199 as follows:

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

2. In § 28.140, revise paragraphs (b) and (c), and table 28.140 to read as follows:

§ 28.140 Operational readiness, maintenance, and inspection of lifesaving equipment.

* * * * *

(b) Each item of lifesaving equipment, including unapproved equipment, must be maintained and inspected in accordance with:

(1) Table 28.140 in this section;

(2) The servicing procedure under the subpart of this chapter applicable to the item's approval; and

(3) The manufacturer's guidelines.

(c) An inflatable liferaft or inflatable buoyant apparatus must be serviced no later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), and whenever the container is damaged or the container straps or seals are broken. It must be serviced at a facility specifically approved by the Commandant for the particular brand.

* * * * *

TABLE 28.140.—SCHEDULED MAINTENANCE AND INSPECTION OF LIFESAVING EQUIPMENT

Item	Interval		Regulation
	Monthly	Annually	
(1) Inflatable wearable personal flotation device (Type V commercial hybrid).		Servicing	28.140.
(2) Personal flotation devices, exposure suits and immersion suits.		Inspect, clean and repair as necessary.	28.140.
(3) Buoyant apparatus and life floats		Inspect, clean and repair as necessary.	28.140.
(4) Inflatable liferaft		Servicing [1]	28.140.
(5) Inflatable buoyant apparatus		Servicing [1]	28.140.
(6) Hydrostatic release		Servicing	28.140.
(7) Disposable hydrostatic release		Replace on or before expiration date.	28.140.
(8) Undated batteries		Replace	28.140.
(9) Dated batteries [2] and other items		Replace on or before expiration date.	25.26–5, 28.140.
(10) EPIRB	Test		25.26–5.

[1] For a new liferaft or inflatable buoyant apparatus, the first annual servicing may be deferred to two years from the date of first packing if so indicated on the servicing sticker.

[2] Water activated batteries must be replaced whenever they are used.

PART 109—OPERATIONS

3. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; 49 CFR 1.46.

4. In § 109.301, revise paragraph (g)(3) to read as follows:

§ 109.301 Operational readiness, maintenance, and inspection of lifesaving equipment.

* * * * *

(g) * * *

(3) An inflatable liferaft must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(i) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the unit, provided that the delay does not exceed 5 months; and

(ii) Whenever the container is damaged or the container straps or seals are broken.

* * * * *

PART 122—OPERATIONS

5. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

6. In § 122.730, revise paragraphs (a) and (b) to read as follows:

§ 122.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets and inflated rescue boats.

(a) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(1) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) Whenever the container is damaged or the container straps or seals are broken.

(b) Each inflatable lifejacket and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

* * * * *

PART 131—OPERATIONS

7. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

8. In § 131.580, revise paragraphs (a) and (b) to read as follows:

§ 131.580 Servicing of inflatable liferafts, inflatable lifejackets, inflatable buoyant apparatus, and inflated rescue boats.

(a) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(1) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) Whenever the container is damaged or the container straps or seals are broken.

(b) Each inflatable lifejacket and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except that servicing may be delayed until the next scheduled inspection of the OSV, provided that the delay does not exceed 5 months.

* * * * *

PART 169—SAILING SCHOOL VESSELS

9. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3307, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

10. In § 169.513, revise paragraph (b) to read as follows:

§ 169.513 Types of primary equipment.

* * * * *

(b) *Inflatable liferafts.* (1) Each inflatable liferaft must be a SOLAS A inflatable liferaft approved under part 160, subpart 160.151, of this chapter, except that inflatable liferafts on vessels operating on protected or partially protected waters may be SOLAS B inflatable liferafts approved under part 160, subpart 160.151, of this chapter.

(2) Each approved inflatable liferaft on the vessel on [EFFECTIVE DATE OF THE FINAL RULE] may be used to meet the requirements of this part as long as it is continued in use on the vessel, and is in good and serviceable condition.''

* * * * *

§ 169.531 [Removed]

11. Remove § 169.531.

12. In § 169.837, revise paragraph (b)(4) to read as follows:

§ 169.837 Lifeboats, liferafts, and lifefloats.

* * * * *

(b) * * *

(4) Each inflatable liferaft has been serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, part 160.151, of this chapter—

(i) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(ii) Whenever the container is damaged or the container straps or seals are broken.

PART 185—OPERATIONS

13. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. In § 185.730, revise paragraphs (a) and (b) to read as follows:

§ 185.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets, and inflated rescue boats.

(a) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(1) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) Whenever the container is damaged or the container straps or seals are broken.

(b) Each inflatable lifejacket and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

* * * * *

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

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

Authority: 46 U.S.C. 3306, 3307, 3703; 49 CFR 1.46.

16. In § 199.190, revise paragraph (g)(3) to read as follows:

§ 199.190 Operational readiness, maintenance, and inspection of lifesaving equipment.

* * * * *

(g) * * *

(3) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(i) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(ii) Whenever the container is damaged or the container straps or seals are broken.

* * * * *

17. In § 199.620, in paragraph (a), revise table 199.620(a) and add a new paragraph (q) as follows: *§ 199.620 Alternatives for all vessels in a specified service.*

* * * * *

TABLE 199.620(A).—ALTERNATIVE REQUIREMENTS FOR ALL VESSELS IN A SPECIFIED SERVICE

Section or paragraph in this part:	Service and reference to alternative requirement section or paragraph				
	Oceans	Coastwise	Great Lakes	Lakes, Bays and Sounds	Rivers
199.70(a): Lifebuoy approval series.	199.620(b)[1]	199.620(b)[1]	199.620(b)	199.620(b)	199.620(b).

TABLE 199.620(A).—ALTERNATIVE REQUIREMENTS FOR ALL VESSELS IN A SPECIFIED SERVICE—Continued

Section or paragraph in this part:	Service and reference to alternative requirement section or paragraph				
	Oceans	Coastwise	Great Lakes	Lakes, Bays and Sounds	Rivers
199.70(b): Lifejacket approval series.	199.620(c)[2]	199.620(c)[2]	199.620(c)	199.620(c)	199.620(c).
199.70(b)(1): Number of lifejackets carried.	No Alternative	199.620(d)	199.620(d)	199.620(d)	199.620(d).
199.70(b) (4)(i): Lifejacket light approval series.	No Alternative	199.620(e)	199.620(e)	Not Applicable	Not Applicable.
199.100(b): Manning of survival craft.	No Alternative	No Alternative	No Alternative	No Alternative	199.620(o).
199.110(f): Embarkation ladder	199.620(f)	199.620(f)	199.620(f)	199.620(f)	199.620(f).
199.130(b): Survival craft stowage position.	No Alternative	No Alternative	199.620(g)	199.620(g)	199.620(g).
199.170: Line-throwing appliance approval series.	199.620(h)[2]	199.620(h)[3]	Not Applicable	Not Applicable	Not Applicable.
199.175: Lifeboat, rescue boat, and rigid liferaft equipment.	199.620(i)[4]	199.620(i)	199.620(j)	199.620(j)	199.620(j).
199.180 Training and drills	199.620(p)	199.620(p)	199.620(p)	199.620(p)	199.620(p).
199.190: Spares and repair equipment.	199.620(n)	199.620(n)	199.620(n)	199.620(n)	199.620(n).
199.190 (g)(3): Service Intervals for inflatable liferaft or inflatable buoyant apparatus.	199.620(q)	199.620(q)	199.620(q)	199.620(q)	199.620(q).
199.201(a)(2) or 199.261: Inflatable liferaft equipment.	199.620(l)[4]	199.620(l)	199.620(l)	199.620(l)	199.620(l).
199.201(a)(2) or 199.261: Liferaft approval series.	No Alternative	199.620(k)	199.620(k)	199.620(k)	199.620(k).

[1] Alternative applies if lifebuoy is orange.
[2] Alternative applies only to cargo vessels that are less than 500 tons gross tonnage.
[3] Alternative applies to cargo vessels that are less than 500 tons gross tonnage and to all passenger vessels.
[4] Alternative applies to passenger vessels limited to operating no more than 50 nautical miles from shore.

* * * * *

(q) For a new liferaft or inflatable buoyant apparatus, the first annual servicing may be deferred to two years after initial packing if so indicated on the servicing sticker.

Dated: February 21, 2002.

Paul J. Pluta,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 02–5211 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–31; FCC 02–44]

Reexamination of the Comparative Standards for Noncommercial Educational Applicants; Association of America's Public Television Stations' Motion for Stay of Low Power Television Auction (No. 81)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document solicits comments on how the Commission should allocate and license ''non-reserved'' spectrum (*i.e.,* spectrum that has not been set aside for exclusive use by noncommercial educational broadcast stations) in which both commercial and noncommercial entities have an interest. The document is in response to a court decision *National Public Radio* vs. *FCC.*

DATES: Comments are due April 15, 2002; Reply comments are due May 15, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric J. Bash, Mass Media Bureau, Policy and Rules Division, (202) 418–2130 or *ebash@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Further Notice of Proposed Rule Making* (''*2FNPRM*'') in MM Docket No. 95–31, FCC 02–44, adopted February 14, 2002, and released February 25, 2002. The complete text of this *2FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418–7426, TTY (202) 418–7365, or *bmillin@fcc.gov.*

I. Introduction

1. We adopt this *2FNPRM* to seek additional comment on the procedures the Commission should use to license ''non-reserved'' channels in which both commercial and noncommercial educational entities have an interest. In the year 2000, the Commission decided to resolve mutually exclusive applications between such entities by competitive bidding. The United States Court of Appeals for the D.C. Circuit has vacated that decision. We now seek additional comment to adopt new procedures to license non-reserved spectrum in which both commercial and noncommercial educational entities have an interest, consistent with the court's opinion, our statutory authority, and our responsibility to serve the public interest.

II. Backgound

2. For some time, the Commission has reserved a portion of the broadcast spectrum for noncommercial educational (''NCE'') use only. In the FM service, the Commission currently reserves twenty specific channels (88.1 MHz to 91.9 MHz, the ''reserved band''), out of a total of one hundred channels, for FM full-power and FM translator NCE use. In the full power television service, the Commission has reserved a similar proportion of channels, but using different channels in different geographic areas across the country. The Commission has not reserved channels or frequencies in other services (*i.e.,* AM, low power TV, TV translator), but the Commission has allowed NCE entities to operate on channels generally available in these services. When NCE entities have elected to apply for operation on non-reserved channels or to apply for operation in a service in which spectrum is not reserved for NCE use, however, they historically have competed for these channels under the same rules as commercial entities.

3. Traditionally, the Commission resolved mutually exclusive applications filed by commercial or NCE entities through often lengthy, and litigious, comparative hearings. The Commission considered different comparative criteria for reserved and non-reserved spectrum. Both processes were called into question in the early 1990s. The Commission's former Review Board described the criteria used by the Commission to resolve competing applications for reserved channels as ''meaningless'' and ''vague,'' and the United States Court of Appeals for the D.C. Circuit held the principal criterion used by the Commission to resolve competing applications for non-reserved channels to be ''arbitrary and capricious, and therefore unlawful.'' In 1992, the Commission initiated a rulemaking proceeding to reexamine its comparative licensing selection processes for both commercial and NCE entities. The Commission thereafter opened this separate docket and released a Notice of Proposed Rulemaking (''*NPRM*''), 60 FR 15275, March 23, 1995, to consider revising the criteria used to select among competing applicants for new NCE broadcast facilities. One of the proposals on which the Commission sought comments was the use of a point system, instead of comparative hearings or lotteries, to award licenses.

4. While the Commission was considering the record, the Balanced Budget Act of 1997 (''1997 Budget Act'') became law, amending certain provisions of the Communications Act (''Act'') relevant to the Commission's review of its licensing policies. Section 309(j), which had been adopted in 1993 to authorize the Commission to use competitive bidding systems to resolve mutually exclusive applications under certain circumstances, was amended by the 1997 Budget Act to require the Commission to use such systems subject to several exceptions. Specifically, section 309(j)(1) was revised as follows: If . . . mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.'' Section 309(j)(2) sets forth the types of authorizations to which the competitive bidding authority of section 309(j)(1) does not apply, including ''licenses or construction permits issued by the Commission * * * (C) for stations described in section 397(6) of this Act,'' *i.e.,* NCE stations. The 1997 Budget Act also amended section 309(i) of the Communications Act to restrict the Commission's authority to issue licenses or permits through a system of random selection to ''licenses or permits for stations described in section 397(6) of this Act.''

5. The Commission sought comment on these statutory changes through a Further Notice of Proposed Rulemaking (''*FNPRM*''), 63 FR 58358, October 30, 1998, in this docket. Given the difference in treatment of licensing mechanisms for NCE and other stations, the *FNPRM* sought comment on how to resolve conflicts between commercial and NCE applicants for non-reserved spectrum. The Commission also sought comment on whether section 309 of the Act prohibited it from using competitive bidding to resolve any mutually exclusive applications when they included at least one NCE entity, or instead only when they involved reserved channels. The Commission sought comment on five specific policy options.

6. In the year 2000, the Commission adopted a Report & Order (''*R&O*''), 65 FR 36375, June 8, 2000, and rules on the issue. On the matter of statutory construction, the Commission ''conclude[d] that the exemption of NCE applicants from our general mandatory auction authority does not prohibit us from auctioning non-reserved channels, even when NCE entities apply for those channels.'' As a result, the Commission decided to require NCE entities to compete with commercial entities for non-reserved channels via competitive bidding. Moreover, to mitigate any hardship that the auction process might impose on NCE entities, the Commission also decided to relax the criteria necessary to reserve a new channel in the otherwise non-reserved spectrum. Specifically, the Commission decided that, on a going-forward basis, NCE entities could seek to reserve a channel in the Table of Allotments for exclusive NCE use, based on two new conditions. If NCE entities could not make this showing, the Commission would not reserve the channel, but NCEs could still compete with commercial entities for the channel at auction.

7. Several parties sought review in court of the Commission's decision to require NCE entities to compete for channels in the non-reserved spectrum via competitive bidding. In *NPR v. FCC* (''*NPR*''), 254 F.3d 226 (D.C. Cir. 2001), the U.S. Court of Appeals for the D.C. Circuit rejected the Commission's construction of section 309. The court held that ''nothing in the Act authorizes the Commission to hold auctions for licenses issued to NCEs to operate in the unreserved spectrum,'' because section 309(j)(2) denied the Commission the authority to use competitive bidding ''based on the nature of the station that ultimately receives the license, and not on the part of the spectrum in which the station operates.''

III. Options

8. Given the court's decision in *NPR,* we seek additional comment on the mechanisms we should use to resolve the competing interests of commercial and NCE entities for non-reserved spectrum. We outline several specific options: (1) Holding NCE entities ineligible for licenses for non-reserved channels and frequencies; (2) permitting NCE entities opportunities to acquire licenses for non-reserved channels and frequencies when there is no conflict with commercial entities; and (3) providing NCE entities opportunities to reserve additional channels in the Table of Allotments. We could adopt one of these options, or we could adopt several of them to work in tandem with one another in order to expand opportunities and mitigate any hardship for applicants for licenses for NCE stations. For example, we could allow entities that seek to operate an NCE FM or TV station the opportunity to reserve a channel at the allocation stage, and even if they fail, still permit them to apply and compete for the channel at the licensing stage, subject to certain caveats. We invite comment on these options, as well as the submission of

any others that would be consistent with the court's decision.

9. Before turning to a discussion of these options, however, we seek comment on the breadth of the statutory language that describes the entities that are exempt from auctions. Section 309(j)(2)(C) states that the Commission's competitive bidding authority does not apply to ''licenses or construction permits issued by the Commission * * * for stations described in section 397(6) of this Act.'' Section 397(6) of the Communications Act defines the terms ''noncommercial educational broadcast station'' and ''public broadcast station'' as a radio or television broadcast station which ''(A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.'' Section 397(6) became effective November 2, 1978. Both at that time and currently, the Commission's rules for the FM service stated that NCE stations ''will be licensed only to a nonprofit educational organization and upon a showing that the station will be used for the advancement of an educational program.'' Likewise, the Commission's rules stated for the TV service that NCE stations ''will be licensed only to nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television service.'' Reading these eligibility requirements in the rules in tandem with the statutory exemption, we request comment on which applicants are exempt from competitive bidding and under what circumstances. Specifically, are all ''nonprofit educational organizations'' exempt from auctions whenever they apply for any broadcast license, or only when they make a ''showing that the station will be used for the advancement of an educational program''? In other words, is the ''showing'' of an ''educational program'' or ''service'' requirement that appears in §§ 73.503 and 73.621 of the Commission's rules, part of the ''eligibility'' requirement that is incorporated by reference in section 397(6) of the Act? Or is the eligibility requirement referenced in section 397(6) only that the applicant be a ''nonprofit educational organization''? If the latter is the case, a nonprofit educational organization could not participate in an auction for a broadcast license under any circumstances—even if it were applying to operate a commercial station. If the former is the case, a nonprofit educational organization could participate in an auction for a broadcast license if it does not make ''a showing that the station will be used for the advancement of an educational program.'' If a nonprofit educational organization may participate in an auction, is it precluded, once having obtained a broadcast license, from providing noncommercial educational service or from later converting to noncommercial educational operations? Is its transferee precluded from these activities?

10. As we construe section 309(j)(2)(C), we note that certain other construction permits and licenses are also exempt from competitive bidding. Section 309(j)(2)(A) states that these construction permits and licenses include those ''for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations that (i) are used to protect the safety of life, health, or property, and (ii) are not made commercially available to the public.'' We seek to ensure that our construction of section 309(j)(2)(C) is consistent with our implementation of section 309(j)(2)(A), taking into account the differences in the statutory language between the two provisions, and the D.C. Circuit's interpretation of section 309(j)(2)(C) specifically.

11. Option #1: Hold NCE entities ineligible for licenses for non-reserved channels and frequencies. One option the Commission considered in the *FNPRM* that remains viable after the *NPR* decision is simply to hold NCE entities ineligible to apply for licenses for non-reserved channels and frequencies. In effect, this option would reserve that spectrum—*i.e.,* non-reserved FM (including translators) channels, non-reserved TV channels, all AM frequencies, and all secondary TV services—for commercial use. As the Commission stated in the *FNPRM,* ''[s]uch an option would be a departure from current policy.'' This approach, however, is consistent with the statutory language, as interpreted by the court in the *NPR* case. We seek comment on this option. Do NCE entities have sufficient reserved spectrum available to them in the areas they wish to serve? Are future opportunities to obtain licenses disproportionately located in either the reserved or non-reserved bands?

12. Option #2: Permit NCE entities to acquire licenses for non-reserved channels and frequencies when there is no conflict with commercial entities. While a decision to hold NCE entities completely ineligible for non-reserved channels has the advantage of clarity and simplicity, such a decision would preclude NCE entities from applying for non-reserved channels even when commercial entities do not wish to do so. As an alternative to that approach, the Commission could open a filing window for both commercial and NCE entities, and resolve mutually exclusive applications as follows. If only NCE entities filed mutually exclusive applications, the Commission could resolve the conflict through the current NCE point system; if only commercial entities filed mutually exclusive applications, the Commission could resolve the conflict via competitive bidding. If both commercial and NCE entities filed applications for channels or frequencies that created a technical conflict, the NCE applicant would be ineligible for a license to operate on such channels or frequencies and the Commission would dismiss its unacceptable application. In services that use the Table of Allotments (*i.e.,* FM or TV), the Commission could modify this approach by providing NCE entities a prior opportunity to reserve or acquire a license for a channel in order to mitigate any hardship to them.

13. If both commercial and NCE entities file mutually exclusive applications for channels in services that do not utilize the Table of Allotments (*i.e.,* AM, FM translators, LPTV, TV translators), such that there has not been an opportunity to reserve channels for exclusive NCE use, the Commission could allow the applicants an opportunity to settle the conflict. If the applicants could not resolve the conflict through settlement or technical resolution, the Commission would then simply reject the NCE applicant, and award the license to one of the remaining commercial applicants through competitive bidding. Under this approach, however, there would be little incentive for the commercial applicant to try to settle or reach an engineering solution in the first place. Is there anything the Commission could do, consistent with section 309(j) as interpreted in the *NPR* decision, to encourage good faith resolution of such conflicts?

14. Any decision to allow NCE entities to apply for non-reserved

channels through auction filing window procedures, and thereafter provide them a period of time in which to resolve any conflicts, implicates the Commission's anti-collusion rule. This rule provides that, after the filing deadline for FCC Form 175 (the ''short form'' application to participate in an auction), ''all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application * * *.'' Notwithstanding the general applicability of this rule to broadcast auctions, there are limited exceptions. For example, application groups consisting of either major modification applications that are mutually exclusive with each other, or major modification and new station applications that are mutually exclusive with each other, may submit settlement agreements or technical solutions during a limited period after the filing of short-form applications but before the start of an auction. Similarly, mutually exclusive applicants for secondary broadcast services, such as LPTV and FM & TV translators, may resolve their conflicts by means of engineering solutions or settlements during a limited period after the filing of short-form applications but before the start of an auction. The Commission noted that allowing competing applicants to settle following the filing of the short form application was not consistent with the general Part I anti-collusion rules, but nonetheless concluded that, in these particular contexts, doing so would serve the public interest. For competing broadcast application groups that are subject to the anti-collusion rules and therefore may not participate in a settlement, should the Commission revise the anti-collusion rules to permit competing applications to pursue a settlement where at least one of the competing applicants is an NCE entity? In the interest of preserving the effectiveness of the anti-collusion rules in general, how can we accommodate settlements in this context? Should we amend our anti-collusion rules to accommodate engineering and other settlements to resolve mixed groups? Should we limit any such exceptions to engineering settlements, and prohibit financial and other types of settlements?

15. Option #3: Provide NCE entities additional opportunities to reserve channels in the Table of Allotments. Another option the Commission considered in the *FNPRM,* and ultimately adopted in the *R&O,* is to provide opportunities to reserve additional FM and TV channels for NCE use through relaxed reservation criteria. Specifically, the Commission decided to reserve a channel, at the allocation stage, if a proponent for reservation could demonstrate two things: (1) in the case of radio, the proponent is technically precluded from using a reserved channel, or in the case of TV, there is no reserved channel available in the proponent's community, and (2) the proponent will provide a first or second radio or TV NCE service to 10% of the population within, in the case of radio, the 1mV/m contour, and in the case of TV, the Grade B contour. The Commission did not provide NCE entities an opportunity to reserve AM channels, nor did it provide pending applicants for FM and TV channels in ongoing proceedings an opportunity to use the relaxed reservation criteria. In order to provide NCE entities additional meaningful opportunities to reserve channels, the Commission now could further expand these criteria for future allocations, and apply and/or modify them for vacant allotments. (The Commission recently allowed pending applicants in the ongoing proceedings an opportunity to settle their conflicts. In the event not all settle, the Commission asks for comment in the instant proceeding on how to resolve the remaining conflicts.)

16. *Future Allocations.* As adopted in the *R&O,* if NCE entities could not satisfy the relaxed reservation criteria and the Commission ultimately allocated the channel as non-reserved, they could still file applications for the channel, with mutual exclusivity resolved by competitive bidding. After the *NPR* decision, the Commission may not permit applicants for authorization to operate an NCE broadcast station on a non-reserved channel to compete in an auction. Given that the result of an NCE entity's failure to reserve a channel is now more severe, should the Commission further relax the reservation criteria? If so, what should the criteria be? How should we define when NCE entities are ''technically precluded'' from using a reserved channel, as required by our current relaxed reservation criteria? Should the definition turn on the availability of equivalent facilities, or will the availability of some minimum class of facilities suffice? In order to assess the burden such a showing may impose on NCE entities, we also seek comment on how much it will cost for them to make the showing necessary to take advantage of the relaxed reservation criteria. What variables affect the cost?

17. *Vacant Allotments.* Also as adopted in the *R&O*, the opportunity to reserve additional channels is limited to future allocations, *i.e.*, for channels that have not yet been placed in the Table of Allotments. Prior to the *NPR* decision, however, the Commission had scheduled Auction No. 37 for approximately 350 vacant FM allotments. The Commission has also allocated more than 100 additional FM non-reserved channels subsequent to scheduling the vacant FM allotments for Auction No. 37. The Commission added many of these channels to the FM Table of Allotments prior to adopting the relaxed reservation criteria, with the result that NCE entities have not had the opportunity to take advantage of the relaxed criteria for those channels. Even in circumstances where NCE entities have already had that opportunity, they might not have reasonably foreseen that the court's decision in the *NPR* case, coupled with the Commission's regulatory response to that decision, might affect their ability to compete for non-reserved channels, where commercial entities file competing applications.

18. Should we establish a procedure for NCE entities to show that these vacant allotments should be reserved under the relaxed criteria? What reservation criteria should be used where the channel has already been allocated through a rulemaking? Should it be the same as the criteria to reserve a channel in a future allocation proceeding? While there is no ''finder's preference'' for a successful proponent in a channel allocation proceeding, is it fair to commercial entities to permit NCE entities at this point an additional opportunity effectively to remove a channel from the reach of a commercial proponent? Should we create any additional opportunity for NCE entities to attempt to reserve these allotments? If so, how can the Commission create such further reservation opportunities and at the same time accommodate the competing needs of commercial broadcasters in a manner that serves the public interest? Would it be appropriate to extend further reservation opportunities but require any NCE proponent to demonstrate a greater need for the channel before attempting to have it reallocated as reserved? For example, we could require NCE entities to show that there are no other channels available that would serve at least 50% of the area within the protected service contour of the subject allotment,

assuming full-class operation of a station at the allotment site. This approach would minimize reserving vacant allotments in areas where other non-reserved channels are available. The process could involve the Commission announcing a date by which interested entities must submit any required showings. The date would be prior to the Form 175 auction filing window. Under this proposal, FM allotments for which no NCE entities have expressed an interest or for which NCE entities fail to satisfy the adopted reservation criteria would proceed to auction.

19. Other Options. If we adopt one or more of the proposals, NCE entities could be accorded more flexible approaches to reserving additional FM and TV channels for NCE use, including channels that have been allocated but not yet licensed, and the ability to operate on non-reserved channels and frequencies if no commercial entities apply for those channels and frequencies. We wish to ensure that NCE entities have reasonable opportunities to obtain the spectrum they need. Will these options satisfy that goal? Are there other options the Commission should consider that would be consistent with the *NPR* decision and the Communications Act? We invite commenters to submit additional proposals that are fully consistent with the governing legal standards and would otherwise serve the public interest.

20. Additional Issue Concerning LPTV and TV Translators. As we reconsider our licensing policies for non-reserved spectrum, we also seek comment on issues unique to LPTV and TV translators. In the year 2000, the Mass Media Bureau and the Wireless Telecommunications Bureau opened a limited filing window to auction the channels for certain LPTV stations. Thereafter, the Association of America's Public Television Stations (APTS) filed a motion to stay the LPTV auction. APTS argued that the *NPR* decision prevented the Commission from auctioning the licenses for channels that included a mixed group of applicants. In this *2FNPRM,* we now consider the impact of the *NPR* decision upon mutually exclusive LPTV and TV translator applications. Given that the Commission never established a date for the LPTV auction, and that we will not do so until we resolve how the *NPR* decision affects our licensing of LPTV and TV translators, we dismiss APTS's motion as moot.

21. While the Commission does not reserve channels in several services, it still licenses NCE entities to operate NCE broadcast stations on AM and FM translator channels, if they satisfy the eligibility criteria and licensing requirements set forth in our rules. The Commission, however, does not license NCE entities as such for LPTV and TV translator channels. Section 309(j)(2)(C) states that competitive bidding procedures shall not apply to ''licenses issued by the Commission * * * for stations described in section 397(6) of this Act.'' Section 397(6) of the Communications Act defines the terms ''noncommercial educational broadcast station'' and ''public broadcast station'' as one which ''(A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.'' Given that the Commission has never licensed LPTV and TV translator facilities to operate as NCE stations, subject to the restrictions that apply to those stations, we seek comment on whether section 309(j)(2)(C) applies to LPTV and TV translators, and if not, whether we must use competitive bidding to resolve competing applications for these services, even if they include applications filed by entities that meet the general NCE eligibility criteria set forth in the rules. If licenses for LPTV and TV translators are within the scope of section 309(j)(2)(C), such licenses would not be available for NCE stations under the proposals in this *2FNPRM,* except when the application of an entity for an NCE license is not in conflict with the application of an entity for a commercial license. Commenters who believe that these licenses are within the scope of section 309(j)(2)(C) should address what changes, if any, the Commission could make to its procedures to ensure that entities that wish to operate NCE stations have opportunities to obtain these licenses. Commenters who believe that the LPTV and TV translator services are within the scope of section 309(j)(2)(C) should also address how to determine which applicants for these services are NCE entities, given that there are no NCE eligibility criteria in those services. While we are not inclined to establish NCE eligibility criteria specifically for LPTV and TV translator channels, should we do so in order to give full effect to the *NPR* decision and to implement the procedures outlined? Does the Commission have the statutory authority to adopt such eligibility criteria, and then use them to exempt applicants for NCE stations from auctions, given that the statutory exemption is based on the ''rules and regulations of the Commission in effect on the effective date of'' section 397(6), *i.e.,* 1978? If the Commission has the authority to adopt eligibility rules and use them as a basis to exempt applicants for NCE stations from auctions, one approach could be to extend NCE status to any LPTV or TV translator applicant that the Commission has already licensed as an NCE entity in a full-power service. The Commission would then resolve mutually exclusive ''mixed'' groups through the same mechanism we establish for other services. In addition, if we do change our licensing practices in the LPTV and TV translator services to authorize NCE stations, we must address the issue of how to resolve mutually exclusive LPTV and TV translator groups that contain applications filed by only NCE entities. Should we resolve those mutually exclusive NCE-only groups through the NCE point system we have established for full-power broadcast services?

IV. Conclusion

22. Through the record established in response to this *2FNPRM,* we seek to create new licensing mechanisms for spectrum in which commercial and NCE entities have competing interests. We intend these policies and procedures to be fully consistent with the court's opinion, our statutory authority, and otherwise to fulfill our statutory duty to serve the public interest.

V. Administrative Matters

23. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 15, 2002, and reply comments on or before May 15, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, (May 1, 1998).

24. Comments filed through ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Post Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail.

To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

25. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW., TW–A325, Washington, DC 20554. Parties who choose to file by paper should also submit comments on diskette. These diskettes should be addressed to: Wanda Hardy, 445 Twelfth Street SW., 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, docket number of the proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy '' Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554.

26. *Ex Parte Rules.* This is a permit-but-disclose notice-and-comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

27. *Initial Regulatory Flexibility Analysis.* With respect to this *2FNPRM,* an Initial Regulatory Flexibility Analysis (''IRFA'') is contained. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an IRFA of the possible significant economic impact on small entities of the proposals contained in this *2FNPRM.* Written public comments are requested on the IRFA. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *2FNPRM,* and must have a distinct heading designating them as responses to the IRFA.

28. *Initial Paperwork Reduction Act Analysis.* This *2FNPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the public to take this opportunity to comment on the information collections contained in this *2FNPRM,* as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *2FNPRM.* 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) ways to enhance the quality, utility, and clarify of the information collected; (c) 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. In addition to filing comments with the Secretary, a copy of any comments on information collections contained in this *2FNPRM* should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street SW., 1–C804, Washington, DC 20554, or over the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or over the Internet to *edward.springer@omb.eop.gov.*

VI. Initial Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act (''*RFA*''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''*IRFA*'') of the possible significant economic impact on small entities by the policy and rules proposed in this *2FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *2FNPRM.* The Commission will send a copy of the *2FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *2FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

30. The Commission adopts the *2FNPRM* in response to National Public Radio v. FCC. This court decision vacated the Commission's earlier decision to require all entities, including those that are eligible to hold licenses for noncommercial educational (NCE) broadcast stations, to compete at auction for licenses for ''non-reserved'' spectrum, *i.e.*, spectrum that the Commission has not reserved for use by NCE stations only. The Commission must revise its licensing mechanisms and policies, consistent with the court's opinion and the Communications Act, to manage conflicts between applicants for commercial stations and NCE stations for licenses for non-reserved spectrum. In the *2FNPRM,* the Commission has proposed three specific options: (1) Holding NCE entities ineligible for licenses for non-reserved channels and frequencies; (2) permitting NCE entities opportunities to acquire licenses for non-reserved channels and frequencies when there is not a conflict with commercial entities; and (3) providing NCE entities opportunities to reserve additional channels in the Table of Allotments.

Legal Basis

31. The Commission adopts the *2FNPRM* pursuant to sections 1, 2(a), 4(i), 303, 307, and 309 of the Communications Act, 47 U.S.C. 151, 152(a), 154(i), 303, 307, and 309.

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

32. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business'' concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A ''small organization'' is generally defined as ''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. A ''small governmental jurisdiction'' is generally defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand * * *.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of less than fifty thousand. The Census Bureau

estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

33. All of the proposals in the *2FNPRM* will affect applicants for NCE stations on non-reserved channels and frequencies. Licenses for NCE stations are available only to nonprofit educational organizations upon a showing that they will use their proposed stations for educational purposes. The proposals could also affect applicants for commercial stations on non-reserved channels and frequencies. Applicants for non-reserved channels and frequencies therefore could include ''small business concerns,'' ''small organizations,'' and ''small governmental jurisdictions.'' The number of possible applicants is unknown.

Radio

34. Applicants could also include existing radio stations. As of September 30, 2001, the Commission had licensed a total of 13,012 radio stations, of which 4,727 were AM stations, 6,051 were FM commercial stations, and 2,234 NCE FM stations. As of the same date, the Commission had also licensed 3,600 FM translators and boosters (commercial and NCE). SBA defines a radio station that has less than $5 million or less in annual receipts as a small business. According to the Commission staff review of BIA Publications Inc. Master Access Radio Analyzer Database on January 24, 2002, about 11,000 full-power commercial radio stations have revenue of $5 million or less. Many commercial radio stations, however, are affiliated with larger corporations with higher revenue, with the result that the estimate of 11,000 commercial radio stations likely overstates the number that qualify as small entities. The Commission does not know how many of its NCE FM station licensees qualify as small entities.

Television

35. Applicants could also include existing TV stations. As of September 30, 2001, the Commission had licensed a total of 1,686 full-power TV stations, of which 1,309 were commercial TV stations, and 377 were NCE TV stations. As of the same date, the Commission had also licensed 4,762 TV translators, 424 Class A TV stations, and 2,212 low-power TV stations. SBA defines television broadcasting establishments that have $10.5 million or less in annual receipts as a small business. According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database on January 24, 2002, fewer than 800 of the commercial TV stations have revenues of $10.5 million or less. SBA's definition, however, indicates that revenues of TV station affiliates that are not TV stations themselves should be aggregated with the revenues of the TV station to determine when a TV station is a small entity. The Commission's revenues figures for TV stations do not include the revenues of their affiliates that are not TV stations themselves, with the result that the estimate of approximately 800 TV stations likely overstates the number of TV stations that qualify as small entities. The Commission does not know how many of its NCE TV station licensees qualify as small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

36. The Commission anticipates that none of the proposals in the 2FNPRM will result in an increase in the existing reporting and recordkeeping requirements of potential applicants.

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

Alternatives Considered

37. 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 and 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.

38. The *2FNPRM* seeks comment on several specific proposals to resolve competing interests of commercial and NCE entities for non-reserved channels and frequencies. Each of these would strike the balance between applicants for commercial and NCE stations at a somewhat different point. Proposals that expand opportunities for applicants for licenses for NCE stations would enhance opportunities for ''small organizations.'' Proposals that limit their opportunities would expand opportunities for commercial applicants, some of which may qualify as ''small businesses.'' For example, if the Commission decided to hold applicants for NCE stations ineligible for licenses in the non-reserved spectrum, it would limit their opportunities to hold such licenses, but expand them for commercial applicants. Thus, adoption of any of the proposals in the *2FNPRM* by the Commission is likely to have an insignificant and mixed impact overall on the economic opportunities for small entities. We seek comment from small entities on this issue.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

39. None.

VII. Ordering Clauses

40. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, and 309, this *2FNPRM* is adopted.

41. America's Public Television Stations' Motion for Stay of Low Power Television Auction (No. 81) *is dismissed.*

42. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *2FNPRM,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–5165 Filed 3–1–02; 10:23 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 43
Tuesday, March 5, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[Reg–126485–01]

RIN 1545–BA06

Statutory Mergers and Consolidations; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document cancels the public hearing on proposed regulations that define the term statutory merger or consolidation as that term is used in section 368(a)(1)(A).

DATES: The public hearing originally scheduled for Wednesday, March 13, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Thursday, November 15, 2001 (66 FR 57400), announced that a public hearing was scheduled for Wednesday, March 13, 2002, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 368 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Wednesday, February 20, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, February 26, 2002, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, March 13, 2002, is cancelled.

Cynthia E. Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–5235 Filed 3–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

26 CFR Part 301

[Reg–107366–00]

RIN 1545–AY08

Civil Cause of Action for Damages Caused by Unlawful Tax Collection Actions, Including Actions Taken in Violation of Section 362 or Section 524 of the Bankruptcy Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to civil causes of action for damages caused by unlawful collection actions of officers and employees of the IRS and the awarding of costs and certain fees. The proposed regulations reflect amendments made by the Taxpayer Bill of Rights 2 and the Internal Revenue Service Restructuring and Reform Act of 1998. The proposed regulations affect all persons who suffer damages caused by unlawful collection actions of officers or employees of the IRS.

DATES: Written comments and requests for a public hearing must be received by June 3, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (Reg–107366–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:ITA:RU (Reg–107366–00), room 5226, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Kevin B. Connelly, (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to civil actions for damages caused by unlawful collection actions of officers or employees of the IRS. The Taxpayer Bill of Rights 2 (TBOR2), Public Law 104–168 (110 Stat. 1465), amended section 7433 of the Internal Revenue Code of 1986 (Code) by increasing the maximum amount of damages a taxpayer may be awarded for unlawful collection actions from $100,000 to $1,000,000. TBOR2 also eliminated the jurisdictional requirement that administrative remedies be exhausted before a court may award damages; TBOR2 authorized the court, however, to reduce damages if it determined that the plaintiff did not exhaust administrative remedies. These TBOR2 provisions were effective for actions of IRS officers or employees after July 30, 1996. The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685), although retaining the pre-existing authorization for an award of damages in the case of reckless or intentional disregard of the Code or regulations, amended section 7433 by providing that taxpayers may file actions for damages caused by the negligent disregard of the Code or regulations. In addition, this amendment provided that an action for damages could be brought for the IRS's willful violation of section 362 (relating to the automatic stay) or section 524 (relating to the effect of discharge) of the Bankruptcy Code. The maximum amount of damages that may be awarded for negligent disregard is $100,000. The maximum amount of damages that may be awarded for reckless or intentional disregard or for willful violations of section 362 or 524 of the Bankruptcy Code is $1,000,000. RRA 1998 also reinstated the requirement under section 7433 that the plaintiff must exhaust administrative remedies before a court may award damages. These RRA 1998 provisions are effective for actions of IRS officers or employees after July 22, 1998.

RRA 1998 also added new subsection (h) to section 7426, which authorizes persons who bring wrongful levy actions under section 7426 to sue for

damages caused by the reckless or intentional, or negligent, disregard of any provision of the Code, plus costs of the action. Consistent with section 7433, damages awarded under section 7426(h) are limited to $1,000,000 for reckless or intentional disregard and $100,000 for negligent disregard. In addition, a plaintiff must exhaust administrative remedies before a court may award damages under section 7426(h). The provisions of section 7433 relating to mitigation and the period for bringing an action also apply to actions brought under section 7426(h).

Explanation of Provisions

§ 301.7426–2

RRA 1998 added a new subsection (h) to section 7426. Subsection (h) authorizes persons to sue the United States in federal district court for damages due to a wrongful levy caused by the reckless or intentional, or negligent, disregard of a provision of the Code. Plaintiffs are entitled to recover the lesser of actual direct economic damages and costs of the action or $1,000,000 ($100,000 in the case of negligence). The amendment also provided that the rules of section 7433(d) relating to exhaustion of administrative remedies, mitigation of damages and the period for bringing an action shall apply. The proposed regulations thus adopt rules like those promulgated under section 7433 that plaintiffs must mitigate damages and no damages may be awarded unless the court determines that the plaintiff has exhausted administrative remedies available within the IRS, e.g., by filing an administrative claim for damages. The proposed regulations also provide that any action for damages under this section must be brought within 2 years after the date the action accrues. This two-year limitations period is independent of the nine-month period after the wrongful levy during which the IRS may return, or the third party may make a claim for, wrongfully levied property.

§ 301.7430–8

Section 7430 provides that reasonable administrative costs may be awarded to the prevailing party in an administrative proceeding brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under Title 26. Because, prior to the amendments in RRA 1998, taxpayers generally were not entitled to recover costs for administrative proceedings in connection with collection matters, the current regulations exclude such collection matters, including proceedings under sections 7432 and 7433, from the definition of *administrative proceedings*. To reflect the RRA 1998 amendments, the proposed regulations expand the definition of an administrative proceeding to include any administrative action for damages under section 7433(e) and any procedure or action brought before the IRS seeking relief with respect to a violation by the IRS of section 362 or 524 of the Bankruptcy Code.

The proposed regulations provide that the prevailing party is a party who establishes that, in connection with the collection of his or her federal tax, the IRS has willfully violated a provision of section 362 or 524 of the Bankruptcy Code. The only administrative costs that may be awarded are those incurred after the date of the bankruptcy petition that gave rise to the section 362 stay or section 524 discharge injunction.

A claim with the IRS for administrative costs must be filed within 90 days after the date the IRS mails its decision on the taxpayer's administrative claim for damages under § 301.7433–2(e) or claim for relief from a violation of section 362 or 524 of the Bankruptcy Code.

§ 301.7433–1

Section 3102 of RRA 1998 amended section 7433(a) of the Code by providing that a taxpayer may sue the United States in a district court of the United States for damages caused by the negligent disregard of the Code or regulations in connection with the collection of the taxpayer's tax liability. Section 801 of TBOR2 amended section 7433(b) by increasing the maximum amount of damages that a taxpayer may recover for damages caused by the reckless or intentional disregard of the Code or regulations from $100,000 to $1,000,000. Section 3102 of RRA 1998 caps the amount of damages that a taxpayer may recover for negligent disregard at $100,000. The proposed regulations under § 301.7433–1 reflect these changes.

§ 301.7433–2

RRA 1998 also amended section 7433 by adding a new subsection (e). Subsection (e) gives taxpayers the right to petition the bankruptcy court to recover damages if, in connection with the collection of a federal tax, any officer or employee of the IRS willfully violates section 362 or 524 of the Bankruptcy Code or any regulation promulgated thereunder. Damages in connection with a claim under section 7433(e) are recoverable under section 7433(b) and are subject to the limitations imposed by section 7433(d).

Section 362 relates to the automatic stay, which arises by operation of law when a debtor files a bankruptcy petition. The stay prohibits certain collection actions against the debtor, the debtor's property, and the property of the bankruptcy estate. Prior to enactment of section 7433(e), individuals injured by the IRS's willful violation of the automatic stay could only sue to recover actual damages, including costs and attorneys' fees, under Bankruptcy Code section 362(h). Section 7433(e) provides an alternative cause of action to recover damages, but still permits an individual to recover damages under section 362(h) of the Bankruptcy Code, in lieu of an action under section 7433(e). However, section 7433(e) explicitly provides that administrative and litigation costs incurred in pressing a claim under section 362(h) of the Bankruptcy Code may only be paid pursuant to, and subject to the conditions described in, section 7430 of the Code. Section 7430 authorizes the payment of administrative and litigation costs only if a taxpayer exhausts administrative remedies. The proposed regulations provide that in order to qualify for an award of administrative and litigation costs in an action under section 362(h) of the Bankruptcy Code, a taxpayer must (as in the case of damages actions under section 7433(e)) file an administrative claim with the IRS relating to the violation of the automatic stay.

Section 524 sets forth the effect of a discharge under the Bankruptcy Code. A discharge operates as an injunction against the commencement or continuation of any action to collect a discharged debt as a personal liability of the debtor. Prior to enactment of section 7433(e), a debtor who believed the IRS had willfully violated the discharge injunction could request the Bankruptcy Court under Bankruptcy Code section 105 to hold the IRS in contempt and seek to recover damages under that Bankruptcy Code provision. Section 7433(e) now provides the exclusive remedy for the IRS's willful violation of the discharge injunction.

The proposed regulations set forth procedures relating to these claim and damage allowance provisions. Damages recoverable under section 7433(e) for a violation of the automatic stay or the discharge injunction are limited to (1) the actual, direct economic damages sustained by the taxpayer (and the taxpayer has a duty to mitigate those damages), plus (2) costs of the action. The maximum damage award is $1,000,000. No petition for damages

under section 7433(e) may be filed in a bankruptcy court unless the taxpayer first exhausts administrative remedies within the IRS.

Similar to rules previously adopted with respect to other wrongful collection actions, the proposed regulations define direct, economic damages as actual, pecuniary damages sustained by the taxpayer as a result of the willful violation of section 362 or 524 of the Bankruptcy Code. Injuries such as inconvenience, loss of reputation, and emotional distress, are not compensable except to the extent they result in actual pecuniary loss.

The proposed regulations define costs of the action that are recoverable as damages under section 7433(e) as: (1) Fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of paper necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those enumerated in this paragraph.

Reasonable administrative and litigation costs, including attorneys fees, are not recoverable as direct economic damages. These costs are recoverable, if at all, under section 7430. The taxpayer generally will be entitled to reasonable litigation costs under section 7430 if the taxpayer (1) files an administrative claim with the IRS, (2) establishes that the IRS willfully violated either the automatic stay under Bankruptcy Code Section 362 or the discharge injunction under section 524, (3) substantially prevails with respect to the amount of damages in controversy, and (4) meets the requirements of sections 7430(c)(4)(A)(ii) regarding net worth.

A petition for damages under section 7433 may not be filed in a bankruptcy court unless the taxpayer first files an administrative claim for damages with the IRS. The claim must be made in writing to the Chief, Local Insolvency Unit for the judicial district in which the bankruptcy was filed. The claim must include: (1) The claimant taxpayer's name, taxpayer identification number, current address, current home and work telephone numbers and any convenient times to be contacted; (2) the court and case number of the bankruptcy case in which the violation occurred; (3) a description, in reasonable detail, of the violation (with copies of any available substantiating documentation or correspondence with the IRS); (4) a description of the injuries incurred by the taxpayer filing the claim (with copies of any available substantiating documentation or evidence); (5) the dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (along with any available substantiating documentation or evidence); and (6) the signature of the taxpayer or any duly authorized representative.

The proposed regulations provide that, after an administrative claim for damages has been filed, a petition for damages under section 7433 may not be filed in a bankruptcy court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. Because a taxpayer must petition the bankruptcy court for damages within two years after the cause of action accrues, the proposed regulations contain an exception for claims filed in the last six months before the two-year limitation period expires. In those circumstances, taxpayers may file petitions for damages at any time after they file their administrative claims and before the period of limitations expires. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. Alternatively, taxpayers may submit comments electronically to the IRS Internet at *www.irs.gov/regs.* All comments will be available for public inspection and copying. The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand or to implement. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summons Division, CC:PA:CBS, IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7426–2 is added to read as follows:

§ 301.7426–2 Recovery of damages in certain cases.

(a) *In general.* In addition to remedies related to wrongful levy set forth in § 301.7426–1(b), if a district court of the United States finds in any action brought under section 7426 that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title, the United States shall be liable to the plaintiff for damages. The plaintiff has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000 ($100,000 in the case of negligence), or the sum of—

(1) Actual, direct economic damages as defined in § 301.7433–1(b) sustained as a proximate result of the reckless, intentional, or negligent actions of the officer or employee, reduced by the amount of any damages awarded under § 301.7426–1(b); and

(2) Costs of the action as defined in § 301.7433–1(c).

(b) *Administrative remedies must be exhausted.* The court may not award a judgment for damages under paragraph (a) of this section unless the court determines that the plaintiff has filed an administrative claim pursuant to paragraph (d) of this section, and has satisfied the requirements of paragraph (c) of this section.

(c) *No request for damages in a district court of the United States prior to filing an administrative claim.* (1) Except as provided in paragraph (c)(2) of this section, no request for damages under paragraph (a) of this section shall be maintained in any district court of the United States before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (d) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (d) of this section.

(2) If an administrative claim is filed in accordance with paragraph (d) of this section during the last six months of the period of limitations described in paragraph (f) of this section, the claimant may file an action in a district court of the United States any time after the administrative claim is filed and before the expiration of the period of limitations.

(d) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 ($100,000 in the case of negligence) or actual, direct economic damages as defined in § 301.7433–1(b) shall be sent in writing to the Chief, Local Insolvency Unit for the area in which the levy was made.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address and current home and work telephone numbers (indicating any convenient times to be contacted) of the person making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the damages incurred by the claimant filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(v) The signature of the claimant or duly authorized representative.

(3) *Duly authorized representative.* For purposes of this paragraph (d), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the claimant before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed to the claimant.

(e) *No liability for damages for any sum in excess of the dollar amount sought in the administrative claim.* See § 301.7433–1(f).

(f) *Period of limitations*—(1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in a district court of the United States within 2 years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the plaintiff has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(g) *Recovery of costs under section 7430.* See § 301.7433–1(h).

(h) *Effective date.* This section is applicable on the date final regulations are published in the **Federal Register**.

Par. 3. Section 301.7430–1 is amended by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g) and (h), respectively, and adding a new paragraph (e) to read as follows:

§ 301.7430–1 Exhaustion of administrative remedies.

* * * * *

(e) *Actions involving willful violations of the automatic stay under section 362 of the Bankruptcy Code*—(1) *Section 7433 claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code or the discharge provisions under section 524 of the Bankruptcy Code unless it files an administrative claim for damages or for relief from a violation of section 362 or 524 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the area in which the bankruptcy petition that is the basis for the asserted automatic stay was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 7433.

(2) *Section 362(h) claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code unless it files an administrative claim for relief from a violation of section 362 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the area in which the bankruptcy petition that is the basis for the asserted automatic stay was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 362(h) of the Bankruptcy Code.

* * * * *

§ 301.7430–2 [Amended]

Par. 4. In § 301.7430–2, paragraph (c)(2) is amended by:

1. Adding the language ''except that requests with respect to administrative proceedings defined by § 301.7430–8(c) should be made to the Chief, Local Insolvency Unit'' at the end of the first sentence.

2. Removing the language ''District Director for the district'' and adding ''Internal Revenue Service office'' in its place in the second sentence.

Par. 5. Section 301.7430–3 is amended by:

1. Revising paragraph (a)(4),

2. Paragraph (b) is amended by adding the language ''except those collection actions described by section 7433(e)'' at the end of the last sentence.

The revision reads as follows:

§ 301.7430–3 Administrative proceeding and administrative proceeding date.

(a) * * *

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under section 7432 or 7433, except proceedings brought under section 7433(e) and § 301.7433–2 or proceedings otherwise described in § 301.7430–8(c). See § 301.7430–8.

* * * * *

Par. 6. Section 301.7430–6 is amended by adding a sentence at the end of the section to read as follows: § 301.7430–6 Effective dates.

* * * Sections 301.7430–2(c)(2), 7430–3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 7. Section 301.7430–8 is added to read as follows: § *301.7430–8 Administrative costs incurred in damage actions for violations of section 362 and 524 of the Bankruptcy Code.*

(a) *In general.* The Internal Revenue Service may grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue

Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) *Prevailing party.* A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430–5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and

(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

(c) *Administrative proceeding.* For purposes of this section, an administrative proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under § 301.7433–2(e).

(d) *Costs incurred after filing of bankruptcy petition.* Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) *Time for filing claim for administrative costs.* (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction to the taxpayer.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs within 6 months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia but within an internal revenue district, the term legal holiday also means a statewide legal holiday in the state where such office is located.

(f) *Effective date.* This section is applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

Par. 8. Section 301.7433–1 is amended as follows:

1. In paragraph (a) introductory text, in the first sentence, the language ‘‘, or by reason of negligence,’’ is added after the language ‘‘recklessly or intentionally’’. In addition, the language ‘‘$100,000’’ in the third sentence is removed and ‘‘$1,000,000 ($100,000 in the case of negligence)’’ is added in its place.

2. In paragraph (b)(1) the language ‘‘, or negligent,’’ is added after the language ‘‘reckless or intentional’’.

3. In paragraph (e)(1), in the first sentence, the language ‘‘$100,000’’ is removed and ‘‘$1,000,000 ($100,000 in the case of negligence)’’ is added in its place. In addition, the language ‘‘district director (marked for the attention of the Chief, Special Procedures Function) of the district’’ is removed and ‘‘Chief, Local Insolvency Unit in the area’’ is added in its place.

4. In paragraph (h), in the penultimate sentence, the language ‘‘7432(a)’’ is removed and ‘‘7433(a)’’ is added in its place.

5. Revising paragraph (i).

The revision reads as follows:

§ 301.7433–1 Civil cause of action for certain unauthorized collection actions.

* * * * *

(i) *Effective dates.* The portions of this section relating to reckless or intentional acts are applicable to actions taken by Internal Revenue Service officials after July 30, 1996. The portions of this section relating to negligent acts are applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

Par. 9. Section 301.7433–2 is added to read as follows:

§ 301.7433–2 Civil cause of action for violation of section 362 or 524 of the Bankruptcy Code.

(a) *In general.* (1) If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to the automatic stay) or section 524 (relating to discharge) of title 11, United States Code, or any regulation promulgated under the provisions of title 11, United States Code, the taxpayer may file a petition for damages against the United States in federal bankruptcy court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000, or the sum of—

(i) Actual, direct economic damages sustained as a proximate result of the willful actions of the officer or employee; and

(ii) Costs of the action.

(2) An action under this section constitutes the exclusive remedy under the Internal Revenue Code for violations of sections 362 and 524 of the Bankruptcy Code. In addition, taxpayers injured by violations of section 362 of the Bankruptcy Code may maintain actions under section 362(h) of the Bankruptcy Code (relating to an individual injured by a willful violation of the stay).

(b) *Actual, direct economic damages*—(1) *Definition.* See § 301.7433–1(b)(1).

(2) *Litigation costs and administrative costs not recoverable as actual, direct economic damages.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. These costs may be recoverable under section 7430 (see paragraph (h) of this section), or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the costs set forth in § 301.7433–1(c).

(d) *No civil action in federal bankruptcy court prior to filing an administrative claim*—

(1) *In general.* Except as provided in paragraph (d)(2) of this section, no action under paragraph (a)(1) of this section shall be maintained in any bankruptcy court before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) *When administrative claim filed in last six months of period of limitations.* If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the

period of limitations described in paragraph (g) of this section, the taxpayer may petition the bankruptcy court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address, and current home and work telephone numbers (with an identification of any convenient times to be contacted) of the taxpayer making the claim;

(ii) The location of the bankruptcy court in which the underlying bankruptcy case was filed and the case number of the case in which the violation occurred;

(iii) A description, in reasonable detail, of the violation (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iv) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(v) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available documentation or evidence); and

(vi) The signature of the taxpayer or duly authorized representative.

(3) *Duly authorized representative defined.* For purposes of this paragraph (e), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) *No action in bankruptcy court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section may be instituted in federal bankruptcy court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*—(1) *Time for filing.* A petition for damages under paragraph (a) of this section must be filed in bankruptcy court within two years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of litigation costs and administrative costs under section 7430*—(1) *In general.* Litigation costs, as defined in § 301.7433–1(b)(2)(i), including attorneys fees, not recoverable under this section may be recoverable under section 7430 if a taxpayer challenges in whole or in part an Internal Revenue Service denial of an administrative claim for damages by filing a petition in the bankruptcy court. If, following the Internal Revenue Service's denial of an administrative claim for damages, a taxpayer files a petition in the bankruptcy court challenging that denial in whole or in part, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(ii) (relating to net worth and size requirements), the taxpayer will be considered a prevailing party for purposes of section 7430, unless the Internal Revenue Service establishes that the position of the Internal Revenue Service in the proceeding was substantially justified. Such taxpayer will generally be entitled to attorneys' fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph (h), if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that the Internal Revenue Service did not willfully violate Bankruptcy Code section 362 or 524.

(2) *Administrative costs*—(i) *In general.* Administrative costs, as defined in § 301.7433–1(b)(2)(ii), including attorneys' fees, not recoverable under this section may be recoverable under section 7430. See § 301.7430–8.

(ii) *Limitation regarding recoverable administrative costs.* Administrative costs may be awarded only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(i) *Effective date.* This section is applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–5113 Filed 3–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: On January 24, 2002, OSHA re-opened the rulemaking record (67 FR 3465) for 60 days to submit to the record the Agency's final draft risk assessment, peer review reports on the draft final risk assessment, and the National Academy of Sciences/Institute of Medicine (NAS/IOM) report ''Tuberculosis in the Workplace'' and to request comments on these documents. OSHA is extending the deadline for 60 days from March 25, 2002 until May 24, 2002, to allow interested parties additional time for submitting their comments to the record.

DATES: Comments and data must be postmarked no later than May 24, 2002. Comments submitted electronically or by FAX must be submitted by May 24, 2002.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket H–371, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Comments of 10 pages or fewer may be transmitted by FAX to: 202–693–1648, provided that the original and one copy of the comments are sent to the Docket Office immediately thereafter.

You may also submit comments electronically to *http://ecomments.osha.gov*. Information such as studies and journal articles cannot be

attached to electronic submissions and must be submitted in duplicate to the Docket Office address listed above. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the TB rulemaking, including the peer reviewers' reports, OSHA's draft final risk assessment and the NAS/IOM report, is available for inspection and copying in the Docket Office, Docket H–371, telephone 202–693–2350.

FOR FURTHER INFORMATION CONTACT: Amanda Edens, Directorate of Health Standards Programs, Occupational Safety and Health Administration, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693–2270, FAX (202) 693–1678.

SUPPLEMENTARY INFORMATION: On October 17, 1997, OSHA published a proposed standard for Occupational Exposure to TB (62 FR 54160). In the proposal, the Agency made a preliminary determination based on a review of the available data that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings are at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures potentially involving exposure to TB.

Many persons submitted comments addressing OSHA's preliminary quantitative risk assessment and suggested that OSHA should use more current data in developing its final quantitative risk assessment. In response to these concerns, OSHA reopened the rulemaking record for 30 days to solicit data and comments with respect to assessing the occupational risk of TB infection and disease (64 FR 34625, June 28, 1999). After reviewing all comments in the expanded record, the Agency revised its preliminary quantitative risk assessment to produce a draft final risk assessment. (Ex. 184) The Agency then chose to have this draft final risk assessment peer reviewed by two experts in the fields of TB epidemiology and risk assessment. The peer reviewers selected were Dr. Richard Menzies and Dr. Mark Nicas. Dr. Menzies, Professor and Director of the Respiratory Epidemiology Unit at McGill University in Montreal, Canada, is a physician experienced in the epidemiology, diagnosis, and treatment of TB and is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to and treatment of TB. Dr. Menzies is also an expert in the use of tuberculin skin testing as a diagnostic test for infection. Dr. Mark Nicas, Professor at the University of California Berkeley and a Certified Industrial Hygienist, is a recognized research scientist, having published numerous scientific papers in the area of occupational exposure to TB and the development of mathematical models for TB transmission. These two reviewers evaluated the overall methodology used by OSHA in the draft final risk assessment, the appropriateness of these studies for the exposure scenarios, the adequacy of the mathematical models, the values of the parameters used to estimate the TB case activation and death rates, the use and estimates of state background infection rates, and the uncertainties associated with the OSHA risk estimates. (Exs. 185 and 186)

In 1999, the U.S. Congress requested that the National Academy of Sciences undertake a short-term study of occupational TB (Pub. L. 106–113) including evaluation of the risks to health care workers due to occupational exposure to TB, the extent to which the TB guidelines of the Centers for Disease Control and Prevention are being implemented, and the potential effectiveness of an OSHA TB standard to protect workers from occupational exposure to TB. The report that was prepared by the IOM, the health policy arm of the Academy, was released on January 16, 2001. In view of the significance of this report, OSHA also placed this report in the record for comment. (Ex. 187)

On February 13, 2002, the Association for Professionals in Infection Control and Epidemiology (APIC), the American Health Care Association (AHCA), and the American Society for Microbiology (ASM), requested from the Secretary of Labor a 60 day extension of the deadline for submitting comments. The letter stated that the APIC, AHCA and ASM believed that the current deadline did not provide sufficient time for a thorough examination of the new risk assessment documents OSHA had added to the rulemaking record.

Risk assessment, as well as the other issues addressed in the re-opening of the record, continues to be of concern to OSHA, and the Agency wants to ensure that all interested parties have ample time to submit comments. Therefore, OSHA has decided to extend the deadline for submitting comments an additional 60 days from March 25, 2002 until May 24, 2002.

Authority: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C 655), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of February, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–5160 Filed 3–4–02; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); Improving the Academic Achievement of the Disadvantaged; Correction

AGENCY: Department of Education.

ACTION: Notice of meeting to conduct a negotiated rulemaking process; correction.

SUMMARY: On February 28, 2002 a notice of meetings to conduct a negotiated rulemaking process relating to improving the academic achievement of the disadvantaged was published in the **Federal Register** (67 FR 9223). This document corrects the address of the meetings, the list of individuals who will participate in negotiated rulemaking, and a Web site address.

FOR FURTHER INFORMATION CONTACT: Susan Wilhelm, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, room 3W202, Washington, DC 20202–6132. Telephone (202) 260–0826.

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 person listed in the preceding paragraph.

The meeting site is accessible to individuals with disabilities. If you need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in alternative format), notify the contact person listed in this notice in advance of the scheduled meeting date. We will make every effort to meet any request we receive.

SUPPLEMENTARY INFORMATION: The caption **ADDRESSES** on page 9223, column two, reads ''The five meetings to conduct the negotiated rulemaking process will be held at the U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202.'' It is corrected to read ''The five meetings to conduct the negotiated rulemaking process will be held at the Sheraton Premiere At Tysons Corner, 8661 Leesburg Pike, Vienna, VA 22182.'' The published listing of individuals under the heading *Representing Principals and Teachers* on page 9224, column one, is corrected by adding to the list ''David Sherman, Vice President, UFT, New York City (NY)''. The published listing of individuals under the heading *Representing local Administrators and Local School Boards* on page 9224, column one, is corrected by removing from the list ''Nelson Smith, charter schools, Washington, DC'' and adding, in its place, ''Nelson Smith, Managing Director for New School Services, New American Schools, Arlington (VA); formerly Executive Director of the DC Public Charter School Board''. The published Web site under the heading *Topics Selected for Negotiation* on page 9224, column two, reads ''*www.ed.gov/nelb/*''. It is corrected to read ''*www.ed.gov/nclb/*''.

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: *www.ed.gov/legislation/FedRegister*

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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*

Dated: February 28, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–5256 Filed 3–1–02; 11:21 am]

BILLING CODE 4001–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Part 457

[CMS–2127–P]

RIN 0938–AL37

State Children's Health Insurance Program; Eligibility for Prenatal Care for Unborn Children

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: In order to provide prenatal care and other health services, this proposed rule would revise the definition of ''child'' under the State Children's Health Insurance Program (SCHIP) to clarify that an unborn child may be considered a ''targeted low-income child'' by the State and therefore eligible for SCHIP if other applicable State eligibility requirements are met. Under this definition, the State may elect to extend eligibility to unborn children for health benefits coverage, including prenatal care and delivery, consistent with SCHIP requirements.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 6, 2002.

ADDRESSES: In commenting, please refer to file code CMS–2127-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2127-P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kathleen Farrell, (410) 786–3285.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195.

I. Background

Section 490l of the Balanced Budget Act, (Public Law 105–33), as amended by Public Law 105–100, added title XXI to the Act. Title XXI authorizes the State Children's Health Insurance Program (SCHIP) to assist State efforts to initiate and expand the provision of child health assistance to uninsured, low-income children. Under title XXI, States may provide child health assistance primarily for obtaining health benefits coverage through (1) a separate child health program that meets the requirements specified under section 2103 of the Act; (2) expanding eligibility for benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of the two approaches. To be eligible for funds under this program, States must submit a State child health plan (State plan), that meets the applicable requirements of title XXI and is approved by the Secretary.

The State Children's Health Insurance Program is jointly financed by the Federal and State governments and is administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligibility groups, benefit packages, payment levels for coverage, and administrative and operating procedures. Under section 2102(b) of the Act, States have discretion to adopt eligibility standards that are related to age, and thus may extend SCHIP eligibility only to certain age groups of targeted low-income children (who must be under age 19). SCHIP provides a capped amount of funds to States on a matching basis for Federal fiscal years (FY) 1998 through 2007. Regulations implementing SCHIP are set forth at 42 CFR part 457.

II. Provisions of the Proposed Regulations

Section 2110 of the Act sets forth the definition of a targeted low-income child. In accordance with this section of

the Act, at § 457.310 we define a targeted low-income child as a child who meets the standards set forth at § 457.310 and the eligibility standards established by the State. The term ''child'' is defined at section 2110(c)(1) of the Act as an individual under 19 years of age. Under this framework and in accordance with the regulations promulgated by the Secretary, a State may elect the age groups of targeted low-income children under age 19 that will be eligible for SCHIP coverage under their State plans. For example, a State plan may permit eligibility of children only through age 12. This statutory definition is currently repeated in the regulations at § 457.10.

For reasons set forth below, in interest of providing necessary pre-natal care to children, we propose in this regulation to clarify and expand the definition of the term ''child'' so that a State may elect to make individuals in the period between conception and birth eligible for coverage as well under their State plan. Specifically, we would expand and revise the definition to clarify that ''child'' means an individual under the age of 19 and may include any period of time from conception to birth through age 19. This clarification of the definition of child will provide States with the option to consider an unborn child to be a targeted low-income child and therefore eligible for SCHIP if other applicable State eligibility requirements are met. This clarification would be consistent with the general statutory flexibility given States to elect the age groups of targeted low income children who must be under 19 years of age. Absent this clarification, under SCHIP there is a significant population of children who would be eligible at birth but who would not have had the benefit of needed prenatal care and delivery services. Currently, a pregnant woman under age 19 could be eligible as a targeted low income child and her child would benefit from needed prenatal care and delivery services by virtue of the mother's eligibility status. Absent this clarification, a pregnant woman over age 19 could not be eligible as a targeted low income child, and her child thus would not necessarily have the benefit of needed prenatal care and delivery services. This clarification would permit States to ensure that these needed services are available to benefit unborn children independent of the mother's eligibility status.

It is anticipated that the children covered by this regulation will become eligible for the SCHIP program after birth. By establishing eligibility prior to birth, the proposed change would improve continuity of care and simply allow states to establish eligibility at an earlier but medically critical point in time.

It is well established that access to prenatal care can improve health outcomes during infancy as well as over a child's life. Prenatal care includes monitoring the health of both the mother and the unborn child. The importance of prenatal care is widely accepted for the reasons summarized in the Department's 1999 report, *Trends in the Well-Being of America's Children and Youth,* ''Receiving prenatal care late in a pregnancy, or receiving no prenatal care at all, can lead to negative health outcomes for mother and child.'' This 1999 report shows that while the percentage of women who receive late prenatal care (defined as seventh month or later) has declined for women in all racial and ethnic groups and ages, there are still significant differences by race and ethnicity and age. For example, five percent of women aged 20 to 24 receive late or no prenatal care compared to 3.9 percent of all women. This proposed rule change would allow states to provide coverage under SCHIP to the unborn children of those pregnant women if other eligibility criteria are met. Since low-income women are less likely to receive prenatal care, this rule would allow states to provide those needed services to a segment of the population that otherwise may not receive them.

The report explains,

> Adequate prenatal care is determined by both the early receipt of prenatal care (within the first trimester) and the receipt of an appropriate number of prenatal care visits for each stage of a pregnancy. Women whose prenatal care fails to meet these standards are at a greater risk for pregnancy complications and negative birth outcomes.

In the 2000 *Trends in the Well-Being of America's Children and Youth,* the Department states,

> Early prenatal care allows women and their health care providers to identify, and when possible, treat or correct health problems and health-compromising behaviors that can be particularly damaging during the initial stages of fetal development. Increasing the percentage of women who receive prenatal care, and who do so early in their pregnancies, can improve birth outcomes and lower health care costs by reducing the likelihood of complications during pregnancy and childbirth.

The 2000 Report explains,

> Babies born weighing less than 2,500 grams face an increased risk of physical and developmental complications and death. These babies account for four-fifths of all neonatal deaths (deaths under 28 days of age) and are 24 times more likely to die during the first year than are heavier infants.

According to the Report, low birthweight infants account for 7.6 percent of all infants born to mothers age 20 to 24 years.

Medical care is continually advancing and offers opportunities for services specifically targeted to the care of the unborn child. ''Fetal medicine'' or ''fetology'' is emerging as a distinct and important medical specialty which includes: obstetrics, maternal-fetal medicine, neonatology, pediatrics and fetal/neonatal pediatric surgery. Physicians specializing in fetal medicine use the pre-partum period to diagnosis potentially life threatening conditions in utero (*e.g.* congenital cystic adenomatoid malformation, congenital diaphragmatic hernia, congenital heart disease, gastroschisis, giant neck masses, hydrocephalus, obstructive uropathy omphalocele, spina bifida, sacrococcygeal teratoma). Once detected, such conditions can often be surgically or medically treated in utero, with beneficial consequences which can include: saving the life of the child; elimination of long neo-natal, post-partum medical care for the child; and ultimately lower post-partum medical care costs for the child and therefore the SCHIP plan. The Secretary would like to permit the States the flexibility to pay for the medical expenses related to unborn children because the Secretary has determined that provision of such services before birth should result in healthier infants, better long-term child growth and development and ultimate cost savings to the SCHIP plans (and the federal government through the SCHIP contribution process) through reduced expenditures for high cost neo-natal care.

This regulatory clarification is intended to benefit both the unborn children and their mothers by promoting continuity of important medical care. Healthy pregnancies should also result in significant savings in public expenditures over a child's lifetime.

In order to protect against the substitution of Title XXI enhanced payments for Medicaid payments, we have added a new subparagraph in section 457.626(a) Prevention of duplicate payments. This subparagraph would clarify that payment is not available under Title XXI when payment may be reasonably expected to be made under Medicaid on the basis of the Medicaid eligibility or enrollment of the pregnant woman. Under section 2105(c)(6)(B) of the SCHIP statute, payment under SCHIP is not available if payment can be reasonably expected under another federally financed health

benefits program. To permit shifting of claims for services that could be covered under Medicaid to the SCHIP program would not be consistent with this provision. The intent of this regulation is to provide prenatal services for unborn children who would otherwise not be covered by Medicaid or other coverage. We want to ensure that Title XXI funds do not substitute for Medicaid funds.

The purpose of the enhanced match in Title XXI is to encourage states to increase eligibility for health insurance coverage. So too is the purpose of this proposed rule. Consistent with congressional intent, the Department will work with states which seek to adopt this definition to ensure that coverage will be expanded beyond current Title XIX and Title XXI levels.

To the extent that a state elects to include unborn children in the SCHIP definition of children, as permitted by this rule, we believe that the state must also apply that same interpretation in assessing compliance with the Medicaid maintenance of effort provision of section 2105(d)(1). Since unborn children receive medical assistance under the Medicaid program through their mothers' status as pregnant women, more restrictive eligibility standards or methodologies for pregnant women in Medicaid would violate this maintenance of effort requirement. This requirement will be considered when state plan amendments to adopt the expanded definition are submitted. For the same reasons, a state that defines children under SCHIP to include unborn children would need to apply the same definition in the screen-and-enroll process described in SCHIP regulations at 42 CFR 457.350. We are proposing to modify these requirements to clarify that, for purposes of the screen and enroll process, individuals are properly enrolled in the appropriate program.

States will continue to have the authority to set eligibility requirements under their State plans, including age limits so long as the age limit is under 19 years of age, and hence States would not be required to extend coverage to this population. States that opt to extend eligibility to unborn children will submit a State plan amendment in accordance with § 457.60.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 457.60 requires a State to submit to CMS for approval an amendment to its approved State plan, whenever necessary, to reflect any changes in; (1) Federal law, regulations, policy interpretations, or court decisions, (2) State law, organization, policy or operation of the program, or (3) the source of the State share of funding. The burden associated with this requirement is the time and effort for a State to prepare and submit any necessary amendments to its State plan to CMS for approval. Based upon CMS's previous experiences with State plan amendments we estimate that on average, it will take a State 8 hours to complete and submit an amendment. We estimate that 13 States/territories will submit an amendment on an annual basis for a total burden of 104 hours.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million.

This proposed rule would revise and clarify the definition of ''child'' under the State Children's Health Insurance Program (SCHIP) to provide that an unborn child may be considered a ''targeted low-income child'' by the State and therefore eligible for SCHIP if other applicable State eligibility requirements are met. We estimate that 13 states will elect to include this definition in their State plans. We also estimate that an additional 30,000 unborn children will benefit by this change. In States that adopt this option, the health status of children will improve to the extent that their mothers receive prenatal care. We estimate that the budget impact will be $320 million over a five-year period. Therefore, the provisions set forth in this proposed rule will not have an impact of $110 million or more annually. These are the best estimates available. However, we are interested in seeking comment from the public on estimates of the impact of this rule. Neither is this rule expected to impose an unfunded mandate on States exceeding $110 million annually. Therefore, we have not prepared an analysis of cost and benefits as required by E.O. 12866 and the Unfunded

Mandates Act for rules with significant economic impacts or that impose significant unfunded mandates on States. Also, we believe the changes being promulgated in this document will have very little direct impact on small entities as defined under the RFA or on small rural hospitals as defined under section 1102(b) of the Social Security Act. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has federalism implications. The option for States to extend coverage to unborn children promulgated in this proposed rule does not meet the criteria for having Federalism implications. This provision would not impose direct costs on states or local governments, nor does it preempt State laws. This new option only increases State flexibility and, therefore, prior consultation is not required. However, we welcome input from State and local governments through the notice and comment process.

List of Subjects in 42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Children's Health Insurance Program, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR part 457 is proposed to be amended as set forth below:

PART 457—ALLOTMENTS AND GRANTS TO STATES

1. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Introduction; State Plans for Child Health Insurance Programs and Outreach Strategies

2. In § 457.10, the definition of ''Child'' is revised to read as follows:

§ 457.10 Definitions and use of terms.

* * * * *

Child means an individual under the age of 19 including the period from conception to birth.

* * * * *

Subpart C—State Plan Requirements: Eligibility, Screening, Applications, and Enrollment

3. Amend § 457.350 as follows:

A. Redesignate the text of paragraph (b) following the heading as paragraph (b)(1).

B. Add paragraph (b)(2) to read as follows:

§ 457.350 Eligibility screening and facilitation of Medicaid enrollment.

* * * * *

(b) Screening objectives. (1) * * *

(2) Screening procedures must also identify any applicant or enrollee who would be potentially eligible for Medicaid services based on the eligibility of his or her mother under one of the poverty level groups described in 1902(l) of the Act, section 1931 of the Act or a Medicaid demonstration project approved under section 1115 of the Act.

* * * * *

Subpart F—Payment to States

4. Revise § 457.622(c)(5) to read as follows:

§ 457.622 Rate of FFP for State expenditures.

* * * * *

(c) * * *

(5) The state does not adopt eligibility standards and methodologies for purposes of determining a child's eligibility under the Medicaid State plan that were more restrictive than those applied under policies of the State plan in effect on June 1, 1997. This limitation applies also to more restrictive standards and methodologies for determining eligibility for services for a child based on the eligibility of a pregnant woman.

* * * * *

5. Amend § 457.626 to add a new paragraph (a)(3) to read as follows:

§ 457.626 Prevention of duplicate payments.

(a) * * *

(3) Services are for an unborn child and are payable under Medicaid as a service to an eligible pregnant woman under that program.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: February 18, 2002.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 22, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–5217 Filed 3–1–02; 2:00 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 28, 109, 122, 131, 169, 185, and 199

[USCG–2001–11118]

RIN 2115–AG28

Liferaft Servicing Intervals

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its commercial vessel regulations to provide consistency in the requirements for servicing of inflatable liferafts and inflatable buoyant apparatus (IBA). We are proposing this rule to eliminate an unnecessary burden on vessel operators and to eliminate confusion among the public and Coast Guard field personnel. The proposed rule would defer the first servicing of a new liferaft or IBA to two years after initial packing on all commercial vessels not certificated under the International Convention for the Safety of Life at Sea (SOLAS).

DATES: Comments and related material must reach the Docket Management Facility on or before May 6, 2002.

ADDRESSES: To make sure that 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–2001–11118), 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 mentioned in this preamble as being available in the 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, contact Kurt Heinz, Coast Guard, telephone 202–267–1444; e-mail *kheinz@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

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–2001–11118), 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 that 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 submit a request for one 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

In 1991, we published a final rule in the **Federal Register** that marked a change—albeit limited to certain vessels—in the timing of initial servicing of liferafts. (56 FR 40364, August 14, 1991). In addition to including first-time requirements that certain uninspected commercial fishing industry vessels must carry inflatable survival craft (inflatable liferafts, or inflatable buoyant apparatus (IBAs)), those safety regulations, at 46 CFR chapter I, subchapter C, part 28, allowed the first servicing of new liferafts or IBAs on these vessels to be deferred to two years from date of manufacture.

Historically, liferafts and IBAs have been required to be serviced annually by an approved servicing facility in order to ensure that they remain in operational condition. This 1991 final rule allowed the first servicing of new liferafts or IBAs on uninspected commercial fishing industry vessels to be deferred to two years, instead of one, to lessen the new rule's initial financial impact on the industry. This was responsive to comments on the NPRM concerning the cost of annually servicing inflatable survival craft as is required for inspected vessels.

The Coast Guard considered this allowance to be low risk for two reasons: The stringent production testing and inspections of new liferafts, and a lack of past operational problems associated with new liferafts. In fact, in the more than 10 years since the final rule was published, the Coast Guard is not aware of any operational problems with liferafts or IBAs related to the deferral of first servicing as permitted by the rule.

Three years after publishing the commercial fishing industry vessel final rule, we published an NPRM (59 FR 52590, October 18, 1994) that proposed a complete revision of the inflatable liferaft regulations in 46 CFR subchapter Q. Unlike subchapter C, these proposed regulations were not tied to a specific type of commercial vessel.

Based on the success of the same allowance in the fishing industry vessel final rule, the 1994 NPRM proposed to allow the first servicing of a new inflatable liferaft to be deferred to two years from the date of manufacture on any ship not certificated under the International Convention for the Safety of Life at Sea, 1974 (SOLAS). (International convention requires that inflatable liferafts on ships certificated under SOLAS be serviced annually.) Because IBAs would be subject to the same servicing requirements as inflatable liferafts, by reference to proposed 46 CFR subpart 160.151 in proposed 46 CFR 160.010–3(c), the proposal would apply to IBAs as well.

In 1997, we published a subchapter Q final rule containing a complete revision of the inflatable liferaft regulations, in a new 46 CFR subpart 160.151. (62 FR 25525, May 9, 1997). These new regulations included the allowance for the first servicing of a new liferaft on a non-SOLAS ship to be deferred to two years from the date of manufacture under certain specified conditions. As stated in the preamble to the final rule at 62 FR 25535, ''The Coast Guard considers this extension to be low-risk in view of the stringent production testing to which new liferafts are subjected, and so these final rules extend its application to new liferafts on all vessels not SOLAS-certificated.''

Unfortunately, the timing of several unrelated and independent rulemaking projects did not permit this clearly stated intent to be reflected in all of the various vessel subparts in 46 CFR. Although the liferaft final rule did include a conforming amendment to the then-recently published interim rule on lifesaving equipment in 46 CFR subchapter W (61 FR 25272, May 20, 1996)—updating 46 CFR 199.190(g)(3)(i) to correctly reference the servicing procedures in the new liferaft regulations—it left intact 46 CFR 199.190(g)(1)(i), which still specifies servicing every 12 months for ''inflatable lifesaving appliances.'' Substantially similar language may be found in subchapter I–A at 46 CFR 109.301(g), subchapter K at 46 CFR 122.730(a), and subchapter T at 46 CFR 185.730(a). The relevant portions of all of these subchapters were in the late stages of various rulemaking projects at the time the new inflatable liferaft regulations were published, and it was not considered feasible to add substantive changes, which had not been included at the NPRM stage.

In addition, although the subchapter W rulemaking replaced all of the lifesaving requirements for public nautical school ships and civilian nautical school vessels in parts 167 and 168 of subchapter R, it did not affect the lifesaving requirements for sailing school vessels in part 169 of that subchapter. Section 169.837(b)(4) in subchapter R still requires that liferafts on sailing school vessels be serviced every 12 months.

Soon after the subchapter Q final rule was published, we were able to amend the liferaft servicing requirement in subchapter L, for offshore supply vessels (62 FR 49308, 49345, September 19, 1997). The following table lists the eight subchapters we have been discussing, along with the current and proposed standards.

CURRENT AND PROPOSED INTERVALS FOR INITIAL SERVICING OF LIFERAFTS ON COMMERCIAL, NON-SOLAS VESSELS

46 CFR, Chapter I, subchapter (and section)	Current first servicing (in months)	Proposed first servicing (in months)
Subchapter C: Uninspected Commercial Fishing Industry Vessels (46 CFR 28.140)	24	
Subchapter I–A: Mobile offshore drilling units (MODUs) (46 CFR 109.301)	12	*24
Subchapter K: Small passenger vessels carrying more than 150 passengers or with overnight accommodations for more than 49 passengers (46 CFR 122.730)	12 months	*24
Subchapter L: Offshore Supply Vessels (46 CFR 131.580)	24	*24
Subchapter Q: Equipment, Construction, and Materials: Specifications and Approval (46 CFR 160.151–57)	24	24
Subchapter R: Part 169, Sailing school vessels (46 CFR 169.837)	12	*24
Subchapter T: Small passenger vessels (under 100 gross tons) (46 CFR 185.730)	12 months	*24
Subchapter W: Lifesaving appliances and arrangements for all inspected U.S. vessels except for (1) offshore supply vessels, (2) MODUs, (3) sailing school vessels, and (4) small passenger vessels (46 CFR 199.190)	* 12	*24

* Servicing may be delayed up to an additional five months until the next scheduled vessel inspection.

Discussion of Proposed Rule

The inconsistency between the servicing interval specified in the liferaft regulations in subchapter Q and those specified in the various vessel subchapters has been the cause of some confusion, and resulted in some cases in new liferafts being serviced unnecessarily. This NPRM proposes to resolve the inconsistencies by harmonizing the servicing intervals specified in subchapters I–A, K, R, T, and W with the general requirement in the liferaft regulations at 46 CFR 160.151–57 in subchapter Q, consistent with the stated intent of that regulation. This would eliminate the confusion caused by ambiguous or conflicting provisions in the various commercial vessel regulations, and reduce the burden on the public by avoiding potential unnecessary servicing of new inflatable liferafts.

In addition, to maintain internal consistency, changes are proposed to sections 169.513(b) and 169.531 in 46 CFR subchapter R to update or remove references to obsolete liferaft regulations. The currently cited regulations no longer exist, and the specified liferafts are no longer approved for manufacture. The proposed changes would require the analogous types of liferafts, that are approved and manufactured under current regulations, but would allow existing liferafts on the vessel to remain in use as long as they are in good and serviceable condition. Also, conforming editorial changes are proposed to the commercial fishing industry vessel regulations in 46 CFR subchapter C, and to subchapter L, to harmonize the specific wording between the various individual vessel subchapters to the extent possible.

Because of its unique structure, subchapter W, which contains liferaft-servicing requirements referenced by various subchapters, necessitates a slightly different approach than the other vessel subchapters. Amendments are being proposed for two sections in subchapter W, 46 CFR 199.190 and 199.620. Included in these changes is a proposed correction to an existing error in table 199.620(a) in section 199.620—changing ''199.621'' to ''199.261'' in the last table entry.

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 benefits and costs under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) 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). A detailed, draft analysis supporting this conclusion is available in the docket as indicated under **ADDRESSES.** A summary of that analysis follows:

Assessment: We analyzed benefits and costs of deferring the first liferaft servicing to 2 years (instead of 1 year) after initial packing for any non-SOLAS vessel subject to the liferaft servicing requirements in subchapters I–A, K, R, T, or W. There are 5,965 vessels that would be affected, for which we assume a zero population growth rate. Furthermore, we assume that vessels would carry 25-person liferafts with an average lifespan of 12 years. Because the vessels have various crew and passenger capacities, the number of liferafts carried by each vessel differs. We assume that vessels subject to the liferaft servicing requirements in subchapters I–A, K, R, T, and W carry one, eight, two, three, and two 25-person liferafts, respectively.

Benefits: The total present value benefit for the proposed rule for the 10-year period would be $7,700,824 (7 percent discount rate). Owners and operators of affected vessels would accrue benefits as reduced operating costs. These benefits are a function of (1) the number of liferafts that would no longer be serviced the first year after manufacture and (2) the fees imposed by the servicing companies.

In addition, we recognize that other benefits of the proposed rule exist but cannot be quantified, particularly the easing of confusion of both the public and Coast Guard personnel caused by vague and conflicting provisions. Furthermore, vessel owners would benefit by eliminating the opportunity cost of time associated with liferaft servicing during the first year after manufacture. Therefore, the total benefits may be higher if the qualitative benefits were represented in monetary terms.

Costs: The proposed rule would not impose costs on vessel owners and operators. No increase in the number of accidents is expected to occur. The revised liferaft servicing allowance is considered low risk in view of the stringent production testing and inspections to which new liferafts are subjected, and there being no history of operational problems associated with new liferafts where servicing has been deferred on commercial fishing industry vessels.

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.

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 because there are no costs to vessel owners/operators associated with the proposed rule.

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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Kurt Heinz at 202–267–1444.

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 Executive Order 13132, Federalism, and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. 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)(d), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This proposed rule would resolve the inconsistencies in inspection intervals for liferaft servicing and therefore would not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 122

Alcohol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 131

Hazardous materials transportation, Marine safety, Navigation (water), Offshore supply vessels, Oil and gas exploration, Operations, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 28, 109, 122, 131, 169, 185, and 199 as follows:

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

2. In § 28.140, revise paragraphs (b) and (c), and table 28.140 to read as follows:

§ 28.140 Operational readiness, maintenance, and inspection of lifesaving equipment.

* * * * *

(b) Each item of lifesaving equipment, including unapproved equipment, must be maintained and inspected in accordance with:

(1) Table 28.140 in this section;

(2) The servicing procedure under the subpart of this chapter applicable to the item's approval; and

(3) The manufacturer's guidelines.

(c) An inflatable liferaft or inflatable buoyant apparatus must be serviced no later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), and whenever the container is damaged or the container straps or seals are broken. It must be serviced at a facility specifically approved by the Commandant for the particular brand.

* * * * *

TABLE 28.140.—SCHEDULED MAINTENANCE AND INSPECTION OF LIFESAVING EQUIPMENT

Item	Interval		Regulation
	Monthly	Annually	
(1) Inflatable wearable personal flotation device (Type V commercial hybrid).		Servicing	28.140.
(2) Personal flotation devices, exposure suits and immersion suits.		Inspect, clean and repair as necessary.	28.140.
(3) Buoyant apparatus and life floats		Inspect, clean and repair as necessary.	28.140.
(4) Inflatable liferaft		Servicing [1]	28.140.
(5) Inflatable buoyant apparatus		Servicing [1]	28.140.
(6) Hydrostatic release		Servicing	28.140.
(7) Disposable hydrostatic release		Replace on or before expiration date.	28.140.
(8) Undated batteries		Replace	28.140.
(9) Dated batteries [2] and other items		Replace on or before expiration date.	25.26–5, 28.140.
(10) EPIRB	Test		25.26–5.

[1] For a new liferaft or inflatable buoyant apparatus, the first annual servicing may be deferred to two years from the date of first packing if so indicated on the servicing sticker.

[2] Water activated batteries must be replaced whenever they are used.

PART 109—OPERATIONS

3. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; 49 CFR 1.46.

4. In § 109.301, revise paragraph (g)(3) to read as follows:

§ 109.301 Operational readiness, maintenance, and inspection of lifesaving equipment.

* * * * *

(g) * * *

(3) An inflatable liferaft must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(i) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the unit, provided that the delay does not exceed 5 months; and

(ii) Whenever the container is damaged or the container straps or seals are broken.

* * * * *

PART 122—OPERATIONS

5. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

6. In § 122.730, revise paragraphs (a) and (b) to read as follows:

§ 122.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets and inflated rescue boats.

(a) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(1) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) Whenever the container is damaged or the container straps or seals are broken.

(b) Each inflatable lifejacket and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

* * * * *

PART 131—OPERATIONS

7. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

8. In § 131.580, revise paragraphs (a) and (b) to read as follows:

§ 131.580 Servicing of inflatable liferafts, inflatable lifejackets, inflatable buoyant apparatus, and inflated rescue boats.

(a) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(1) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) Whenever the container is damaged or the container straps or seals are broken.

(b) Each inflatable lifejacket and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except that servicing may be delayed until the next scheduled inspection of the OSV, provided that the delay does not exceed 5 months.

* * * * *

PART 169—SAILING SCHOOL VESSELS

9. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3307, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

10. In § 169.513, revise paragraph (b) to read as follows:

§ 169.513 Types of primary equipment.

* * * * *

(b) *Inflatable liferafts.* (1) Each inflatable liferaft must be a SOLAS A inflatable liferaft approved under part 160, subpart 160.151, of this chapter, except that inflatable liferafts on vessels operating on protected or partially protected waters may be SOLAS B inflatable liferafts approved under part 160, subpart 160.151, of this chapter.

(2) Each approved inflatable liferaft on the vessel on [EFFECTIVE DATE OF THE FINAL RULE] may be used to meet the requirements of this part as long as it is continued in use on the vessel, and is in good and serviceable condition.''

* * * * *

§ 169.531 [Removed]

11. Remove § 169.531.

12. In § 169.837, revise paragraph (b)(4) to read as follows:

§ 169.837 Lifeboats, liferafts, and lifefloats.

* * * * *

(b) * * *

(4) Each inflatable liferaft has been serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, part 160.151, of this chapter—

(i) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(ii) Whenever the container is damaged or the container straps or seals are broken.

PART 185—OPERATIONS

13. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. In § 185.730, revise paragraphs (a) and (b) to read as follows:

§ 185.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets, and inflated rescue boats.

(a) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(1) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) Whenever the container is damaged or the container straps or seals are broken.

(b) Each inflatable lifejacket and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

* * * * *

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

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

Authority: 46 U.S.C. 3306, 3307, 3703; 49 CFR 1.46.

16. In § 199.190, revise paragraph (g)(3) to read as follows:

§ 199.190 Operational readiness, maintenance, and inspection of lifesaving equipment.

* * * * *

(g) * * *

(3) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant for the particular brand, and in accordance with servicing procedures meeting the requirements of part 160, subpart 160.151, of this chapter—

(i) No later than the month and year on its servicing sticker affixed under 46 CFR 160.151–57(n), except that servicing may be delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(ii) Whenever the container is damaged or the container straps or seals are broken.

* * * * *

17. In § 199.620, in paragraph (a), revise table 199.620(a) and add a new paragraph (q) as follows: *§ 199.620 Alternatives for all vessels in a specified service.*

* * * * *

TABLE 199.620(A).—ALTERNATIVE REQUIREMENTS FOR ALL VESSELS IN A SPECIFIED SERVICE

Section or paragraph in this part:	Service and reference to alternative requirement section or paragraph				
	Oceans	Coastwise	Great Lakes	Lakes, Bays and Sounds	Rivers
199.70(a): Lifebuoy approval series.	199.620(b)[1]	199.620(b)[1]	199.620(b)	199.620(b)	199.620(b).

TABLE 199.620(A).—ALTERNATIVE REQUIREMENTS FOR ALL VESSELS IN A SPECIFIED SERVICE—Continued

Section or paragraph in this part:	Service and reference to alternative requirement section or paragraph				
	Oceans	Coastwise	Great Lakes	Lakes, Bays and Sounds	Rivers
199.70(b): Lifejacket approval series.	199.620(c)[2]	199.620(c)[2]	199.620(c)	199.620(c)	199.620(c).
199.70(b)(1): Number of lifejackets carried.	No Alternative	199.620(d)	199.620(d)	199.620(d)	199.620(d).
199.70(b) (4)(i): Lifejacket light approval series.	No Alternative	199.620(e)	199.620(e)	Not Applicable	Not Applicable.
199.100(b): Manning of survival craft.	No Alternative	No Alternative	No Alternative	No Alternative	199.620(o).
199.110(f): Embarkation ladder	199.620(f)	199.620(f)	199.620(f)	199.620(f)	199.620(f).
199.130(b): Survival craft stowage position.	No Alternative	No Alternative	199.620(g)	199.620(g)	199.620(g).
199.170: Line-throwing appliance approval series.	199.620(h)[2]	199.620(h)[3]	Not Applicable	Not Applicable	Not Applicable.
199.175: Lifeboat, rescue boat, and rigid liferaft equipment.	199.620(i)[4]	199.620(i)	199.620(j)	199.620(j)	199.620(j).
199.180 Training and drills	199.620(p)	199.620(p)	199.620(p)	199.620(p)	199.620(p).
199.190: Spares and repair equipment.	199.620(n)	199.620(n)	199.620(n)	199.620(n)	199.620(n).
199.190 (g)(3): Service Intervals for inflatable liferaft or inflatable buoyant apparatus.	199.620(q)	199.620(q)	199.620(q)	199.620(q)	199.620(q).
199.201(a)(2) or 199.261: Inflatable liferaft equipment.	199.620(l)[4]	199.620(l)	199.620(l)	199.620(l)	199.620(l).
199.201(a)(2) or 199.261: Liferaft approval series.	No Alternative	199.620(k)	199.620(k)	199.620(k)	199.620(k).

[1] Alternative applies if lifebuoy is orange.
[2] Alternative applies only to cargo vessels that are less than 500 tons gross tonnage.
[3] Alternative applies to cargo vessels that are less than 500 tons gross tonnage and to all passenger vessels.
[4] Alternative applies to passenger vessels limited to operating no more than 50 nautical miles from shore.

* * * * *

(q) For a new liferaft or inflatable buoyant apparatus, the first annual servicing may be deferred to two years after initial packing if so indicated on the servicing sticker.

Dated: February 21, 2002.

Paul J. Pluta,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 02–5211 Filed 3–4–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–31; FCC 02–44]

Reexamination of the Comparative Standards for Noncommercial Educational Applicants; Association of America's Public Television Stations' Motion for Stay of Low Power Television Auction (No. 81)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document solicits comments on how the Commission should allocate and license ''non-reserved'' spectrum (*i.e.,* spectrum that has not been set aside for exclusive use by noncommercial educational broadcast stations) in which both commercial and noncommercial entities have an interest. The document is in response to a court decision *National Public Radio* vs. *FCC.*

DATES: Comments are due April 15, 2002; Reply comments are due May 15, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric J. Bash, Mass Media Bureau, Policy and Rules Division, (202) 418–2130 or *ebash@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Further Notice of Proposed Rule Making* (''*2FNPRM*'') in MM Docket No. 95–31, FCC 02–44, adopted February 14, 2002, and released February 25, 2002. The complete text of this *2FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.* This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Brian Millin at (202) 418–7426, TTY (202) 418–7365, or *bmillin@fcc.gov.*

I. Introduction

1. We adopt this *2FNPRM* to seek additional comment on the procedures the Commission should use to license ''non-reserved'' channels in which both commercial and noncommercial educational entities have an interest. In the year 2000, the Commission decided to resolve mutually exclusive applications between such entities by competitive bidding. The United States Court of Appeals for the D.C. Circuit has vacated that decision. We now seek additional comment to adopt new procedures to license non-reserved spectrum in which both commercial and noncommercial educational entities have an interest, consistent with the court's opinion, our statutory authority, and our responsibility to serve the public interest.

II. Backgound

2. For some time, the Commission has reserved a portion of the broadcast spectrum for noncommercial educational (''NCE'') use only. In the FM service, the Commission currently reserves twenty specific channels (88.1 MHz to 91.9 MHz, the ''reserved band''), out of a total of one hundred channels, for FM full-power and FM translator NCE use. In the full power television service, the Commission has reserved a similar proportion of channels, but using different channels in different geographic areas across the country. The Commission has not reserved channels or frequencies in other services (*i.e.,* AM, low power TV, TV translator), but the Commission has allowed NCE entities to operate on channels generally available in these services. When NCE entities have elected to apply for operation on non-reserved channels or to apply for operation in a service in which spectrum is not reserved for NCE use, however, they historically have competed for these channels under the same rules as commercial entities.

3. Traditionally, the Commission resolved mutually exclusive applications filed by commercial or NCE entities through often lengthy, and litigious, comparative hearings. The Commission considered different comparative criteria for reserved and non-reserved spectrum. Both processes were called into question in the early 1990s. The Commission's former Review Board described the criteria used by the Commission to resolve competing applications for reserved channels as ''meaningless'' and ''vague,'' and the United States Court of Appeals for the D.C. Circuit held the principal criterion used by the Commission to resolve competing applications for non-reserved channels to be ''arbitrary and capricious, and therefore unlawful.'' In 1992, the Commission initiated a rulemaking proceeding to reexamine its comparative licensing selection processes for both commercial and NCE entities. The Commission thereafter opened this separate docket and released a Notice of Proposed Rulemaking (''*NPRM*''), 60 FR 15275, March 23, 1995, to consider revising the criteria used to select among competing applicants for new NCE broadcast facilities. One of the proposals on which the Commission sought comments was the use of a point system, instead of comparative hearings or lotteries, to award licenses.

4. While the Commission was considering the record, the Balanced Budget Act of 1997 (''1997 Budget Act'') became law, amending certain provisions of the Communications Act (''Act'') relevant to the Commission's review of its licensing policies. Section 309(j), which had been adopted in 1993 to authorize the Commission to use competitive bidding systems to resolve mutually exclusive applications under certain circumstances, was amended by the 1997 Budget Act to require the Commission to use such systems subject to several exceptions. Specifically, section 309(j)(1) was revised as follows: If . . . mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.'' Section 309(j)(2) sets forth the types of authorizations to which the competitive bidding authority of section 309(j)(1) does not apply, including ''licenses or construction permits issued by the Commission * * * (C) for stations described in section 397(6) of this Act,'' *i.e.,* NCE stations. The 1997 Budget Act also amended section 309(i) of the Communications Act to restrict the Commission's authority to issue licenses or permits through a system of random selection to ''licenses or permits for stations described in section 397(6) of this Act.''

5. The Commission sought comment on these statutory changes through a Further Notice of Proposed Rulemaking (''*FNPRM*''), 63 FR 58358, October 30, 1998, in this docket. Given the difference in treatment of licensing mechanisms for NCE and other stations, the *FNPRM* sought comment on how to resolve conflicts between commercial and NCE applicants for non-reserved spectrum. The Commission also sought comment on whether section 309 of the Act prohibited it from using competitive bidding to resolve any mutually exclusive applications when they included at least one NCE entity, or instead only when they involved reserved channels. The Commission sought comment on five specific policy options.

6. In the year 2000, the Commission adopted a Report & Order (''*R&O*''), 65 FR 36375, June 8, 2000, and rules on the issue. On the matter of statutory construction, the Commission ''conclude[d] that the exemption of NCE applicants from our general mandatory auction authority does not prohibit us from auctioning non-reserved channels, even when NCE entities apply for those channels.'' As a result, the Commission decided to require NCE entities to compete with commercial entities for non-reserved channels via competitive bidding. Moreover, to mitigate any hardship that the auction process might impose on NCE entities, the Commission also decided to relax the criteria necessary to reserve a new channel in the otherwise non-reserved spectrum. Specifically, the Commission decided that, on a going-forward basis, NCE entities could seek to reserve a channel in the Table of Allotments for exclusive NCE use, based on two new conditions. If NCE entities could not make this showing, the Commission would not reserve the channel, but NCEs could still compete with commercial entities for the channel at auction.

7. Several parties sought review in court of the Commission's decision to require NCE entities to compete for channels in the non-reserved spectrum via competitive bidding. In *NPR v. FCC* (''*NPR*''), 254 F.3d 226 (D.C. Cir. 2001), the U.S. Court of Appeals for the D.C. Circuit rejected the Commission's construction of section 309. The court held that ''nothing in the Act authorizes the Commission to hold auctions for licenses issued to NCEs to operate in the unreserved spectrum,'' because section 309(j)(2) denied the Commission the authority to use competitive bidding ''based on the nature of the station that ultimately receives the license, and not on the part of the spectrum in which the station operates.''

III. Options

8. Given the court's decision in *NPR,* we seek additional comment on the mechanisms we should use to resolve the competing interests of commercial and NCE entities for non-reserved spectrum. We outline several specific options: (1) Holding NCE entities ineligible for licenses for non-reserved channels and frequencies; (2) permitting NCE entities opportunities to acquire licenses for non-reserved channels and frequencies when there is no conflict with commercial entities; and (3) providing NCE entities opportunities to reserve additional channels in the Table of Allotments. We could adopt one of these options, or we could adopt several of them to work in tandem with one another in order to expand opportunities and mitigate any hardship for applicants for licenses for NCE stations. For example, we could allow entities that seek to operate an NCE FM or TV station the opportunity to reserve a channel at the allocation stage, and even if they fail, still permit them to apply and compete for the channel at the licensing stage, subject to certain caveats. We invite comment on these options, as well as the submission of

any others that would be consistent with the court's decision.

9. Before turning to a discussion of these options, however, we seek comment on the breadth of the statutory language that describes the entities that are exempt from auctions. Section 309(j)(2)(C) states that the Commission's competitive bidding authority does not apply to ''licenses or construction permits issued by the Commission * * * for stations described in section 397(6) of this Act.'' Section 397(6) of the Communications Act defines the terms ''noncommercial educational broadcast station'' and ''public broadcast station'' as a radio or television broadcast station which ''(A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.'' Section 397(6) became effective November 2, 1978. Both at that time and currently, the Commission's rules for the FM service stated that NCE stations ''will be licensed only to a nonprofit educational organization and upon a showing that the station will be used for the advancement of an educational program.'' Likewise, the Commission's rules stated for the TV service that NCE stations ''will be licensed only to nonprofit educational organizations upon a showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television service.'' Reading these eligibility requirements in the rules in tandem with the statutory exemption, we request comment on which applicants are exempt from competitive bidding and under what circumstances. Specifically, are all ''nonprofit educational organizations'' exempt from auctions whenever they apply for any broadcast license, or only when they make a ''showing that the station will be used for the advancement of an educational program''? In other words, is the ''showing'' of an ''educational program'' or ''service'' requirement that appears in §§ 73.503 and 73.621 of the Commission's rules, part of the ''eligibility'' requirement that is incorporated by reference in section 397(6) of the Act? Or is the eligibility requirement referenced in section 397(6) only that the applicant be a ''nonprofit educational organization''? If the latter is the case, a nonprofit educational organization could not participate in an auction for a broadcast license under any circumstances—even if it were applying to operate a commercial station. If the former is the case, a nonprofit educational organization could participate in an auction for a broadcast license if it does not make ''a showing that the station will be used for the advancement of an educational program.'' If a nonprofit educational organization may participate in an auction, is it precluded, once having obtained a broadcast license, from providing noncommercial educational service or from later converting to noncommercial educational operations? Is its transferee precluded from these activities?

10. As we construe section 309(j)(2)(C), we note that certain other construction permits and licenses are also exempt from competitive bidding. Section 309(j)(2)(A) states that these construction permits and licenses include those ''for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations that (i) are used to protect the safety of life, health, or property, and (ii) are not made commercially available to the public.'' We seek to ensure that our construction of section 309(j)(2)(C) is consistent with our implementation of section 309(j)(2)(A), taking into account the differences in the statutory language between the two provisions, and the D.C. Circuit's interpretation of section 309(j)(2)(C) specifically.

11. Option #1: Hold NCE entities ineligible for licenses for non-reserved channels and frequencies. One option the Commission considered in the *FNPRM* that remains viable after the *NPR* decision is simply to hold NCE entities ineligible to apply for licenses for non-reserved channels and frequencies. In effect, this option would reserve that spectrum—*i.e.,* non-reserved FM (including translators) channels, non-reserved TV channels, all AM frequencies, and all secondary TV services—for commercial use. As the Commission stated in the *FNPRM,* ''[s]uch an option would be a departure from current policy.'' This approach, however, is consistent with the statutory language, as interpreted by the court in the *NPR* case. We seek comment on this option. Do NCE entities have sufficient reserved spectrum available to them in the areas they wish to serve? Are future opportunities to obtain licenses disproportionately located in either the reserved or non-reserved bands?

12. Option #2: Permit NCE entities to acquire licenses for non-reserved channels and frequencies when there is no conflict with commercial entities. While a decision to hold NCE entities completely ineligible for non-reserved channels has the advantage of clarity and simplicity, such a decision would preclude NCE entities from applying for non-reserved channels even when commercial entities do not wish to do so. As an alternative to that approach, the Commission could open a filing window for both commercial and NCE entities, and resolve mutually exclusive applications as follows. If only NCE entities filed mutually exclusive applications, the Commission could resolve the conflict through the current NCE point system; if only commercial entities filed mutually exclusive applications, the Commission could resolve the conflict via competitive bidding. If both commercial and NCE entities filed applications for channels or frequencies that created a technical conflict, the NCE applicant would be ineligible for a license to operate on such channels or frequencies and the Commission would dismiss its unacceptable application. In services that use the Table of Allotments (*i.e.,* FM or TV), the Commission could modify this approach by providing NCE entities a prior opportunity to reserve or acquire a license for a channel in order to mitigate any hardship to them.

13. If both commercial and NCE entities file mutually exclusive applications for channels in services that do not utilize the Table of Allotments (*i.e.,* AM, FM translators, LPTV, TV translators), such that there has not been an opportunity to reserve channels for exclusive NCE use, the Commission could allow the applicants an opportunity to settle the conflict. If the applicants could not resolve the conflict through settlement or technical resolution, the Commission would then simply reject the NCE applicant, and award the license to one of the remaining commercial applicants through competitive bidding. Under this approach, however, there would be little incentive for the commercial applicant to try to settle or reach an engineering solution in the first place. Is there anything the Commission could do, consistent with section 309(j) as interpreted in the *NPR* decision, to encourage good faith resolution of such conflicts?

14. Any decision to allow NCE entities to apply for non-reserved

channels through auction filing window procedures, and thereafter provide them a period of time in which to resolve any conflicts, implicates the Commission's anti-collusion rule. This rule provides that, after the filing deadline for FCC Form 175 (the ''short form'' application to participate in an auction), ''all applicants are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other applicants until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application * * *.'' Notwithstanding the general applicability of this rule to broadcast auctions, there are limited exceptions. For example, application groups consisting of either major modification applications that are mutually exclusive with each other, or major modification and new station applications that are mutually exclusive with each other, may submit settlement agreements or technical solutions during a limited period after the filing of short-form applications but before the start of an auction. Similarly, mutually exclusive applicants for secondary broadcast services, such as LPTV and FM & TV translators, may resolve their conflicts by means of engineering solutions or settlements during a limited period after the filing of short-form applications but before the start of an auction. The Commission noted that allowing competing applicants to settle following the filing of the short form application was not consistent with the general Part I anti-collusion rules, but nonetheless concluded that, in these particular contexts, doing so would serve the public interest. For competing broadcast application groups that are subject to the anti-collusion rules and therefore may not participate in a settlement, should the Commission revise the anti-collusion rules to permit competing applications to pursue a settlement where at least one of the competing applicants is an NCE entity? In the interest of preserving the effectiveness of the anti-collusion rules in general, how can we accommodate settlements in this context? Should we amend our anti-collusion rules to accommodate engineering and other settlements to resolve mixed groups? Should we limit any such exceptions to engineering settlements, and prohibit financial and other types of settlements?

15. Option #3: Provide NCE entities additional opportunities to reserve channels in the Table of Allotments. Another option the Commission considered in the *FNPRM,* and ultimately adopted in the *R&O,* is to provide opportunities to reserve additional FM and TV channels for NCE use through relaxed reservation criteria. Specifically, the Commission decided to reserve a channel, at the allocation stage, if a proponent for reservation could demonstrate two things: (1) in the case of radio, the proponent is technically precluded from using a reserved channel, or in the case of TV, there is no reserved channel available in the proponent's community, and (2) the proponent will provide a first or second radio or TV NCE service to 10% of the population within, in the case of radio, the 1mV/m contour, and in the case of TV, the Grade B contour. The Commission did not provide NCE entities an opportunity to reserve AM channels, nor did it provide pending applicants for FM and TV channels in ongoing proceedings an opportunity to use the relaxed reservation criteria. In order to provide NCE entities additional meaningful opportunities to reserve channels, the Commission now could further expand these criteria for future allocations, and apply and/or modify them for vacant allotments. (The Commission recently allowed pending applicants in the ongoing proceedings an opportunity to settle their conflicts. In the event not all settle, the Commission asks for comment in the instant proceeding on how to resolve the remaining conflicts.)

16. *Future Allocations.* As adopted in the *R&O,* if NCE entities could not satisfy the relaxed reservation criteria and the Commission ultimately allocated the channel as non-reserved, they could still file applications for the channel, with mutual exclusivity resolved by competitive bidding. After the *NPR* decision, the Commission may not permit applicants for authorization to operate an NCE broadcast station on a non-reserved channel to compete in an auction. Given that the result of an NCE entity's failure to reserve a channel is now more severe, should the Commission further relax the reservation criteria? If so, what should the criteria be? How should we define when NCE entities are ''technically precluded'' from using a reserved channel, as required by our current relaxed reservation criteria? Should the definition turn on the availability of equivalent facilities, or will the availability of some minimum class of facilities suffice? In order to assess the burden such a showing may impose on NCE entities, we also seek comment on how much it will cost for them to make the showing necessary to take advantage of the relaxed reservation criteria. What variables affect the cost?

17. *Vacant Allotments.* Also as adopted in the *R&O*, the opportunity to reserve additional channels is limited to future allocations, *i.e.*, for channels that have not yet been placed in the Table of Allotments. Prior to the *NPR* decision, however, the Commission had scheduled Auction No. 37 for approximately 350 vacant FM allotments. The Commission has also allocated more than 100 additional FM non-reserved channels subsequent to scheduling the vacant FM allotments for Auction No. 37. The Commission added many of these channels to the FM Table of Allotments prior to adopting the relaxed reservation criteria, with the result that NCE entities have not had the opportunity to take advantage of the relaxed criteria for those channels. Even in circumstances where NCE entities have already had that opportunity, they might not have reasonably foreseen that the court's decision in the *NPR* case, coupled with the Commission's regulatory response to that decision, might affect their ability to compete for non-reserved channels, where commercial entities file competing applications.

18. Should we establish a procedure for NCE entities to show that these vacant allotments should be reserved under the relaxed criteria? What reservation criteria should be used where the channel has already been allocated through a rulemaking? Should it be the same as the criteria to reserve a channel in a future allocation proceeding? While there is no ''finder's preference'' for a successful proponent in a channel allocation proceeding, is it fair to commercial entities to permit NCE entities at this point an additional opportunity effectively to remove a channel from the reach of a commercial proponent? Should we create any additional opportunity for NCE entities to attempt to reserve these allotments? If so, how can the Commission create such further reservation opportunities and at the same time accommodate the competing needs of commercial broadcasters in a manner that serves the public interest? Would it be appropriate to extend further reservation opportunities but require any NCE proponent to demonstrate a greater need for the channel before attempting to have it reallocated as reserved? For example, we could require NCE entities to show that there are no other channels available that would serve at least 50% of the area within the protected service contour of the subject allotment,

assuming full-class operation of a station at the allotment site. This approach would minimize reserving vacant allotments in areas where other non-reserved channels are available. The process could involve the Commission announcing a date by which interested entities must submit any required showings. The date would be prior to the Form 175 auction filing window. Under this proposal, FM allotments for which no NCE entities have expressed an interest or for which NCE entities fail to satisfy the adopted reservation criteria would proceed to auction.

19. Other Options. If we adopt one or more of the proposals, NCE entities could be accorded more flexible approaches to reserving additional FM and TV channels for NCE use, including channels that have been allocated but not yet licensed, and the ability to operate on non-reserved channels and frequencies if no commercial entities apply for those channels and frequencies. We wish to ensure that NCE entities have reasonable opportunities to obtain the spectrum they need. Will these options satisfy that goal? Are there other options the Commission should consider that would be consistent with the *NPR* decision and the Communications Act? We invite commenters to submit additional proposals that are fully consistent with the governing legal standards and would otherwise serve the public interest.

20. Additional Issue Concerning LPTV and TV Translators. As we reconsider our licensing policies for non-reserved spectrum, we also seek comment on issues unique to LPTV and TV translators. In the year 2000, the Mass Media Bureau and the Wireless Telecommunications Bureau opened a limited filing window to auction the channels for certain LPTV stations. Thereafter, the Association of America's Public Television Stations (APTS) filed a motion to stay the LPTV auction. APTS argued that the *NPR* decision prevented the Commission from auctioning the licenses for channels that included a mixed group of applicants. In this *2FNPRM,* we now consider the impact of the *NPR* decision upon mutually exclusive LPTV and TV translator applications. Given that the Commission never established a date for the LPTV auction, and that we will not do so until we resolve how the *NPR* decision affects our licensing of LPTV and TV translators, we dismiss APTS's motion as moot.

21. While the Commission does not reserve channels in several services, it still licenses NCE entities to operate NCE broadcast stations on AM and FM translator channels, if they satisfy the eligibility criteria and licensing requirements set forth in our rules. The Commission, however, does not license NCE entities as such for LPTV and TV translator channels. Section 309(j)(2)(C) states that competitive bidding procedures shall not apply to ''licenses issued by the Commission * * * for stations described in section 397(6) of this Act.'' Section 397(6) of the Communications Act defines the terms ''noncommercial educational broadcast station'' and ''public broadcast station'' as one which ''(A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.'' Given that the Commission has never licensed LPTV and TV translator facilities to operate as NCE stations, subject to the restrictions that apply to those stations, we seek comment on whether section 309(j)(2)(C) applies to LPTV and TV translators, and if not, whether we must use competitive bidding to resolve competing applications for these services, even if they include applications filed by entities that meet the general NCE eligibility criteria set forth in the rules. If licenses for LPTV and TV translators are within the scope of section 309(j)(2)(C), such licenses would not be available for NCE stations under the proposals in this *2FNPRM,* except when the application of an entity for an NCE license is not in conflict with the application of an entity for a commercial license. Commenters who believe that these licenses are within the scope of section 309(j)(2)(C) should address what changes, if any, the Commission could make to its procedures to ensure that entities that wish to operate NCE stations have opportunities to obtain these licenses. Commenters who believe that the LPTV and TV translator services are within the scope of section 309(j)(2)(C) should also address how to determine which applicants for these services are NCE entities, given that there are no NCE eligibility criteria in those services. While we are not inclined to establish NCE eligibility criteria specifically for LPTV and TV translator channels, should we do so in order to give full effect to the *NPR* decision and to implement the procedures outlined? Does the Commission have the statutory authority to adopt such eligibility criteria, and then use them to exempt applicants for NCE stations from auctions, given that the statutory exemption is based on the ''rules and regulations of the Commission in effect on the effective date of'' section 397(6), *i.e.,* 1978? If the Commission has the authority to adopt eligibility rules and use them as a basis to exempt applicants for NCE stations from auctions, one approach could be to extend NCE status to any LPTV or TV translator applicant that the Commission has already licensed as an NCE entity in a full-power service. The Commission would then resolve mutually exclusive ''mixed'' groups through the same mechanism we establish for other services. In addition, if we do change our licensing practices in the LPTV and TV translator services to authorize NCE stations, we must address the issue of how to resolve mutually exclusive LPTV and TV translator groups that contain applications filed by only NCE entities. Should we resolve those mutually exclusive NCE-only groups through the NCE point system we have established for full-power broadcast services?

IV. Conclusion

22. Through the record established in response to this *2FNPRM,* we seek to create new licensing mechanisms for spectrum in which commercial and NCE entities have competing interests. We intend these policies and procedures to be fully consistent with the court's opinion, our statutory authority, and otherwise to fulfill our statutory duty to serve the public interest.

V. Administrative Matters

23. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 15, 2002, and reply comments on or before May 15, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, (May 1, 1998).

24. Comments filed through ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Post Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail.

To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

25. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW., TW–A325, Washington, DC 20554. Parties who choose to file by paper should also submit comments on diskette. These diskettes should be addressed to: Wanda Hardy, 445 Twelfth Street SW., 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, docket number of the proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy '' Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554.

26. *Ex Parte Rules.* This is a permit-but-disclose notice-and-comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

27. *Initial Regulatory Flexibility Analysis.* With respect to this *2FNPRM,* an Initial Regulatory Flexibility Analysis (''IRFA'') is contained. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an IRFA of the possible significant economic impact on small entities of the proposals contained in this *2FNPRM.* Written public comments are requested on the IRFA. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *2FNPRM,* and must have a distinct heading designating them as responses to the IRFA.

28. *Initial Paperwork Reduction Act Analysis.* This *2FNPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the public to take this opportunity to comment on the information collections contained in this *2FNPRM,* as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *2FNPRM.* 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) ways to enhance the quality, utility, and clarify of the information collected; (c) 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. In addition to filing comments with the Secretary, a copy of any comments on information collections contained in this *2FNPRM* should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street SW., 1–C804, Washington, DC 20554, or over the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or over the Internet to *edward.springer@omb.eop.gov.*

VI. Initial Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act (''*RFA*''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''*IRFA*'') of the possible significant economic impact on small entities by the policy and rules proposed in this *2FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *2FNPRM.* The Commission will send a copy of the *2FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *2FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

30. The Commission adopts the *2FNPRM* in response to National Public Radio v. FCC. This court decision vacated the Commission's earlier decision to require all entities, including those that are eligible to hold licenses for noncommercial educational (NCE) broadcast stations, to compete at auction for licenses for ''non-reserved'' spectrum, *i.e.*, spectrum that the Commission has not reserved for use by NCE stations only. The Commission must revise its licensing mechanisms and policies, consistent with the court's opinion and the Communications Act, to manage conflicts between applicants for commercial stations and NCE stations for licenses for non-reserved spectrum. In the *2FNPRM,* the Commission has proposed three specific options: (1) Holding NCE entities ineligible for licenses for non-reserved channels and frequencies; (2) permitting NCE entities opportunities to acquire licenses for non-reserved channels and frequencies when there is not a conflict with commercial entities; and (3) providing NCE entities opportunities to reserve additional channels in the Table of Allotments.

Legal Basis

31. The Commission adopts the *2FNPRM* pursuant to sections 1, 2(a), 4(i), 303, 307, and 309 of the Communications Act, 47 U.S.C. 151, 152(a), 154(i), 303, 307, and 309.

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

32. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business'' concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A ''small organization'' is generally defined as ''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. A ''small governmental jurisdiction'' is generally defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand * * *.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of less than fifty thousand. The Census Bureau

estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

33. All of the proposals in the *2FNPRM* will affect applicants for NCE stations on non-reserved channels and frequencies. Licenses for NCE stations are available only to nonprofit educational organizations upon a showing that they will use their proposed stations for educational purposes. The proposals could also affect applicants for commercial stations on non-reserved channels and frequencies. Applicants for non-reserved channels and frequencies therefore could include ''small business concerns,'' ''small organizations,'' and ''small governmental jurisdictions.'' The number of possible applicants is unknown.

Radio

34. Applicants could also include existing radio stations. As of September 30, 2001, the Commission had licensed a total of 13,012 radio stations, of which 4,727 were AM stations, 6,051 were FM commercial stations, and 2,234 NCE FM stations. As of the same date, the Commission had also licensed 3,600 FM translators and boosters (commercial and NCE). SBA defines a radio station that has less than $5 million or less in annual receipts as a small business. According to the Commission staff review of BIA Publications Inc. Master Access Radio Analyzer Database on January 24, 2002, about 11,000 full-power commercial radio stations have revenue of $5 million or less. Many commercial radio stations, however, are affiliated with larger corporations with higher revenue, with the result that the estimate of 11,000 commercial radio stations likely overstates the number that qualify as small entities. The Commission does not know how many of its NCE FM station licensees qualify as small entities.

Television

35. Applicants could also include existing TV stations. As of September 30, 2001, the Commission had licensed a total of 1,686 full-power TV stations, of which 1,309 were commercial TV stations, and 377 were NCE TV stations. As of the same date, the Commission had also licensed 4,762 TV translators, 424 Class A TV stations, and 2,212 low-power TV stations. SBA defines television broadcasting establishments that have $10.5 million or less in annual receipts as a small business. According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database on January 24, 2002, fewer than 800 of the commercial TV stations have revenues of $10.5 million or less. SBA's definition, however, indicates that revenues of TV station affiliates that are not TV stations themselves should be aggregated with the revenues of the TV station to determine when a TV station is a small entity. The Commission's revenues figures for TV stations do not include the revenues of their affiliates that are not TV stations themselves, with the result that the estimate of approximately 800 TV stations likely overstates the number of TV stations that qualify as small entities. The Commission does not know how many of its NCE TV station licensees qualify as small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

36. The Commission anticipates that none of the proposals in the 2FNPRM will result in an increase in the existing reporting and recordkeeping requirements of potential applicants.

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

Alternatives Considered

37. 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 and 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.

38. The *2FNPRM* seeks comment on several specific proposals to resolve competing interests of commercial and NCE entities for non-reserved channels and frequencies. Each of these would strike the balance between applicants for commercial and NCE stations at a somewhat different point. Proposals that expand opportunities for applicants for licenses for NCE stations would enhance opportunities for ''small organizations.'' Proposals that limit their opportunities would expand opportunities for commercial applicants, some of which may qualify as ''small businesses.'' For example, if the Commission decided to hold applicants for NCE stations ineligible for licenses in the non-reserved spectrum, it would limit their opportunities to hold such licenses, but expand them for commercial applicants. Thus, adoption of any of the proposals in the *2FNPRM* by the Commission is likely to have an insignificant and mixed impact overall on the economic opportunities for small entities. We seek comment from small entities on this issue.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

39. None.

VII. Ordering Clauses

40. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, and 309, this *2FNPRM* is adopted.

41. America's Public Television Stations' Motion for Stay of Low Power Television Auction (No. 81) *is dismissed.*

42. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *2FNPRM,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–5165 Filed 3–1–02; 10:23 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 67, No. 43
Tuesday, March 5, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention disclosed in Patent Cooperation Treaty Application PCT/US01/45457, ''Cucurbitacin-Containing Insecticidal Compositions,'' filed October 24, 2001, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Florida Food Products, Inc., of Eustis, Florida, an exclusive license to this invention.

DATES: Comments must be received within ninety (90) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Florida Food Products, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,
Assistant Administrator.
[FR Doc. 02–5200 Filed 3–4–02; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the large-seeded Kabuli chickpea variety designated ''Sierra,'' which is resistant to ascochyta blight, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the Washington State University Research Foundation of Pullman, Washington, an exclusive license to this variety.

DATES: Comments must be received within ninety (90) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's intellectual property rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,
Assistant Administrator.
[FR Doc. 02–5199 Filed 3–4–02; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–008–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations governing the importation of solid wood packing material into the United States.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 6, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–008–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–008–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–008–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except

holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on the regulations governing the importation of solid wood packing material into the United States, contact Ms. Cynthia Stahl, Program Analyst, Port Operations, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–5281. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Wood Packing Material from China.

OMB Number: 0579–0135.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing the introduction and spread of plant pests into or through the United States. The Plant Protection Act authorizes the Department to carry out this mission. APHIS' Plant Protection and Quarantine (PPQ) program is responsible for implementing the regulations that carry out the intent of the Act.

The regulations in 7 CFR 319.40–1 through 319.40–11 are intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles into the United States. Section 319.40–5 governs, in part, the importation of solid wood packing material (such as pallets or crates) from the People's Republic of China. Under § 319.40–5(g), solid wood packing material accompanying merchandise exported from the People's Republic of China (including Hong Kong) must be heat treated, fumigated and aerated, or treated with preservatives prior to exportation. Since solid wood packing material could harbor plant pests, treatment is necessary to help prevent the introduction of plant pests into the United States.

These requirements necessitate the use of information collection activities. If solid wood packing material is used in a shipment, the regulations require the completion of an importer statement and a treatment certificate stating that the solid wood packing material used in the shipment was treated, fumigated and aerated, or treated with preservatives. If solid wood packing material is not used in the shipment, then an exporter document is required stating that the shipment contains no solid wood packing material.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.087 hours per response.

Respondents: Exporters, foreign plant health protection authorities.

Estimated annual number of respondents: 29,000.

Estimated annual number of responses per respondent: 29.3103.

Estimated annual number of responses: 850,000.

Estimated total annual burden on respondents: 73,950 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 27th day of February, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–5198 Filed 3–4–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Big Sur, Sisquoc, and Sespe National Wild and Scenic Rivers, Los Padres National Forest, Monterey Santa Barbara, and Ventura Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final Boundaries of the Big Sur, Sisquoc, and Sespe National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Rich Phelps, Special Areas Coordinator (805) 934–9654 or Jim Turner, Forest Planner (805) 961–5752, Los Padres National Forest, 6755 Hollister Avenue, Goleta, CA 93117.

SUPPLEMENTARY INFORMATION: The Big Sur, Sisquoc, and Sespe Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenues SW., Washington, DC 20024; Pacific Southwest Regional Office, 1323 Club Drive, Vallejo, CA 94592; and, Los Padres National Forest, 6755 Hollister Avenue, Goleta, CA 93117.

The Los Padres Condor Range and River Protection Act (Public Law 102–301) 1992, designated the Big Sur, Sisquoc, and Sespe Rivers, California, as National Wild and Scenic Rivers, to be administered by the Secretary of Agriculture. The boundaries have been delineated on the appropriate USGS Quad Sheets since 1995 and used for day to day management. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: February 25, 2002.

Jeanine Derby,

Forest Supervisor.

[FR Doc. 02–5215 Filed 3–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Delegation of Authority From the Regional Forester, Eastern Region, to Forest Supervisors, Eastern Region, for Forest Road and Trail Act (FRTA) Easements

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Regional Forester, Eastern Region, hereby delegates the authority to grant FRTA easements, to public road agencies, to all Forest Supervisors in the Easter Region, Forest Service.

Forest Supervisors are also authorized to terminate FRTA easements, to public road agencies, with the consent of the grantee.

Dated: February 7, 2002.

Donald L. Meyer,

Acting Regional Forester.

[FR Doc. 02–5148 Filed 3–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 022802B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Billfish Angler Survey.

Form Number(s): NOAA Form 88–10.

OMB Approval Number: 0648–0020.

Type of Request: Regular submission.

Burden Hours: 63.

Number of Respondents: 750.

Average Hours Per Response: 5 minutes.

Needs and Uses: Volunteer recreational anglers are asked to report on their fishing catch and effort for billfish throughout the Pacific area. The information received is used to study the health and activity of the billfish resources in the Pacific.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5231 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–22–S]

DEPARTMENT OF COMMERCE

[I.D. 022802A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Raised Footrope Trawl Exempted Fishery.

Form Number(s): None.

OMB Approval Number: 0648–0422.

Type of Request: Regular submission.

Burden Hours: 230.

Number of Respondents: 288.

Average Hours Per Response: 2 minutes

Needs and Uses: Framework 35 to the Northeast Multispecies Fishery Management Plan modified existing multispecies regulations to allow for a seasonal whiting raised footrope trawl exempted fishery. Persons holding multispecies Federal Fisheries Permits and wanting to participate in the exempted fishery must: (1) request a certificate to fish in the fishery, and (2) provide notification when they withdraw from the fishery. Requests for certificates must include the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. The information is needed for management of the fishery and enforcement.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5232 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Format for Petition Requesting Relief Under U.S. Antidumping Duty Law; Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 6, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at *MClayton@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jim Nunno, Import Administration, Office of Policy, Room 3713, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–0783, and fax number: (202) 501–7952.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty law. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA–357P, '' Format for Petition Requesting Relief Under the U.S. Antidumping Duty Law,'' is designed for U.S. companies or industries that are unfamiliar with the antidumping law and the petition process. The Form is designed for potential petitioners that believe that an industry in the United States is being injured because a foreign competitor is selling a product in the United States at less than fair value. Since a variety of detailed information is required under the law before initiation of an antidumping duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

II. Method of Data Collection

Form ITA–357P is sent by request to potential U.S. petitioners.

III. Data

OMB Number: 0625–0105.

Form Number: ITA–357P.

Type of Review: Regular Submission.

Affected Public: U.S. companies or industries that suspect the presence of unfair competition from foreign firms selling merchandise in the United States below fair value.

Estimated Number of Respondents: 55.

Estimated Time Per Response: 40 hours.

Estimated Total Annual Burden Hours: 2,200 hours.

Estimated Total Annual Costs: Assuming the number of petitioners remains the same, the estimated annual cost for this collection is $544,500 ($396,000 for respondents and $148,500 for federal government).

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 costs) 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 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: February 27, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5180 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S.-Japan Semiconductor Agreement Data Collection Program; Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 6, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & 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 and instructions should be directed to: Dorothea Blouin, Office of Microelectronics, Medical Equipment and Instrumentation, Room 1015, Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230; phone (202) 482–1333, fax number (202) 482–0975 or via the Internet at *Dorothea_Blouin@ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Data Collection Form is the vehicle by which individual ''Foreign'' (non-Japanese) semiconductor companies voluntarily report their sales to Japan. The information provided by the Data Collection Program (DCP) is used by the U.S. Government to calculate foreign market share in the Japanese semiconductor market to ensure access to the Japanese market gained under the 1986 and 1991 U.S.-Japan Semiconductor Arrangement continues under the 1996 Semiconductor Agreement.

II. Method of Data Collection

The Department of Commerce distributes Form ITA–4115P and the instruction manual to semiconductor companies after their eligibility is checked. The applicant completes the form and then forwards it to Price Waterhouse, who submits a summary report to the U.S. Department of Commerce/ Office of Microelectronics for calculation of foreign (non-Japanese) share of the Japanese market.

III. Data

OMB Number: 0625–0211.

Form Number: ITA–4115P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit companies.

Estimated Number of Respondents: 38.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 456 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $41,040 ($34,200 for respondents and $6,840 for federal government).

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 costs) 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 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: February 27, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5181 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Final results of changed circumstances review.

EFFECTIVE DATE: March 5, 2002.

SUMMARY: On November 15, 2001, the Department of Commerce (''the Department'') published a notice of initiation and preliminary results of a changed circumstances review for a revocation of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands at the request of a letter dated September 18, 2001 from Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and United States Steel LLC (collectively, ''petitioners''). The Department issued its preliminary results and intent to revoke the antidumping duty order, retroactive to August 19, 1993, given that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order (*see Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Initiation and Preliminary Results of Changed Circumstances Review*, 66 FR 57415 (November 15, 2001)). In our preliminary results we invited interested parties to comment on our preliminary results. We received no comments. Therefore, our final results of the changed circumstances review remain the same as our preliminary results and the Department hereby revokes this order with respect to all unliquidated entries for consumption of the subject merchandise made from August 19, 1993 through January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier or Abdelali Elouaradia, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1394 or (202) 482–1374, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published in the **Federal Register** the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (*see Antidumping Duty Order and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 58 FR 44172 (August 19, 1993)). On December 15, 2000, the Department published in the **Federal Register** a revocation of the order effective January 1, 2000 (*see Revocation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products From Canada, Germany, Korea, the Netherlands, and Sweden*, 65 FR 78467). On September 18, 2001, Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and United States Steel LLC (collectively, ''petitioners'') requested that the order be revoked retroactively to August 19, 1993. In this letter, petitioners indicated that their revocation request applies to all unliquidated entries for consumption of the subject merchandise made from August 19, 1993 through January 1, 2000, and that domestic producers accounting for at least 85 percent of production have expressed a lack of interest in the order with respect to this period prior to January 1, 2000. On November 15, 2001, the Department published a notice of initiation and preliminary results the a changed circumstances review for a revocation of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. The Department issued its preliminary results and intent to revoke the antidumping duty order, retroactive to August 19, 1993, given that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order.

Final Results of Review: Revocation of the Antidumping Duty Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 782(h)(2) of the Act and § 351.222(g)(1)(i) of the Department's regulations provide that the Secretary may revoke an order, in whole or in part, based on changed circumstances if ''{p}roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * have expressed a lack of interest in the order, in whole or in part. * * *'' In this context, the Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product (*see, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, Revocation of Orders, and Recission of Administrative Reviews*, 65 FR 13713, 13714 (March 14, 2000)).

Petitioners are domestic interested parties as defined by section 771(9)(C) of the Act and 19 CFR 351.102(b). Petitioners indicate that they, along with other domestic producers that have expressed a lack of interest in the order retroactive to August 19, 1993, represent at least 85 percent of the domestic production of the domestic like product to which this order pertains, and thus account for ''substantially all'' of the production of the domestic like product.

In this changed circumstances review we have determined to revoke the order in part, retroactive to August 19, 1993, for unliquidated entries in light of the submission by petitioners and particularly in light of the fact that the parties to the litigation concerning these entries have agreed to withdraw their appeals; there is only one importer of record; and we received no comments following our preliminary results of November 15, 2001. We hereby notify the public of our revocation in whole the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands retroactive to August 19, 1993.

Upon dismissal by the courts of the pending appeals, we will instruct the Customs Service to refund any estimated antidumping duties collected for all unliquidated entries of certain cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for

consumption on or after August 19, 1993. We will also instruct the Customs Service to pay interest on any refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 19, 1993, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and § 351.216 of the Department's regulations.

Dated: February 26, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–5209 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–821]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Notice of Preliminary Results of Changed Circumstances Review, Preliminary Intent to Revoke the Antidumping Duty Order, and Preliminary Rescission of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances review, preliminary intent to revoke the antidumping duty order, and preliminary rescission of antidumping duty administrative reviews.

SUMMARY: In response to a request by KBA North America, Inc., Web Press Division, a U.S. producer of subject merchandise and an interested party in this proceeding, on November 5, 2001, the Department of Commerce initiated a changed circumstances review to consider revocation of the antidumping duty order on large newspaper printing presses from Germany. We have preliminarily determined that the producers accounting for all or substantially all of the production of the domestic like product to which the order pertains do not have an interest in maintaining the order. Consequently, we preliminarily intend to revoke the order on large newspaper printing presses from Germany with an effective date of September 1, 1999. In addition, the Department is rescinding preliminarily the ongoing administrative reviews of this order. These reviews cover the periods September 1, 1999, through August 31, 2000, and September 1, 2000, through August 31, 2001. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Irene Darzenta Tzafolias AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–0922, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (2001).

Background

On September 4, 1996, the Department issued the antidumping duty order on large newspaper printing presses (LNPPs) from Germany (61 FR 46623). On September 24, 2001, Koenig & Bauer AG and KBA North America, Inc. Web Press Division (KBA NA, a domestic producer of the subject mercandise; collectively, K&B) requested that the Department revoke the antidumping duty order on LNPPs from Germany through initiation of a changed circumstances review. K&B provided information that Goss, the petitioner in the antidumping duty order proceeding, closed its sole U.S. production facility on August 31, 2001, and is no longer a producer of the merchandise subject to the antidumping duty order. On November 2, 2001, KBA NA stated that it accounts for substantially all of the production of the domestic like product and no longer has an interest in the continuation of the antidumping order. In addition, prior to K&B's request, on September 19, 2001, MAN Roland Druckmaschinen AG and MAN Roland Inc. (collectively, MAN Roland), a foreign producer/exporter of the subject merchandise and its U.S. affiliate, requested that the Department revoke the antidumping duty order on LNPPs from Germany through a changed circumstances review. MAN Roland provided information similar to K&B's regarding the status of Goss's U.S. production facility. Both K&B and MAN Roland submitted additional material regarding Goss on October 19, 2001, and MAN Roland provided further information on October 29, 2001. In their submissions, both K&B and MAN Roland requested that the order be revoked with respect to any entries of LNPPs that have not yet been the subject of a completed administrative review.

On October 3, 2001, the Department requested Goss to state for the record whether it is a domestic producer of LNPPs. Goss responded on October 19, 2001, stating that it continues to perform certain manufacturing functions at a U.S. facility and thus continues to be a manufacturer, producer, or wholesaler in the United States within the meaning of section 771(9) of the Act. On that basis, Goss contended that the Department should reject the requests for a changed circumstances review.

Based on the information submitted by KBA NA and KBA NA's assertions that it accounted for substantially all of the production of the domestic like product and had no interest in maintaining the order, the Department determined that there was sufficient evidence of changed circumstances to warrant a review under section 751(b)(1) of the Act and 19 CFR 351.222(g) and 351.216, and consequently, initiated a changed circumstances review on November 5, 2001. (See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order, 66 FR 56798 (November 13, 2001) (Initiation Notice).) In the Initiation Notice, we stated that we would consider whether there is interest in continuing the order on the part of the U.S. industry. We also stated that we would publish in the Federal Register a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), prior to the issuance of the final results of the review.

Since the Department's notice of initiation of this review, the following events have occurred. On December 7, 2001, the Department issued a questionnaire to Goss seeking to better understand its current operations and to assess its status as a domestic producer of LNPPs. While it never responded directly to the questions in this questionnaire, on December 21, 2001, Goss filed a letter stating that it was no longer interested in participating in any of the current antidumping proceedings concerning LNPPs from Germany (and Japan), including the changed circumstances review, and therefore was withdrawing from them. Subsequent to the filing of Goss's letter, on December 31, 2001 and January 8, 2002, MAN Roland and K&B, respectively, submitted letters urging the Department to conclude based on the facts of the record that Goss is not a domestic producer of the subject merchandise and to revoke the order on the basis of changed circumstances with respect to all unliquidated entries of the subject merchandise, including those that are subject to the current administrative reviews. Specifically, K&B requested that the effective date of revocation of the order be September 1, 1999. On January 31, 2002, MAN Roland specified an effective revocation date of September 1, 2000. Other than the additional comments filed by K&B and MAN Roland, no other interested parties filed comments.

Scope of Order

The products covered by the order are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the order includes the five press system components. They are: (1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non–subject elements before or after importation, is included in the scope of this order. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the order, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the Harmonized Tariff Schedule of the United States (HTSUS): the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start–up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this order. Used presses are also not subject to this order. Used presses are those that have been previously sold in an arm's–length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this order covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this order are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Preliminary Results of Changed Circumstances Review and Preliminary Intent to Revoke the Antidumping Duty Order

We interpret Goss's withdrawal from all of the ongoing LNPP proceedings to mean that Goss no longer has interest in the maintenance of this order. Both Goss, the original petitioner, and KBA NA, a U.S. producer of LNPPs which claims it accounts for substantially all of the production of the domestic like product, are no longer interested in the maintenance of this order, and no other interested party has filed any objection to the revocation of this order pursuant to the Department's solicitation of comments in its Initiation Notice.

Pursuant to section 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. 19 CFR 351.222(g) provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances exist sufficient to warrant revocation. Furthermore, it is

the Department's practice to revoke an antidumping order so that the effective date of revocation covers entries that have not been subject to a completed administrative review. There has not been a completed administrative review for K&B since September 1, 1999, because the Department deferred for one year the initiation of the administrative review of K&B for the period September 1, 1999, through August 31, 2000. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews, 65 FR 64662, (October 30, 2000).[1]

The Department preliminarily determines that the producers accounting for substantially all of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by this order, dating back to September 1, 1999, and thus, sufficient changed circumstances exist to warrant revocation of the order. The Department also preliminarily determines that the effective date of revocation for this order is September 1, 1999, the date of the suspension of liquidation for the 1999–2000 administrative review for K&B. Therefore, the Department preliminarily determines that it shall revoke, effective September 1, 1999, the order on LNPPs from Germany in whole, pursuant to sections 751(b) and (d) and 782(h) of the Act, as well as 19 CFR 351.216 and 351.222(g).

Preliminary Rescission of Antidumping Administrative Reviews

As discussed above, on October 30, 2001, the Department published in the Federal Register (65 FR 64662) a notice stating that it would defer for one year the initiation of the administrative review for the period September 1, 1999 through August 31, 2000, for K&B. On October 26, 2001, the Department published in the Federal Register (66 FR 54195) a notice of initiation of an administrative review for the period September 1, 2000 through August 31, 2001 for K&B and MAN Roland. Because we are preliminarily revoking the order for the reasons stated above, effective September 1, 1999, we are preliminarily rescinding the ongoing administrative reviews of LNPPs from Germany pursuant to section 751(d)(3) of the Act.

Instructions to the Customs Service

If our final results do not differ from our preliminary results with respect to revocation, the Department, in accordance with 19 CFR 351.222, will instruct the Customs Service to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, all unliquidated entries of LNPPs from Germany, entered, or withdrawn from warehouse, for consumption on or after September 1, 1999, the date of the suspension of liquidation for the 1999–2000 administrative review for K&B. The Department will further instruct the Customs Service to refund with interest any estimated duties collected with respect to unliquidated entries of LNPPs from Germany entered, or withdrawn from warehouse, for consumption on or after September 1, 1999, in accordance with section 778 of the Act. These instructions will not be issued until either the conclusion of the ongoing litigation with respect to the final determination of the Department's less–than–fair–value investigation of LNPPs from Germany, pursuant to which entries have been enjoined from liquidation, or the injunction in that case is lifted or amended to allow liquidation of entries. (See Koenig & Bauer Albert v. United States, Fed. Cir. Court No. 00–1387 (CIT 96–10–02298).)

Public Comment

Interested parties are invited to comment on these preliminary results. Case briefs may be submitted by interested parties not later than 10 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than five days after the deadline for submission of case briefs. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Parties to the proceedings may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, which will include the results of its analysis of issues raised in any case or rebuttal briefs or at the hearing.

This notice of preliminary results of changed circumstances review and intent to revoke the antidumping duty order are in accordance with sections 751(b) and (d), and 777 of the Act and 19 CFR 351.216(d) and 351.222(g). The 1999–2000 and 2000–2001 antidumping duty administrative reviews of LNPPs from Germany are being preliminarily rescinded in accordance with section 751(d)(3) of the Act.

February 27, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5207 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] There has been a completed administrative review of the order for MAN Roland since the specified effective date of revocation (i.e., covering the period September 1, 1999 through August 31, 2000) (see Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Final Results of Antidumping Duty Administrative Review, 67 FR 2192 (January 16, 2002)); however, the margin resulting from the completed review for MAN Roland for the period September 1, 1999, through August 31, 2000, was zero, and thus, notwithstanding the Department's decision to revoke the order, the Department would otherwise instruct the Customs Service to liquidate the entries relevant to this review period in the same manner as it would with respect to revocation of the order effective September 1, 1999 (i.e., it would instruct the Customs Service to liquidate the entries at issue without regard to antidumping duties). The effective date would have no impact on MAN Roland.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid from the People's Republic of China: Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo at (202) 482–0629, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION: On August 20, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 66 FR 43570. The period of review is July 1, 2000 through June 30, 2001. The review covers three exporters of the subject merchandise to the United States.

Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245–day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. Due to the difficulty in selecting surrogate values to value factors of production, and the requirement that we conduct verification in this proceeding, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Consequently, we have extended the deadline until July 31, 2002.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)(2001)).

February 22, 2002

Susan Kuhbach,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. 02–5205 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–822]

Notice of Extension of Time Limits of the Preliminary Results of AntidumpingDuty Administrative Review: Stainless Steel Plate in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Stephen Shin, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–0413.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to the current regulations as codified at 19 CFR Part 351 (2001).

Background

On May 31, 2001, Acciai Speciali Terni S.p.A. and its affiliated company, requested that the Department conduct an administrative review. On June 19, 2001, the Department published a notice of initiation of the administrative review of the antidumping duty order on Stainless Steel Plate in Coils from Italy, covering the period May 1, 2000 through April 30, 2001. See Initiation of Antidumping and Countervailing Duty Administrative Review and Requests for Revocation in Part, 66 FR 32934 (June 19, 2001). On December 3, 2001, the Department extended the preliminary results of the review by 60 days. See Notice of Extension of the Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Italy, 66 FR 60196 (December 3, 2001). The preliminary results of this review are currently due no later than April 1, 2002.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. On October 22, 2001, the Department initiated a sales-below-the-cost-of-production investigation with respect to home market sales made by AST. On November 23, 2001, AST submitted the company-specific cost data. In order to properly analyze and consider the cost data in the Department's preliminary results, the Department has determined that it is not practicable to complete the preliminary results of this review for Acciai Speciali Terni S.p.A. and its affiliates within the initial time limits provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Therefore, we are extending the due date for the preliminary results by 60 days, until no later than May 31, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

February 26, 2002

Joseph Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–5206 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

EFFECTIVE DATE: March 5, 2002.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen at 202–482–0409, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On July 2, 2001, the Department published a notice of opportunity to

request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 66 FR 34910 (July 2, 2001). On July 31, 2001, Acciai Speciali Terni S.p.A. (''AST''), an Italian producer of subject merchandise, its affiliate, Acciai Speciali Terni USA, Inc. (''AST USA''), a U.S. importer of subject merchandise, and the petitioners from the original investigation requested the Department conduct an administrative review. On August 20, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise, for the period July 1, 2000 through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 43570 (August 20, 2001). The preliminary results of this administrative review are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, constructed export price versus export price, selling expenses, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. Therefore, we are extending the due date for the preliminary results by 90 days, until no later than July 1, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

February 26, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–5208 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

[Docket No. 990813222–0035–03]

RIN 0625–AA55

Allocation of Duty-Exemptions for Calendar Year 2002 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates calendar year 2002 duty-exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446, as amended by Pub. L. 103–465 (''the Act'').

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with §303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2002 is 1,866,000 units for the Virgin Islands (65 FR 8048, February 17, 2000).

The criteria for the calculation of the calendar year 2002 duty-exemption allocations among insular producers are set forth in §303.14 of the regulations (15 CFR 303.14).

The Departments have verified and adjusted the data submitted on application form ITA–334P by Virgin Islands producers and inspected their current operations in accordance with § 303.5 of the regulations (15 CFR 303.5).

In calendar year 2001 the Virgin Islands watch assembly firms shipped 508,506 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 2001 plus the creditable wages paid by the industry during calendar year 2001 to residents of the territory was $3,058,590.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 2002 Virgin Islands annual allocations, based on the data verified by the Departments, are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc	500,000
Hampden Watch Co., Inc	200,000
Unitime Industries, Inc	400,000
Tropex, Inc	300,000

The balance of the units allocated to the Virgin Islands is available for new entrants into the program or producers who request a supplement to their allocation.

Faryar Shirzad,

Assistant Secretary for Import Administration, Department of Commerce.

Nikolao Pula,

Acting Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. 02–5210 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program; Announcement of a Public Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend the Hampton University's Second Annual Technology Conference co-sponsored by the Advanced Technology Program (ATP) and Hampton University, Hampton, Virginia. ATP provides cost-shared funding to industry to accelerate the development of challenging, high-risk, innovative technologies that promise broad-based economic benefits for the nation.

DATES: The Technology Conference will be held on April 3, 2002, from 6:00 p.m. to 8:30 p.m. The Meeting will continue on April 4, 2002, from 8:00 a.m. to 8:00 p.m. and on April 5, 2002, from 8:00 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at the Hampton University Student Center, Hampton, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information or registration questions, contact Ms. Adrienna Davis at (757) 728–6927 or email at

HUTC2002@hamptonu.edu, subject heading HUTC2002. For information about the ATP contact Toni Nashwinter at (301) 975–3780 or email at *toni.nashwinter@nist.gov.*

SUPPLEMENTARY INFORMATION: The ATP statute originated in the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418, 15 U.S.C. 278n), and was amended by the American Technology Preeminence Act of 1991 (Public Law 102–245). This law has been codified at 15 U.S.C. 278n. The ATP implementing regulations are published at 15 CFR part 295, as amended. The ATP is a competitive cost-sharing program designed for the Federal government to work in partnership with industry, universities, and states to accelerate the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant commercial payoffs and widespread benefits for the nation.

The Technology Conference title, ''Are You Sure, It is Secure?'' and ''How to Secure Your Share of Federal Funding,'' will consist of three Tracks. The Advanced Technology Program will host a robust track on Advanced Technology Development and Commercialization Opportunities. This track will focus on information about the over $1 billion of funding opportunities available for advanced technology research from Federal government agencies. Sessions will emphasize and highlight minority businesses' and universities' participation in these programs. Hampton University will host two tracks, the first ''Cyber Crimes: An In-depth Understanding'', and the second, ''Information Security and Assurance.''

Information on the meeting agenda and the registration requirements can be found at the ATP website at *www.atp.nist.gov* with a link to the Hampton website or visit the Hampton Website at *www.hamptonu.edu* and click on 'Hot News' to learn about this Conference and to access the registration form. There is a registration fee of $250 if postmarked by March 15; $300 on-site registration fee, and $100 fee for students.

Dated: February 26, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–5236 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–13–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, William H. Ward, at (202) 606–5000, extension 375. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between the hours of 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, within 30 days from the date of publication in this **Federal Register**.

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 Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Description: AmeriCorps Education Award Utilization Survey.

One of the goals of the AmeriCorps program is furthering the educational opportunities of its members. The AmeriCorps Education Award provides up to $4,725 to help a member pay for further education or to repay student loans. Part-time members get a pro-rated portion of that amount. (42 U.S.C. 12601 *et seq.*) The Corporation's National Service Trust data showed that about half of the AmeriCorps graduates who have earned Education Awards had begun to use them. Through the proposed study, the Corporation seeks to identify reasons for non-use of Education Awards. In addition, a thorough exploration of trends in non-use and reasons for non-use will identify ways in which the Corporation can meaningfully increase the use of Education Awards, thus furthering educational opportunity. The Corporation seeks to conduct a survey of former members of the AmeriCorps*State and National, AmeriCorps*VISTA and AmeriCorps*NCCC programs. This survey will entail telephone interviews of approximately 30 minutes in length with 1,000 former AmeriCorps members. It will identify trends in and reasons for non-use of the Educational Awards.

- *Type of Review:* New collection.
- *Agency:* Corporation for National and Community Service.
- *Title:* AmeriCorps Education Award Utilization Survey.
- *OMB Number:* None.
- *Agency Number:* None.
- *Affected Public:* Former AmeriCorps members.
- *Total Respondents:* 1,000.
- *Frequency:* One time.
- *Average Time Per Response:* 30 minutes.
- *Estimated Total Burden Hours:* 500 hours.
- *Total Burden Cost (capital/startup):* 0.
- *Total Burden Cost (operating/maintenance):* 0.

Dated: February 26, 2002.

David Reingold,

Director, Department of Research and Policy Development.

[FR Doc. 02–5131 Filed 3–4–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF ENERGY

Office of Science

High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal

Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, April 26, 2002; 9 a.m. to 6 p.m. and Saturday, April 27, 2002; 8:30 a.m. to 4 p.m.

ADDRESSES: Fermi National Accelerator Laboratory, Wilson Hall, First Floor 1 North and 1 West, Batavia, Illinois 60510.

FOR FURTHER INFORMATION CONTACT: Glen Crawford, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–9458.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Friday, April 26, 2002, and Saturday, April 27, 2002

- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Discussion of High Energy Physics University Programs.
- Reports on and Discussion of U.S. Large Hadron Collider Activities.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Glen Crawford, 301–903–9458 or *Glen.Crawford@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 28, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–5192 Filed 3–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet March 12–15, 2002, at the headquarters of the IEA in Paris, France in connection with the IEA's Disruption Simulation Exercise Program (ERE2).

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on March 12, 2002, beginning at approximately 2:15 p.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at an emergency response procedures training session hosted by the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on March 12, 2002. The Agenda for the meeting is under the control of the IEA. It is expected the IEA will adopt the following Agenda:

1. Welcome to the IEA.
2. Objectives of the Session.
3. Introduction to the IEA Emergency System—Background and Objectives, Emergency Response Measures, Organization and Roles.
4. Activation of IEA Measures—A Step by Step Process—Coordinated Emergency Response Measures (CERM) procedures and CERM situations, Application of International Energy Program (IEP)/Emergency Management Manual Procedures.
5. IEA Energy Statistics and Emergency Data System—Structure and Contents of Emergency Questionnaires, and Reporting Relationships.
6. IEA Information Technologies—Structure and Capabilities of IEA Information Technologies.
7. Questions & Answers.
8. Summary of the Training Session.

A meeting involving members of the IAB in connection with the IEA's Disruption Simulation Exercise Program (ERE2) will be held on March 13 and 14, 2002, at the headquarters of the IEA beginning at approximately 9 a.m., and including a preparatory encounter among company representatives from approximately 8:45 a.m. to 9 a.m. The purpose of this meeting is to train IEA delegates in the use of IEA emergency response procedures by reacting to a hypothetical oil supply disruption scenario. The Agenda for the meeting is under the control of the IEA. It is expected the IEA will adopt the following Agenda:

I. Disruption—Stage 1

A. Plenary Session

1. Introduction by SEQ Chairman and IEA Oil Markets and Emergency Preparedness (OME) Director.
2. Introduction of Simulation Facilitator, Market Group, Media Group, and Design Group.
3. Logistics are described by Head of Emergency Plans and Preparations Division (EPPD).
4. Rules are defined and simulation is initiated by Facilitator.
5. Before the announcement of the situation, the Market Group will describe and discuss the oil market context of the session.
6. The Stage 1 event is announced.
7. A brief analysis of the market impact by the Market Group.
8. The Media Group requests some on-the-spot answers.

B. Participants Break Out Into Assigned Teams

1. Respond to specific questions on market analysis and IEA decision-making.
2. Report on what action(s) if any the IEA should take at this point.
3. Submit a brief report to the Facilitator.

C. Plenary Session

1. Presentation of four team reports (more if sufficiently diverse).
2. Reactions and questions from the Media Group to each team report presentation.
3. Reaction from Market Group on fundamentals following all team reports.

4. Discussions on the recommendations.
5. Chairman's Summary of the Stage 1 Session.

II. Disruption—Stage 2

A. Plenary Session

1. Introduction by SEQ Chairman and OME Director.
2. Simulation is initiated by Facilitator.
3. Before the announcement of the situation, the Market Group will describe and discuss the oil market context of the session.
4. The Stage 2 event is announced.
5. The Market Group provides a brief analysis of the supply demand impact.
6. The Media Group requests some on-the-spot answers.

B. Participants Break Out Into Assigned Teams

1. Respond to specific questions on market analysis and IEA decision-making.
2. Report on what action(s) the IEA should take at this point.
3. Submit a brief report to the Facilitator.

C. Plenary Session

1. Presentation of four team reports (more if sufficiently diverse).
2. Reactions and questions from the Media Group to each team report presentation.
3. Reaction from Market Group on fundamentals following all team reports.
4. Discussions on the recommendations.
5. Review and critique of the first day of the exercise.
6. Chairman's summary.

III. Disruption—Stage 3

A. Plenary Session

1. Introduction by SEQ Chairman.
2. Simulation is initiated by Facilitator.
3. Before the announcement of the situation, the Market Group will describe and discuss the oil market context of the session.
4. The Stage 3 event is announced.
5. The Market Group provides a brief analysis of the supply demand impact.
6. The Media Group requests some on-the-spot answers.

B. Participants Break Out Into Assigned Teams

1. Respond to specific questions on market analysis and IEA decision-making.
2. Report on what action(s) if any the IEA should take at this point.
3. Submit a brief report to the Facilitator.

C. Plenary Session

1. Presentation of four team reports (more if sufficiently diverse).
2. Reactions and questions from the Media Group to each team report presentation.
3. Reaction from Market Group on fundamentals following all team reports.
4. Discussions on the recommendations.
5. Chairman's summary of the session.

IV. Plenary Discussion on Conclusions

A. Introduction Of The Session By The SEQ Chairman

B. Presentation By The Facilitator Of The Outcomes Of The Exercises

C. Summary By The Market Group Of Fundamentals

D. Discussion Of The Types And Magnitudes Of The Recommended Responses

E. Discussion Of The Decision-making Process

F. Chairman's Initial Summary Of The Exercise And Recommendations

A meeting of the IAB will be held on March 15, 2002, at the IEA beginning at approximately 9 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's SEQ, which is scheduled to be held on that date, including a preparatory encounter among company representatives from approximately 9 a.m. to 9:15 a.m. The Agenda for the meeting is under the control of the IEA. It is expected the IEA will adopt the following Agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the 103rd Meeting.
3. SEQ Program of Work for 2003–2004—2003–2004 Work Program of the SEQ—First Elements.
4. Update on Compliance with IEP Stockholding Commitments.
5. Policy and Legislative Developments in Member Countries—Update on Korea's Accession to the IEA.
6. Report on Developments in Non-Member Countries and International Organizations.
7. Emergency Response Training and Simulation Exercise—Initial Report on the Emergency Response Training and Simulation Exercise 2002 (ERE2), Phase 3 and Data Workshop Issues.
8. Current IAB Activities—Oral Report by the IAB Chairman.
9. Emergency Response Procedures—Transition from CERM to IEP Measures.
10. Questionnaire on IEA Oil Stock Drawdown Capacity.
11. Joint SEQ/Standing Group on Long-Term Cooperation (SLT) Seminar—Conclusions from Joint SEQ/SLT Inter-fuels Workshop, Results from the Fuel-Switchng Survey.
12. Emergency Response Reviews of IEA Countries—Tentative Schedule of Emergency Response Reviews for 2002–2003.
13. Emergency Data and Related Issues for Information.

Emergency Reserve and Net Import Situation of IEA Countries on January 1, 2001.

Emergency Reserve Situation of IEA Candidate Countries on January 1, 2001.

Monthly Oil Statistics December 2001.

Base Period Final Consumption 1Quarter(Q)2000/4Q2001.

Quarterly Oil Forecast—1Q2002.

Reissue of Emergency Mangement Manual.

Update of Emergency Contacts List.

14. Other Business—Dates of Next Meetings—June 25–27, 2002 and November 12–15 (or 19–22), 2002.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), these meetings are open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, February 28, 2002.

Eric Fygi,

Deputy General Counsel.

[FR Doc. 02–5201 Filed 3–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

Date and Time: Thursday, March 21, 2002, 8:30 am–5:00 pm, Friday, March 22, 2002, 8:30 am–11:30 a.m.

Place: U.S. Department of Energy, Room 8E–089, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 287–1709. Alternately, Mr. Weinig may be contacted by email at *william.weinig@eia.doe.gov* or by FAX at (202) 287–1705.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy-related statistical matters.

Tentative Agenda

Thursday, March 21, 2002

A. Opening Remarks by the ASA Committee Chair, the EIA Acting Administrator and the Director, Statistics and Methods Group, EIA. Room 8E–089

B. Major Topics (Room 8E–089 Unless Otherwise Noted)

1. Weekly Natural Gas Storage Survey.
2. Human Capital Management.
3. Natural Gas Data Quality.
4. Managing Risk in Energy Markets (Room 5E–069).
5. Public Questions and Comments.
6. Redesign of the Commercial Buildings Energy Consumption Survey (CBECS).
7. Extension of the National Energy Modeling System (NEMS) to 2025 (Room 5E–069).
8. System for the Analysis of Global Energy Markets (SAGE).
9. Implementation of New Electric Power Data System.
10. Public Questions and Comments.

Friday, March 22, 2002, Room 8E–089

C. Major Topics

1. Energy Situation Analysis Report (ESAR).
2. Information Quality Guidelines.
3. Improve the Quality of the Annual Nonutility Data.
4. Public Questions and Comments.

D. Closing Remarks by the Chair

Public Participation: The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

Minutes: A Meeting Summary and Transcript will subsequently be available through Mr. Weinig who may be contacted at (202) 287–1709 or by email at *william.weinig@eia.doe.gov.*

Issued at Washington, DC on February 28, 2002.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 02–5191 Filed 3–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. GT01–25–003 and RP99–301–038]

ANR Pipeline Company; Notice of Compliance Filing

February 27, 2002.

Take notice that on December 21, 2001, ANR Pipeline Company (ANR) made a filing in compliance with three orders issued by the Commission on November 21, 2001, in the above referenced dockets. *ANR Pipeline Company,* 97 FERC ¶ 61,222 (2001); *ANR Pipeline Company,* 97 FERC ¶ 61,223; *ANR Pipeline Company,* 97 FERC ¶ 61,224 (2001). As part of this filing, ANR has tendered (1) revised agreements with two shippers in compliance with these orders; and (2) Eighth Revised Sheet No. 190 of ANR's Second Revised Volume No. 1, with a proposed effective date of December 21, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 6, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5171 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–63–000]

Constellation Power Source, Inc., Complainant, v. California Power Exchange Corporation, Respondent; Notice of Complaint

February 27, 2002.

Take notice that on February 25, 2002, Constellation Power Source, Inc. tendered a filing with the Federal Energy Regulatory Commission (Commission), a Complaint in which it requests that the Commission find that the California Power Exchange Corporation (CalPX) should release three letters of credit that Constellation had provided as a condition for participating in the CalPX's now-defunct markets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 18, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers 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. 02–5170 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–051]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

February 27, 2002.

Take notice that on February 22, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing contracts between Gulf South and the following companies for disclosure of recently negotiated rate transactions. As shown on the contracts, Gulf South requests an effective date of April 1, 2002.

Special Negotiated Rate Between Gulf South Pipeline Company, LP and The City of Brewton, Contract No. 14492
Gulf South Pipeline Company, LP and The City of Foley, Contract No. 14502

Gulf South states that it has served copies of this filing upon all parties on the official service list created 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5174 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–503–001]

Natural Gas Pipeline Company of America; Notice of Technical Conference

February 27, 2002.

In the Commission's order issued on February 1, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, March 19, 2002, at 10:30 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5175 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–61–000]

PG&E National Energy Group, PG&E, Generating, US Gen New England, Inc., and PG&E Energy Trading-Power, L.P., Complainants, v. ISO New England Inc., Respondent; Notice of Complaint

February 27, 2002.

Take notice that on February 25, 2002, PG&E National Energy Group, PG&E Generating, US Gen New England, Inc., and PG&E Energy Trading-Power, L.P. (collectively referred to PG&E National Energy Group Companies) filed a Complaint Requesting Fast Track Processing against ISO New England Inc. (ISO–NE) requesting that the Federal Energy Regulatory Commission immediately strike the January 25, 2002 action by ISO–NE lowering the New England Power Pool (NEPOOL) Objective Capability. The Complaint also requests the Commission to direct NEPOOL to include the Hydro Quebec Interconnection in the NEPOOL Transmission Facilities, and roll the costs of supporting the Hydro Quebec Interconnection into the NEPOOL Open Access Transmission Tariff, or any future tariff for a Northeast Regional Transmission Organization.

Copies of the complaint were served via facsimile and courier to representatives of ISO–NE, electronically to NEPOOL Counsel for circulation to NEPOOL Participants, and by overnight delivery to the affected state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 18, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers 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. 02–5169 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–83–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

February 27, 2002.

Take notice that on February 22, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part

[1] Natural Gas Pipeline Company of America, 98 FERC ¶ 61,099 (2002).

of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 23F, with an effective date of January 1, 2002.

Tennessee states that the revised tariff sheet is being filed in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, *et al.,* and approved by the Commission on April 29, 1998 (the GRI Settlement), *Gas Research Institute,* 83 FERC ¶61,093 (1998), *order on reh'g,* 83 FERC ¶61,331 (1998), and the Commission's Letter Order approving the Gas Research Institute's Year 2002 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2001 in Docket No. RP01–434. Tennessee further states that the revised tariff sheet reflects a decrease in the Gas Research Institute surcharges for 2002 for the FT–IL Rate Schedule.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5176 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–161–000]

Viking Gas Transmission Company; Notice of Tariff Filing

February 27, 2002.

Take notice that on February 21, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheet to become effective April 1, 2002:

2nd Rev Eleventh Revised Sheet No. 6B

Viking states that the purpose of this filing is to make Viking's annual adjustment to its Load Management Cost Reconciliation Adjustment in accordance with Section 154.403 of the Commission's Rules and Regulations, 18 CFR 154.403 and Section 27 of the General Terms and Conditions of Viking's FERC Gas Tariff.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5177 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 2631–007 Massachusetts

Woronoco Hydro, LLC, Notice of Availability of Environmental Assessment

February 27, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Woronoco Hydroelectric Project, located on the Westfield River in Hampden County, Massachusetts. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Any comments (an original and 8 copies) should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments 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. For further information, contact Allan E. Creamer at (202) 219–0365 or *allan.creamer@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5173 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Draft Environmental Assessment Accepted for Filing and Soliciting Motions To Intervene and Protests

February 27, 2002.

Take notice that the following hydroelectric application, including an applicant prepared draft environmental assessment, have been filed with the Commission and are available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 469–013.

c. *Date Filed:* October 30, 2001.

d. *Applicant:* ALLETE, Inc., d.b.a. Minnesota Power Inc.

e. *Name of Project:* Winton Hydroelectric Project.

f. *Location:* On the Kawishiwi River near the City of Ely, in Lake and St. Louis Counties, MN. The project occupies federal lands within the Superior National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Paulson, Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802, *jpaulson@mnpower.com*, 218–722–5642, ext. 3569.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us*, 202–219–2778.

j. *Deadline for filing motions to intervene and protests:* 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 Commissions, 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person that is on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The license application has been accepted for filing, but is not ready for environmental analysis. When the license application is ready for environmental analysis, a public notice will be issued soliciting comments, recommendations, terms and conditions, and prescriptions.

l. *Description of the Project:* The project consists of the following two developments:

The Winton Development consists of the following existing facilities: (1) The Winton Dam comprising: (a) A 227-foot-long earth dike; (b) a 29-foot-high, 176-foot-long spillway section; (c) an 84-foot-long Taintor gate and log sluice section; (d) an 80-foot-long stop-log gate section; (e) an 111-foot-long and a 120-foot-long non-over-flow section; (f) a 176-foot-long forebay; and (g) a 1,250-foot-long earth dike; (3) a 2,982-acre reservoir comprising the Garden, Farm, South Farm, and Friday Lakes at a normal water surface elevation of 1,385.67 feet USGS; (4) two 215-foot-long, 9-foot-diameter underground penstocks extending to; (5) a powerhouse containing two generating units with a total installed capacity of 4,000 kW; and (6) other appurtenances.

The Birch Lake Reservoir Development consists of: (1) A 7-foot high, 227-foot-long dam comprising; (a) a 72-foot-long Taintor gate section; and (b) an 85-foot-long sluice gate section; and (2) the 7,624-acre Birch Lake reservoir at normal water surface elevation of 1,420.5 feet USGS. This development provides water storage for the Winton Development.

m. 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). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received at the Commission on or before the specified deadline date.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing pertains; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5172 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Workshop; Better Stakeholder Involvement: How To Make It Work

February 27, 2002.

The Office of Energy Projects is initiating the second phase of its Better Stakeholder Involvement Series. These workshops will explore ways to help make the pre-filing stakeholder involvement work. They stem from the staff's report entitled: ''Ideas For Better Stakeholder Involvement In The Interstate Natural Gas Pipeline Planning Pre-Filing Process' which was a product of the seminars held last year and the latter part of 2000.[1] This first workshop will be held in Atlanta, Georgia on Thursday, April 4, 2002. We plan to conduct future workshops around the country throughout the upcoming year.

We are again inviting interstate natural gas companies; Federal, state and local agencies; landowners and other non-governmental organizations with a continuing interest in developing successful strategies for involving people in the pre-filing process. The purpose of these workshops is to discuss how stakeholders are implementing the ideas outlined in the staff report. We will not discuss the merits of any pending or planned pipeline projects.

Please join us as we continue to explore and develop ways to enhance the project design and streamline the regulatory process. In a series of panel discussions stakeholders will be sharing their experiences in interactive sessions. Presentations will be made by the staff of the Commission's Office of Energy Projects, various Federal and state agencies, natural gas company representatives, and private landowners.

The objective will be to better define the pre-filing actions. This will aid in identifying and resolving issues, improving the quality of applications, and achieving quicker approval by the Commission for projects required by the public convenience and necessity. Case studies which can be used as examples will be highlighted.

The workshop will be held at the Atlanta Capitol Plaza, 450 Capitol Avenue, SW, Atlanta, Georgia 30312, phone: 404–591–2000, fax: 404–591–1999 Atlanta, Georgia, from 9:15 a.m. to 12:30 p.m. A preliminary agenda and directions to the hotel are enclosed.

[1] The staff report can be downloaded from the FERC web-site at www.ferc.gov or requested by e-mail at: *gasoutreach@ferc.gov.*

If you plan to attend or have suggestions for the agenda, please respond by March 29, 2002 via facsimile to Roberta Coulter at 202/219–2722, or you may email our team at: gasoutreach@ferc.gov. Please include in the response the names, addresses, and telephone numbers of all attendees from your organization.

To help us enhance our panel discussions, please consider, and forward to us, issues and/or questions you would like to have addressed at the meetings. If you have any questions, you may contact any of the staff listed below:

Richard Hoffmann—202/208–0066

Lauren O'Donnell—202/208–0325

Jeff Shenot—202/219–2178

Howard Wheeler—202/208–2299

J. Mark Robinson,

Director, Office of Energy Projects.

Preliminary Workshop Agenda

Better Stakeholder Involvement: How To Make It Work

April Workshop

9 a.m. Introduction, workshop objectives

9:15 a.m. Panel One—The Challenge at Headquarters, A Broad Overview

- How can you develop company-wide commitment to stakeholder outreach?
- How do you implement the ''corporate commitment?''

10 a.m. Panel Two—Agency Panel

- Agency experiences with early involvement in a project.
- What went well and what might be improved?

10:30 a.m. Break

10:45 a.m. Panel Three—Citizen

- How can it work for us?
- Why should a landowner be involved?

11:15 a.m. Panel Four—Company Case Study

- Experience with specific projects:

1. What went well?
2. Where there were problems with implementation?
3. How to get around the barriers.

- Examples of resolving issues.

12 p.m. Comments/Discussion/Next Steps

- Implementation Strategies.

1 p.m. Adjourn

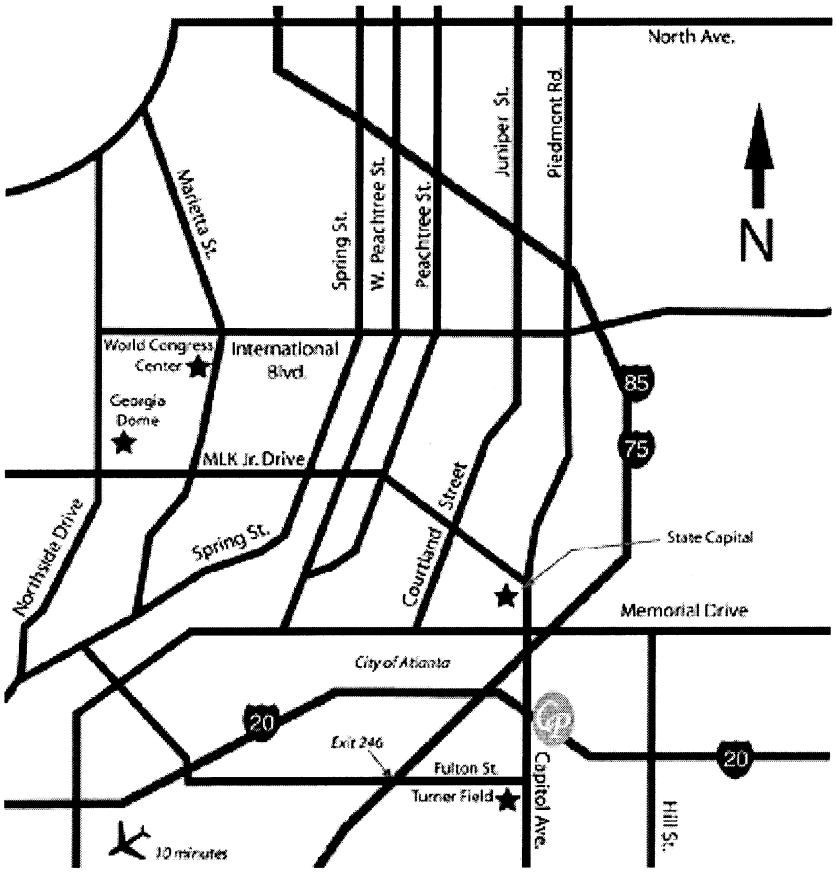
BILLING CODE 6717–01–P

Atlanta Capitol Plaza
450 Capitol Avenue, SW, Atlanta, Georgia 30312
phone: 404-591-2000
fax:404-591-1999

Directions

From Atlanta's Hartsfield International Airport - Take I-75/85 north to Exit 246, turn right onto Fulton Street. At the second light, turn left onto Capitol Avenue. Hotel is immediately on the right.

I-85 South - Exit 246, toward Fulton Street. Turn left onto Fulton Street. At the second light, turn left onto Capitol Avenue. Hotel is immediately on the right.



[FR Doc. 02–5168 Filed 3–4–02; 8:45 am]
BILLING CODE 6717–01–C

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–9]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's

regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *Auby.susan@epamail.epa.gov*, or download off the internet at *http://www.epa.gov.icr* and refer to EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1367.06; Regulation of Fuels and Fuel Additives: Gasoline Volatility: Reporting Requirements in 40 CFR part 80.27; was approved 12/17/2001; OMB No. 2060–0178; expires 12/31/2004.

EPA ICR No. 1831.02, NESHAP for Ferroalloys Production in 40 CFR part 63 subpart XXX; was approved 12/17/2001; OMB No. 2060–0391; expires 12/31/2004.

EPA ICR No. 1800.02; Information Requirements for Locomotives and Locomotive Engines in 40 CFR part 92; was approved 12/14/2001; OMB No. 2060–0392; expires 12/31/2004.

EPA ICR No. 1805.03; National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills; in 40 CFR part 63, subpart MM; was approved 12/14/2001; OMB No. 2060–0377; expires 12/31/2004.

EPA ICR No. 1573.07; Part B Permit Application, Permit Modifications, and Special Permits (Corrective Action Management Proposed Rule); in 40 CFR parts 264 and 270; was approved 12/12/2001; OMB No. 2050–0009; expires 03/31/2003.

EPA ICR No. 1935.01; Standardized Permit for RCRA Hazardous Waste; in 40 CFR parts 267 and 270, 264; was approved 12/12/2001; OMB No. 2050–0182; expires 12/31/2004.

EPA ICR No. 1669.03; Lead-based Pre-Renovation Information Dissemination—TSCA Sec. 406(b); in 40 CFR part 745, subpart E; was approved 12/13/2001; OMB No. 2070–0158; expires 12/31/2004.

EPA ICR No. 0938; General Administrative Requirement for Assistant Programs (Lobbying and Litigation Certification Amendment); was approved 12/13/2001; OMB No. 2030–0020; expires 12/31/2002.

EPA ICR No. 0309.10; Registration of Fuels and Fuel Additives: Requirements for Manufacturers in 40 CFR part 79; was approved 12/05/2001; OMB No. 2060–0150; expires 01/31/2004.

EPA ICR No. 1692.04; NESHAP for Petroleum Refineries in 40 CFR Part 63, subpart CC; was approved 12/05/2001; OMB No. 2060–0340; expires 12/05/2004.

EPA ICR No. 1591.13; Reformulated Gasoline and Conventional Gasoline; Requirements for Parties in the Gasoline Distribution Network; in 40 CFR part 80, subpart D,E,F; was approved 12/05/2001; OMB No. 2060–0277; expires 04/30/2004.

EPA ICR No. 0328.08; Spill Prevention, Control and Countermeasures (SPCC) Plans; in 40 CFR part 112; was approved 12/19/2001; OMB No. 2050–0021; expires 06/30/2002.

EPA ICR No. 1503.04; Data Acquisition for Registration; was approved 12/21/2001; OMB No. 2070–0122; expires 12/31/2004.

Short Term Extensions

EPA ICR No. 1432.20; Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances; OMB No. 2060–0170; on 12/14/2001 OMB extended the expiration date through 01/30/2002.

EPA ICR No. 0783.40; Motor Vehicle Emission Standards and Emission Credits Provisions; in 40 CFR part 86; OMB No. 2060–0104; on 12/18/2001 OMB extended the expiration date through 02/28/2002.

Withdrawn/Continued

EPA ICR No. 1665.05; Final Rule for Elimination or Special Treatment for Category of Confidential Business Information; in 40 CFR part 2, subpart B; OMB No. 2020–0003; this ICR was withdrawn from OMB review.

Comment Filed

EPA ICR No. 1963.01; NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards; on 12/05/2001 OMB filed comment.

Dated: February 25, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–5183 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7153–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP for Marine Vessel Loading Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Marine Vessel Loading Operations (Subpart Y); EPA ICR# 1679.04; OMB Control Number 2060–0289, expiration date February 28, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 4, 2002.

ADDRESSES: Send comments, referencing EPA ICR No.1679.04 and OMB Control No. 2060–00289, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *Auby.susan@epamail.epa.gov,* or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No.1679.04. For technical questions about the ICR contact Virginia Lathrop by phone at (202) 564–7057, by E-mail at *lathrop.virginia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Marine Vessel Loading Operations (Subpart Y); ICR No.1679.04; OMB Control Number 2060–0289, expiration date February 28, 2002. This is a request for extension of a currently approved collection.

Abstract: This collection is for record keeping and periodic reporting information to EPA Regional Offices and delegated states. The information concerns compliance information for the emissions relating to loading of

marine tank vessels with petroleum and gasoline. Delegated states and EPA Regional Offices use the data to determine compliance with the NESHAP rule. The purpose is to assure compliance with emission requirements in 40 CFR part 63, subpart Y. In general, records will be stored on site and shown to inspectors when requested. These will be hard copy records for the most part. Other information for periodic reports are sent to the state or to the Regional Office. It will cost 105 facilities, a total of 28,131 hours each year at a total cost of $1,535,817.

Under sections 40 CFR part 63, subpart Y, information collection is mandatory, not voluntary. All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on August 17, 2001 (66 FR 43253); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 32 hours to prepare excess emissions. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Marine Tank Vessel Loading Operations.

Estimated Number of Respondents: 105.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 28,131 hours per year.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No.1679.04 and OMB Control No. 2060–0289 in any correspondence.

Dated: February 25, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–5184 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–2]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in American Foundrymen's Society, et al. v. EPA, No. 00–1208 (D.C. Circuit). This case concerns the National Emission Standard for Hazardous Air Pollutants for Secondary Aluminum Production, 40 CFR part 63, subpart RRR, published at 65 FR 15710 on March 23, 2000. The proposed settlement agreement was lodged with the United States Court of Appeals for the District of Columbia Circuit on January 11, 2002.

DATES: Written comments on the proposed settlement agreement must be received by April 4, 2002.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed settlement agreement was also lodged in the case with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on January 11, 2002.

SUPPLEMENTARY INFORMATION: EPA promulgated the National Emission Standard for Hazardous Air Pollutants for Secondary Aluminum Production, 40 CFR part 63, subpart RRR, on March 23, 2000. 65 FR 15170. Because aluminum die casters and aluminum foundries may conduct some of the same operations as other secondary aluminum producers, Subpart RRR was intended to apply to those die casters and foundries which conduct such operations.

During the original rulemaking, representatives of the aluminum die casters and foundries argued that they are not really secondary aluminum producers and should therefore be wholly exempt from the rule. In response, EPA agreed that not all die casters and foundries engage in secondary aluminum operations, and that those who do not should not be subject to the rule. EPA also agreed during the rulemaking to permit die casters and foundries to melt contaminated internal scrap without thereby becoming subject to the standard. However, industry representatives insisted that too many facilities would remain subject to the standard. Immediately prior to promulgation, EPA agreed that it would withdraw Subpart RRR as applied to aluminum die casters and foundries and develop a separate MACT standard for these facilities.

After promulgation of the rule, the Petitioners the American Foundrymen's Society, the North American Die Casting Association, and the Non-Ferrous Founders' Society (''Petitioners'') petitioned for judicial review. The parties then negotiated an initial settlement agreement establishing a process to effectuate the commitment by EPA to develop a new MACT standard for these facilities, which was lodged with the D.C. Circuit on July 31, 2000. In that first settlement, EPA agreed that it would stay the current standard for these facilities, collect comprehensive data to support an alternate standard, and then promulgate an alternate standard. However, while collecting information to support the new standard, the parties began exploring the possibility of a new settlement agreement which would be based instead on amendments of the current standard.

In the new settlement, EPA has agreed to propose changes in the present standard which would permit customer returns to be treated as internal scrap, and would permit facilities operated by the same company at different locations to be aggregated for purposes of determining what is internal scrap. Some other technical changes intended to eliminate potential anomalies in applicability determinations will also be proposed. The settlement requires the EPA Administrator to sign a proposed rule incorporating these changes by May

10, 2002, and to take final administrative action concerning that proposal by December 13, 2002.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: February 22, 2002.

Alan W. Eckert,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–5189 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–3]

Environmental Laboratory Advisory Board (ELAB) Meeting Dates, and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of teleconference meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will have a teleconference meeting on March 20, 2002, at 11 A.M. EST to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed include: (1) Update on recommendations to restructure the National Environmental Laboratory Accreditation Conference (NELAC) to allow it to better serve the future needs of EPA, the States, and the private sector; (2) approaches to facilitate NELAP accreditation of smaller environmental laboratories; (3) review of ELAB recommendations to EPA; and (4) the reports from ELAB work groups. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, PO Box 93478, Las Vegas NV 89193, faxed to (702) 798–2261, or emailed to *kantor.edward@epa.gov.* Members of the public are invited to listen to the teleconference calls, and time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Edward Kantor at 702–798–2690 to obtain teleconference information. The number of lines are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual.

Gareth Pearson,

Acting Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–5186 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–7]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Carroll & Dubies Site, Town of Deer Park, Orange County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Carroll & Dubies Site (''Site'') located in the Town of Deer Park, Orange County, New York. The settlement requires the settling parties, Kolmar Laboratories, Inc. and Wichhen Products, Inc. to pay $75,000 in reimbursement of EPA's past response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before April 4, 2002.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Carroll & Dubies Site located in the Town of Deer Park, Orange County, New York, Index No. CERCLA–02–2002–2009. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Sharon E. Kivowitz, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3183.

Dated: February 14, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

[FR Doc. 02–5188 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Meeting Notice Correction

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on February 15, 2002 announcing a meeting of the Network Reliability and Interoperability Council to be held on Monday, March 22. The document incorrectly specified that March 22 was a Monday.

FOR FURTHER INFORMATION CONTACT: Robert Kimball at 202–418–2339 or TTY 202–418–2989.

Correction

In the **Federal Register** of February 15, 2002 in FR Doc. 02–3696, on page 7178, correct the **DATES** caption to read:

DATES: Friday, March 22, 2002 at 10 a.m. to 1 p.m.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–5255 Filed 3–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Application Form for Single Lot or Structural Amendments to National Flood Insurance Program Maps.

Type of Information Collection: Revision of a Currently Approved Collection.

OMB Number: 3067–0257.

Abstract: FEMA Form 81–92 is designed to assist requesters in gathering information that FEMA needs to determine whether a certain single-lot property or structure is likely to be flooded during a flood event that has a one-percent annual change of being equaled or exceeded in any given year (base flood). FEMA Form 81–92A is a Spanish version of FEMA Form 81–92 and, as such, only one of the two formas would be required for any one application.

Affected Public: Individual or Households, Business or Other For-Profit, and State, Local or Tribal Government.

Number of Respondents: 9,000.

Estimated Time per Respondent: FEMA Form 81–92, 2.4 hours and FEMA Form 81–92A, 2.4 hours.

Estimated Total Annual Burden Hours: 21,600 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: February 27, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 02–5159 Filed 3–4–02; 8:45 am]

BILLING CODE 6718–01–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 April 1, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. The Baraboo Bancorporation, Inc., Baraboo, Wisconsin; to acquire 100 percent of the voting shares of The Bancorp, Inc., Cedarburg, Wisconsin, and thereby indirectly acquire Northwoods State Bank, Elcho, Wisconsin.

Board of Governors of the Federal Reserve System, February 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–5197 Filed 3–4–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of new system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records. The proposed system is titled ''Claims Payment System For Medicare's ''Healthy Aging'' Demonstration Project (CPS–HA), HHS/CMS/CBC, System No. 09–70–0539.'' CMS proposes to establish a new system of records containing enrollment and claims payment information plus research-related survey data, in support of a short-term demonstration project testing new potential benefits in the Medicare program.

The primary purpose of the system of records is to manage and maintain information needed to pay Medicare claims under the research demonstration program known as the Healthy Aging project (HA) including its component known as the Medicare Stop Smoking Program (MSSP). The system of records will enable CMS to: enroll and communicate with eligible Medicare beneficiaries who volunteer to participate in HA initiatives, communicate with clinicians and other providers and suppliers who submit claims payable under HA demonstrations, review submitted claims and pay those conforming to applicable payment criteria and federal law, and develop, maintain, and analyze research information showing the

potential impact of HA interventions on the quality and cost of health care services in Medicare. Information retrieved from this system of records will also be disclosed to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; assist another Federal or State agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; facilitate research on the quality and effectiveness of care provided; and, combat fraud and abuse in certain health benefits programs. We have provided background information about the proposed system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 25, 2002. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: James Coan, Division of Health Promotion and Disease Prevention, Center for Beneficiary Choices, CMS, Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–9168.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

Statutory and Regulatory Basis For System of Records

The authority to conduct the demonstration project for which the system of records is needed is section 402(a) of Public Law 90–248, as amended by section 222(b)(2) of Public Law 92–603, 42 U.S.C. 1395b–1(a)

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The CPS–HA includes the Medicare Health Insurance Claim (HIC) Number, sex, race, age, zip code, state and county. It also includes claims information related to HA claims, answers to enrollment questionnaires and other information needed to confirm a beneficiary's eligibility for enrollment and ongoing participation in the demonstration, and other survey and research information needed to pay claims, administer the HA program, and develop research reports on the study's findings.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release CPS–HA information that can be associated with an individual patient as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with CPS–HA information and identifiers. Non-identifiable data includes individual records with CPS–HA information and masked identifiers or CPS–HA information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the purpose of the CPS–HA system. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; *e.g.,* developing and refining payment systems and monitoring the quality of care provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CPS–HA without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving HA quality of care. PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to State agencies.

The PROs may use these data to support quality improvement activities and other PRO responsibilities as detailed in Title XI, sections 1151–1164.

3. To another Federal or State agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, or

c. To improve the state survey process for investigation of complaints related to health and safety or quality of care and to implement a more outcome oriented survey and certification program.

Other Federal or State agencies in their administration of a Federal health program may require CPS–HA information in order to support evaluations and monitoring of quality of care for special populations or special care areas, including proper payment for services provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

4. To an individual or organization for research on the utilization of inpatient rehabilitation services as well as evaluation or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or for understanding and improving payment projects.

The CPS–HA data will provide an opportunity for comprehensive research, evaluation and epidemiological projects regarding HA patients. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to HA patients and the policy that governs the care.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require CPS–HA information for the purpose of combating fraud and abuse in such Federally funded programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purposes of collecting the information.

9. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMO) or a competitive medical plan (CMP)) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a third party administrator; utilize the information solely for the purpose of processing the individual's insurance claims; and

b. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, CMP, HMO, and HCPP may require CPS–HA information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper payment for services provided.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

IV. Safeguards

The HHS CPS–HA system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects (e.g., tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Index Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites will implement the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system:

Access to all servers is to be controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server is to require a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-on—Authentication is to be performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are to be determined and implemented at the agency level.
- Inactivity Lockout—Access to the NT workstation is to be automatically locked after a specified period of inactivity.
- Warnings—Legal notices and security warnings are to be displayed on all servers and workstations.
- Remote Access Security—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is to be controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; Information Resource Management (IRM) Circular #10; HHS Automated Information Systems Security Program; the CMS Information Systems Security Policy, Standards, and Guidelines Handbook; and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of CPS–HA data. CPS–HA

information on patients is submitted to CMS through standard systems. Accuracy of the data is important since incorrect information could result in the wrong payment for services and a less effective process for assuring quality of services. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of CPS–HA data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: February 20, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0539

SYSTEM NAME:

Claims Payment System For Medicare's ''Healthy Aging'' Demonstration Project (CPS–HA).

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will contain claims and demographic information on Medicare beneficiaries who have volunteered to participate in Medicare's Healthy Aging program including specific demonstration projects such as the MSSP, as well as claims-related information for submissions from providers and suppliers providing services that are covered under Medicare exclusively within the HA program and its demonstration projects. The system will also retain research information such as enrollment questionnaires and survey data from participants in the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records will contain demographic and claims-related information on Medicare beneficiaries who have elected to participate, as well as eligibility and enrollment data collected through voluntary surveys, payment information for providers and vendors submitting claims, and other information designed to support the enrollment, claims payment, and research reporting functions of the CPS–HA program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority to conduct the demonstration project for which the system of records is needed is section 402(a)(1)(G) and (a)(2) of Public Law 90–248, as amended by section 222(b)(2) of Public Law 92–603, 42 U.S.C. 1395b–1(a)(1)(G) and (a)(2).

PURPOSE(S):

The primary purpose of the system of records is to manage and maintain information needed to pay Medicare claims under the research demonstration program known as the Healthy Aging project (HA) including its component known as the Medicare Stop Smoking Program (MSSP). The system of records will enable CMS to: Enroll and communicate with eligible Medicare beneficiaries who volunteer to participate in CPS–HA initiatives, communicate with clinicians and other providers and suppliers who submit claims payable under CPS–HA demonstrations, review submitted claims and pay those conforming to applicable payment criteria and federal law, and develop, maintain, and analyze research information showing the potential impact of CPS–HA interventions on the quality and cost of health care services in Medicare. Information retrieved from this system of records will also be disclosed to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; assist another Federal or State agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; facilitate research on the quality and effectiveness of care provided; and, combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CPS–HA without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care. PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to State agencies.

3. To another Federal or State agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program

funded in whole or in part with Federal funds, or

c. To improve the state survey process for investigation of complaints related to health and safety or quality of care and to implement a more outcome oriented survey and certification program.

4. To an individual or organization for research on the utilization of inpatient rehabilitation services as well as evaluation or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health epidemiological, or for understanding and improving payment projects.

5. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

9. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMO) or a competitive medical plan (CMP)) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a third party administrator;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media. Input data arrives as paper claims in the case of provider or supplier claims, and eligibility and enrollment information such as the enrollment survey and follow-up monitoring surveys are recorded in hard copy before transcription to magnetic media.

RETRIEVABILITY:

The Medicare records are retrieved by health insurance claim (HIC) number of the beneficiary. Provider IDs and supplier registration numbers are used to facilitate inquiries into specific claims as needed.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Information Systems Security, Standards Guidelines Handbook and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

CMS will retain identifiable CPS–HA data for a total period of 25 years. Data residing with the designated claims payment contractor shall be returned to CMS at the end of the third project year, with all data then being the responsibility of CMS for adequate storage and security.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Beneficiary Choices, CMS, Mailstop C5–19–16, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), address, age, and sex, and social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

1. Enrollment data on Medicare beneficiaries volunteering to participate in CPS–HA projects will come from beneficiaries who report the information to CMS officials or contractors, pursuant to information collection activities approved at the Office of Management and Budget and through an Institutional Review Board as required by law. Follow-up surveys and questionnaires for participants will also come directly from beneficiaries' voluntary reporting.

2. Claims data will come through voluntary submissions of providers, suppliers, and others seeking reimbursement for covered services provided to a Medicare beneficiary, in accordance with the provisions of the demonstration and the conditions of participation in the Medicare program.

3. Research analysis and reporting will come from the enrollment data, surveys and questionnaires provided by beneficiaries, as well as the analysis and compilations of this information developed by CMS officials, contractors, research collaborators, and others supporting the CPS–HA project and fulfilling the conditions of confidentiality, privacy and security outlined in this Notice.

4. Eligibility information as well as financial or quality reporting related to program integrity or other matters may also interact with existing CMS registries such as those relating to Medicare claims, provider registries, beneficiary enrollment databases, national claims histories.

5. Provider information to document the eligibility of a provider, supplier, or other person or entity to submit Medicare claims under the CPS–HA program, receive continuing medical education within the scope of the CPS–HA program, or for other uses will come from existing Medicare records of eligible providers and suppliers (as may be modified according to the needs of the CPS–HA program).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–5140 Filed 3–4–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee Meetings; Correction

In FR Doc. 01–28108 appearing on pages 56689–56690 in the issue for Friday, November 9, 2001, the dates and location of some Health Professions and Nurse Education Special Emphasis Panel meetings have changed. The meeting scheduled on April 22–25, 2002, has changed to March 18–21, 2002; the meeting on April 29–May 2, 2002, has changed to April 2–5, 2002; the meeting on May 6–9, 2002, has changed to April 15–18, 2002; and the location of these meetings has changed to the Hilton Silver Spring. The correct information is as follows:

Name: Health Careers Opportunity Program Peer Review Group.
Date and Time: March 18–21, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: March 18, 2002, 8 a.m. to 10 a.m.
Closed on: March 18, 2002, 10 a.m. to adjournment (approximately 6 p.m.), March 19–21, 2002, 8 a.m. to adjournment (approximately 6 p.m.).

Name: Basic Nurse Education and Practice Grants Program Peer Review Group I.
Date and Time: April 2–5, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: April 2, 2002, 8 a.m. to 10 a.m.
Closed on: April 2, 2002, 10 a.m. to adjournment (approximately 6 p.m.), April 3–5, 2002, 8 a.m. to adjournment (approx. 6 p.m.).

Name: Basic Nurse Education and Practice Grants Program Peer Review Group II.
Date and Time: April 15–18, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: April 15, 2002, 8 a.m. to 10 a.m.
Closed on: April 15, 2002, 10 a.m. to adjournment (approximately 6 p.m.), April 16–18, 2002, 8 a.m. to adjournment (approximately 6 p.m.).

Dated: February 26, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–5132 Filed 3–4–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory Council on Nurse Education and Practice scheduled to meet during the month of April 2002.

Name: National Advisory Council on Nurse Education and Practice
Date and Time: April 11, 2002, 8:30 a.m.–5 p.m., April 12, 2002, 8:30 a.m.–3 p.m.
Place: Hotel Washington, Pennsylvania Avenue, NW., at 15th St., Washington, DC 20004

The meeting is open to the public.

Agenda: Department, Agency, Bureau, and Division administrative updates; introduction of new members; discussion of Council administrative procedures; and presentations of national and regional nursing workforce issues with special emphasis on nursing faculty shortage to be followed with workgroup sessions on nursing workforce and education for practice improvement to address strategies for intervention and recommendations impacting Title VIII legislation.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1405.

Dated: February 27, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–5161 Filed 3–4–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Sciences (NIEHS)

The NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) 1. Announces a Future Evaluation of Ethylene Glycol (CASRN: 107–21–1) and Propylene Glycol (CASRN: 57–55–6), 2. Requests Public Input on These Chemicals, and 3. Solicits the Nomination of Individuals Qualified to Serve on an Expert Panel.

Evaluation of Ethylene Glycol and Propylene Glycol

The CERHR plans to hold an expert panel evaluation of ethylene glycol (CASRN: 107–21–1) and propylene glycol (CASRN: 57–55–6). The exact date for this expert panel meeting is not yet set, but is tentatively planned for the fall of 2002. Additional details about the meeting, including the date and location, will be published in a future **Federal Register** notice.

The CERHR will convene an expert panel to evaluate the reproductive and developmental toxicity of ethylene glycol and propylene glycol. The expert panel will consist of approximately 12 scientists, selected for their scientific

expertise in various aspects of reproductive and developmental toxicology and other relevant areas of science. The expert panel meeting will be open to the public with time scheduled for oral public comment.

Ethylene glycol is a high production volume chemical used chiefly in antifreeze for heating and cooling systems. There is widespread exposure to ethylene glycol due to its use as an automotive antifreeze and as a de-icer for aircraft. The toxicology database on ethylene glycol includes recent mechanistic data and occupational exposure information. Propylene gylcol, similar in structure to ethylene glycol, is used as an antifreeze, de-icing solution, and in various paints and coatings. Unlike ethylene glycol, propylene glycol is approved for use in various food additives, drugs, and cosmetics.

Request for Public Input

The CERHR invites input from the public and other interested parties on ethylene glycol and propylene glycol including toxicology information from completed and ongoing studies, information on planned studies, as well as information about current production levels, human exposure, use patterns, and environmental occurrence. Information and comments should be forwarded to the CERHR at P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 541–3455 (phone), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (email). Information and comments received by May 6, 2002 will be made available to the CERHR staff and the expert panel for consideration in the evaluation.

The CERHR also invites nominations of qualified scientists to serve on the expert panel for the ethylene glycol/propylene glycol evaluation. Panelists are primarily drawn from the CERHR Expert Registry and/or the nomination of other scientists who meet the criteria for listing in that registry. Criteria for listing in the CERHR Expert Registry include: formal academic training and experience in a relevant scientific field, publications in peer-reviewed journals, membership in relevant professional societies, certification by an appropriate scientific Board or other entities, and participation in similar committee activities. All panel members serve as individual experts in their specific areas of expertise, not as representatives of their employer or other organization. Scientists on the expert panel will represent a wide range of expertise including developmental toxicology, reproductive toxicology, epidemiology, general toxicology, pharmacokinetics, exposure assessment, and biostatistics. Nominations received by May 6, 2002 will be considered for the Ethylene Glycol/Propylene Glycol Expert Panel and inclusion in the CERHR Expert Registry. Nominations should be forwarded to the CERHR at the address given above.

Additional Information about CERHR

The NTP and the NIEHS established the CERHR in June 1998 [FR (Vol. 63, No. 239, p. 68782, December 1998)]. The purpose of the CERHR is to provide scientifically-based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans may be exposed. The CERHR also serves as a resource for information on various environmental exposures and their potential to affect pregnancy and child development. Its Web site (*http://cerhr.niehs.nih.gov*) has information about common concerns related to fertility, pregnancy and the health of unborn children, and links to other resources for information about public health.

The CERHR follows a formal, open process for the selection and review of chemicals nominated for evaluation of potential reproductive and/or developmental hazards. This process includes an evaluation of the chemical(s) by an external scientific panel that follows specific guidelines in conducting its assessment and provides multiple opportunities for public input. As a final step in the process, the CERHR publishes a NTP–CERHR report on each chemical that includes the expert panel report, public comments, and a NTP brief. A summary of the review process was recently published in the **Federal Register** (Vol. 66, No. 136, pp. 37047–37048, July 16, 2001). The process and guidelines are posted on the CERHR Web site and are available in hard copy by contacting the CERHR (address provided above). The CERHR welcomes the nomination of chemicals to be considered for future evaluation or qualified scientists for its expert registry. These nominations can be made through the CERHR Web site or by contacting the CERHR directly (see address above).

Dated: February 8, 2002.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–5138 Filed 3–4–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following websites: *http://workplace.samhsa.gov; http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS

Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115, (Formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.)

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Drive,

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR, June 9, 1994, pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Spokane, WA 99204, 509–755–8991/800–541–7891x8991
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
Universal Toxicology Laboratories (Florida), LLC, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–717–0300, 800–419–7187x419, (Formerly: Integrated Regional Laboratories, Cedars Medical Center, Department of Pathology)
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851
US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–5164 Filed 3–4–02; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

2002 Industry Awards Program and Luncheon

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of 2002 Industry Awards Program and Luncheon.

SUMMARY: This notice announces the 2002 Industry Awards Program and Luncheon. This is the 20th year that MMS will honor outstanding companies for their exemplary safety and pollution prevention records, and is the fourth year for our MMS-wide industry awards program.

DATES: The awards program and luncheon will be held on Thursday, April 11, 2002.

ADDRESSES: The program and luncheon will be held at the Hotel Inter-Continental Houston, 2222 West Loop South, Houston, Texas 77027. The hotel's phone number is (713) 961–7272. To obtain registration information, please log onto the MMS temporary Web site at: *http://www.temporarygomr.com/hq/industry_awards.html*

FOR FURTHER INFORMATION CONTACT: Offshore Minerals Management, Debbie O'Brien at 703–787–1579; Marcia Oliver at (703) 787–1043; Minerals Revenue Management, David Izon at 202–208–3731; Jan Therkildsen at (303) 231–3604; or Mary Louise Miller at (303) 231–3386.

SUPPLEMENTARY INFORMATION: This is the 20th year that MMS will honor outstanding companies for their exemplary safety and pollution prevention records, and is the fourth year for our MMS-wide industry awards program.

The following awards will be presented:

- Corporate Leadership Award (CORLA) recognizing Corporation employees for performing an act or service that enhances MMS's ability to meet Offshore or Minerals Revenue Management mission objectives.
- Corporate Citizen Award (CORCIT) recognizing lessees that have provided the most outstanding performance across MMS—in both offshore operational safety and mineral revenues financial compliance.
- Secretary of the Interior's Mineral Revenues Stewardship Award recognizing exceptional performance by companies that report production and pay royalties for Federal and Indian minerals leases. A company's outstanding performance is reflected by low error rates, timely payment, and responsiveness to compliance and enforcement requests and orders.
- Safety Award for Excellence (SAFE) recognizing OCS oil and gas facility operators and contractors for outstanding safety and pollution prevention performance. It also highlights companies that conduct offshore oil and gas activities safely and in a pollution-free manner, although such activities are complex and carry a significant element of risk. The SAFE Award Categories are as follows:
  - High Activity
  - Moderate Activity
  - Contractor—Drilling
  - Contractor—Production

Dated: February 15, 2002.

Lucy Querques Denett,

Acting Director, Minerals Management Service.

[FR Doc. 02–5139 Filed 3–4–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Northeast Region; Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Meetings

In accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–109 Section 102(c)), the National Park Service is preparing an

Environmental Impact Statement (EIS) for the resource study of the Washington-Rochambeau Revolutionary Route, as authorized by Pub. L. 106–473. The historic route stretched from Newport, Rhode Island to Yorktown, Virginia, passing through Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and what is now Washington D.C. A segment of the return route extended from Providence, Rhode Island to Boston, Massachusetts. The purpose of the EIS/study is to determine if the route is eligible to become a National Historic Trail. If the National Park Service determines that the route is nationally and historically significant, retains integrity and has potential for public recreation, Congress could designate the route a National Historic Trail. The study will identify alternative management options to preserve and interpret the route. The alternatives will describe the: Proposed route; current land ownership and use; areas adjacent to the trails to be used for developmental purposes; estimated cost of acquisition of lands or interest in lands, if any; cost of developing and maintaining the trail; the proposed Federal administering agency; participation of State and local governments and private and public organizations; anticipated levels of public use; economic and social benefits of public use; and the potential impacts of recreational use to trail resources.

The NPS will hold three public scoping meetings beginning in March 2002, that will provide opportunities for all interested parties to express concerns, make suggestions and raise issues concerning the future direction and development of the Washington-Rochambeau Revolutionary Route study. The first public meeting will be held in Hartford, Connecticut on Thursday March 14, from 1:30–3:30 p.m. in the Stanley Room of the South Congregational Church, 277 South Main Street. The second meeting will be held in Yorktown, Virginia on Saturday, March 16, from 1:30–3:30 p.m. in Theater 2 of the Yorktown Visitor Center, Colonial National Historical Park, located at the intersection of Route 238 and Colonial Parkway. A third meeting is being scheduled in Trenton, New Jersey. Additional information about the meetings and the EIS/study will be available on the National Park Service website, *www.nps.gov/revwar/*.

Those persons who wish to comment orally or in writing, or who require further information, are invited to contact Brian_Aviles, Project Manager, at the National Park Service Boston Support Office, 15 State Street, Boston, Massachusetts 02109–3572, (617) 223–5319, –5164 fax, or via email at *Brian_Aviles@nps.gov.*

The Draft EIS/study report is expected to be completed and available for public review in mid 2004. After public and interagency review of the draft document, comments will be considered and a final EIS/study report, followed by a Record of Decision, will be prepared.

Dated: January 29, 2002.

Lawrence Gall,

Acting Superintendent, Boston Support Office.

[FR Doc. 02–5234 Filed 3–4–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Commission for the Review of FBI Security Programs

ACTION: Notice of closed meeting.

Date: March 25, 2002.

Place: Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

Status: This meeting will be closed to the public.

Matters to be Considered: The purpose of the Commission for the Review of FBI Security Programs is to provide advice and recommendations on policy and procedural issues as they relate to the security programs of the Federal Bureau of Investigation. The Attorney General of the United States Department of Justice (DOJ) has determined that the meetings of the Commission will be closed to the public in accordance with the United States Code, Title 5, Section 552b, due to the likelihood that sensitive national security information regarding intelligence and counter-intelligence investigative techniques and procedures will be reviewed and discussed in an open forum. The potential release of this information could seriously jeopardize the integrity of our internal security programs; ongoing intelligence and counter-intelligence investigations, and could also endanger the lives and safety of FBI Special Agents, other intelligence community personnel, and individuals supporting our intelligence personnel.

FOR FURTHER INFORMATION CONTACT: George Ellard, Deputy Chief Investigative Counsel, (202) 616–1327.

Richard M. Rogers,

Deputy Chief Investigative Counsel, Commission for the Review of FBI Security Programs, Department of Justice.

[FR Doc. 02–5237 Filed 3–4–02; 8:45 am]

BILLING CODE 0A92–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsoft Corporation; Notice of Availability of Public Comments

Notice is hereby given that the United States will publish the Tunney Act public comments that it received relating to the Revised Proposed Final Judgment in United States v. Microsoft Corporation, Civil Action No. 98–1232, pending in the United States District Court for the District of Columbia, by following the procedures described in this notice.

On February 15, 2002, the United States made electronic copies of 47 detailed comments, which were provided to the Court on February 14, 2002, available on the Department of Justice's website at *www.usdoj.gov/atr/cases/ms-major.htm.* The United States will make available electronic copies of all comments on the Department of Justice's website at *www.usdoj.gov/atr/cases/ms-comments.htm,* and the Department's website will also provide a means for interested persons to download a compressed version, *i.e.,* a ''Zip'' file, of the full text of all comments. The comments should be available on the website beginning March 4, 2002. Also beginning March 4, 2002, interested persons may request a copy of the one or more CD–ROMs containing the full text of the comments, at no cost (one copy to each individual and five copies to each library or other institution that submits a request), by contacting the Department of Justice in Washington, DC at Antitrust Documents Group, 325 7th Street NW., Ste. 215 North, Washington, DC 20530, Telephone: (202) 514–2481, Fax: (202) 514–3763. The United States will file the comments on CD–ROM with the Clerk of the United States District Court for the District of Columbia. Furthermore, the United States will, as soon as possible, publish in the **Federal Register** a complete list of the names of all individuals or entities submitting comments, the number of pages of each comment, a unique tracking number assigned to each comment so that each comment may be located on the Department's website, an index to the comments organized by six categories based primarily on the level of detail of the comment, and the United States' response to the comments. Separately, the United States will submit to the

Federal Register the full text of the public comments for publication.

Constance K. Robinson,
Director of Operations.

[FR Doc. 02–5147 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

CHM Wholesale Co.; Denial of Application

On or about April 11, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to CHM Wholesale Company (CHM), located in Chicago, Illinois, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated June 8, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoeophedrine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified CHM that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was returned, marked ''Return to Sender—Moved, Left No Address.'' The OTSC subsequently was sent by certified mail to the residential address of CHM's owner, Hyun Jin Kim (Kim), where it was received, June 4, 2001, as indicated by the signed postal return receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that CHM is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that on or about June 8, 2000, an application was received by the DEA Chemical Operations Registration section on behalf of CHM for DEA registration as a distributor of the two above-mentioned List I chemicals. The DEA pre-registration inspection on September 7, 2000, revealed that Kim and CHM had no prior experience in distributing List I chemical products. Kim further stated that he had lived in Chicago only three months. He stated he previously had lived in Houston, Texas, where he had operated a number of different retail businesses.

CHM provided a supplier list in response to DEA's request. The DEA investigation revealed both of CHM's proposed suppliers were the recipients of 15 Warning Letters between them. These letters notified the recipients that List I chemicals distributed by them were being diverted and were being discovered in various illicit settings consistent with the clandestine manufacture of methamphetamine. CHM was unable to provide a list of proposed customers.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

The Administrator finds factors one, four, and five relevant to this application.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security arrangements, in that there was no separate secure enclosure at the proposed business location wherein the List I chemical products would be stored. The inspection also revealed inadequate recordkeeping arrangements, in that CHM failed to provide information regarding planned controls to prevent diversion.

Also relevant to this factor, Kim stated to DEA investigators that he planned to relocate CHM's business premises. No further information has been received by DEA regarding the relocation, however, and therefore DEA has been unable to inspect the new proposed business location.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Kim could provide no verifiable evidence of previous experience related to handling or distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that both of CHM's proposed suppliers were the recipients of 15 Warning Letters between them; one of the proposed suppliers was the subject of a current DEA investigation regarding the diversion of listed chemicals. CHM could not provide a customer list, so DEA investigators could not verify a legitimate customer base for the distribution of List I chemical products. The investigation further showed CHM had inadequate security and no apparent recordkeeping arrangements for listed chemical products. The Administrator concludes that CHM is not prepared to be entrusted with the responsibilities of a DEA registration.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of CHM.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by CHM Wholesale Company be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,
Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Robert Walker, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid registered return receipt to Mr. Hyun Jin Kim, CHM Wholesale

Company, 2428 W. Jarvis, Chicago, Illinois 60645.

Karen C. Grant.

[FR Doc. 02–5224 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Denver Wholesale; Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Denver Wholesale, located in Denver, Colorado, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Denver Wholesale's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Denver Wholesale and its owner, Hassan, Zaghmot (Zaghmot) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 003378DHY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Denver Wholesale that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On August 9, 2000, a copy of the OTSC was served upon Zaghmot's attorney. No request for a hearing or any other response was received by DEA from Denver Wholesale or Zaghmot; nor anyone purporting to represent it in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Denver Wholesale is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is inter alia a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that at the time Denver Wholesale became registered with the DEA in July of 1998 as a distributor of List I chemicals, Zaghmot was personally served with the DEA notices informing him that ephedrine and pseudoephedrine are diverted for use in clandestine methamphetamine laboratories, as well as the notice informing him that possession or distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance is a violation of the Controlled Substances Act.

The DEA investigation shows Denver Wholesale has received millions of dosage units of pseudoephedrine from distributors nationwide since being registered with DEA. In calendar year 1999, Denver Wholesale received 18 million dosage units of 60 mg. pseudoephedrine from one of its six List I chemical suppliers alone.

During September, 1999, and on June 20, 2000, Denver Wholesale provided DEA with customer lists. The lists showed no customers in California, yet Federal Express records document numerous large shipments of pseudoephedrine from Denver Wholesale to California, several of which were tracked directly to methamphetamine laboratories. Zaghmot used fictitious and non-existent business names and addresses in shopping pseudoephedrine to California.

In March of 2000, in Denver, Colorado, Zaghmot and other individuals loaded approximately 55 boxes containing over 15,000 bottles of pseudoephedrine 60 mg. tablets from a storage locker into a rented van, that was then packed with furniture obtained from thrift shops throughout the Denver area. The boxes were transported to a self-storage facility in California, from whence it was transported to several different locations at which laboratory equipment and chemicals consistent with the clandestine manufacture of methamphetamine were located. The individuals having access to the storage lockers were arrested and charged with conspiracy to manufacture methamphetamine. The rented van was stopped in Nevada, and a search revealed $233,960 in United States currency. The passenger, who had been observed by investigators assisting Zaghmot loading pseudoephedrine into the van, stated that he had driven the van from Denver to Sacramento, California, with a load of pseudoephedrine, and was returning to Denver for another load of the chemical.

On July 20, 2000, an undercover DEA agent purchased 120 bottles of Denver Wholesale-labeled pseudoephedrine product for $1000 in cash from a convenience store in Denver, Colorado. On July 25, 2000, the undercover agent returned for another purchase. In response to questioning from the convenience store owner, the undercover agent stated that he had used the previous purchase to manufacture methamphetamine. The convenience store owner sold the agent another 144 bottles of the same product, and informed the agent that he could provide as much as 100 cases (14,400 bottles) of pseudoephedrine. Larger quantities, however, would cost $1,500 a case. The undercover agent left, and the convenience store owner was observed to drive to Denver Wholesale, where he met with Zaghmot. The next day, the undercover agent contacted the convenience store owner, who stated that since the supplier did not know the agent, the supplier would only provide two cases at a time until a relationship was built.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Denver Wholesale's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Denver Wholesale's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as

determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Denver Wholesale and Zaghmot actively participated in the illegal diversion of pseudoephedrine knowing it would be used to manufacture methamphetamine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals that on July 27, 2000, a Federal Grand Jury in the District indicated Zaghmot and other individuals with violations of 21 U.S.C. 841(d)(2) (possession or distribution of a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance) and 846 (attempt or conspiracy to violate the Controlled Substances Act); as well as various money-laundering offenses. Zaghmot was arrested the next day. Search warrants were executed upon Denver Wholesale, a storage facility used by Zaghmot, and Zaghmot's residence. Totals of approximately 2,500 pounds of pseudoephedrine and $668,000 in United States currency were seized from Denver Wholesale, Zaghmot, and his co-conspirators.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Denver Wholesale or Zaghmot has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Zaghmot actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine. Denver Wholesale's customer list did not contain any customers from California. Yet DEA investigators observed Zaghmot and others loading pseudoephedrine into a rental van in Denver, Colorado, concealing the chemicals with thrift store furniture, and driving the van to a California self-storage facility. A search of the rental van as it was headed back to Colorado revealed $233,960 in United States currency.

In addition, the investigative file contains information obtained from Federal Express showing Denver Wholesale shipping large quantities of pseudoephedrine to California. Zaghmot used fictitious business names and addresses in making these shipments. A number of these shipments were traced directly to clandestine methamphetamine laboratories.

Thus the Administrator finds Denver Wholesale and Zaghmot violated 21 U.S.C. 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); and 830(b)(1)(a) (failure to report any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)). Therefore, the Administrator finds Denver Wholesale and Zaghmot significantly violated applicable federal law.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that Denver Wholesale significantly violated applicable law by illegally trafficking thousands of pounds of pseudoephedrine knowing it was being diverted to the manufacture of methamphetamine and further by failing to keep and maintain required records and failure to report suspicious listed chemical transactions. Zaghmot was indicated and arrested for various violations pertaining to controlled substances and listed chemicals.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 003378DHY, previously issued to Denver Wholesale, be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Charles Trant, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Hassan Zaghmot, Denver Wholesale, 8200 East Pacific Place, Suite 103, Denver, Colorado 80231.

Karen C. Grant.

[FR Doc. 02–5221 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Daniel E. Epps, Jr., Denial of Application

On or about March 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Daniel E. Epps, Jr. (Epps), located in Matthews, North Carolina, notifying him of an opportunity to show cause as to why the DEA should not deny his applications, dated May 2, 2000, and July 26, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Mr. Epps that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received March 12, 2001, as indicated by the signed postal return receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Mr. Epps is deemed to have waived his right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about May 2, 2000, an application was submitted by and on behalf of Daniel E. Epps, Jr., for DEA registration as a distributor of the List I chemical ephedrine. On July 26, 2000, Mr. Epps requested that his application be amended to include the List I chemicals pseudoephedrine and phenylpropanolamine.

During the July 29, 2000, pre-registration inspection, Mr. Epps informed a DEA investigator that he proposed to sell various products from his home, including List I chemical products. While Mr. Epps alleged he had 29 years of experience in the grocery/retail business, he admitted he had no experience in the handling of listed chemical products. Mr. Epps stated he planned to sell List I chemical products to convenience stores and gas stations. He also stated that he wished to distribute certain List I chemical products in 60 count bottles.

The DEA investigation showed that Mr. Epps' residence, where he proposes to conduct business, is not zoned for business purposes in Mecklenburg County, North Carolina. Additionally, as of the date of the July 26, 2000, inspection, Mr. Epps had not applied with the North Carolina State authorities for a Change of Use Permit for the operation of a business from his residence.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administ6rator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g., Energy Outlet,* 64 FR 14,269 (1999). *see also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security at the proposed business location. Mr. Epps proposes to store List I chemical products in an unlocked room in the basement of his residence. The residence does not have any sort of alarm system, and the DEA investigation shows that the residence goes unoccupied for long periods of time. Moreover, Mr. Epps admittedly has no experience in handling List I chemicals.

Regarding factor two, the applicant's compliance with applicable law, the Administrator notes that the DEA investigation showed North Carolina State or local law requires zoning approval and a Change of Use Permit cooperate a business from this residence. Mr. Epps did not possess such a permit, and challenged DEA investigators when this lack was noted. There is no evidence in the investigative file that Mr. Epps ever applied for or received the required Change of Use Permit.

Regarding factor three, there is no evidence that Mr. Epps has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Mr. Epps has no previous experience in handling listed chemicals or distributing listed chemical products.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that due to the applicant's lack of experience in handling listed chemicals, a lack of adequate security at the proposed business location, and his failure to obtain the required zoning approval to operate a business from his residence, the Administrator concludes it would be inconsistent with the public interest to grant this application.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Mr. Daniel E. Epps, Jr. be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Robert Walker, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Daniel E. Epps, Jr., 539 Walnut Point Drive, Matthews, North Carolina 28105.

Karen C. Grant.

[FR Doc. 02–5223 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled

substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 31, 2001, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 4, 2002.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administrator.

[FR Doc. 02–5218 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

North American Group Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to North American Group, located in Kissimmee, Florida, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended North American Group's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determine is reached in these proceedings. The OTSC informed North American Group of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004407NAY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified North American Group that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On July 31, 2000, a copy of the OTSC was affixed to the front door of the business premises, since no one appeared to be present at the business. On this same date, a second copy of the OTSC was sent certified mail, return receipt requested, to North American Group. The mailed OTSC was returned marked ''attempted—unclaimed.'' No request for a hearing or any other response was received by DEA from North American Group nor anyone purporting to represent it in this matter. Therefore, the Administrator of the DEA, finding that (1) Thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes North American Group is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is inter alia a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that Hesham Nabut (Nabut) is the owner and president of North American Group (NAG). On July 2, 1999, DEA conducted a preregistration inspection of NAG, and at that time provided Nabut with the DEA notices informing him that pseudoephedrine products are used in the illicit manufacture of methamphetamine; and that possession or distribution of a List I chemical knowing or having reasonable cause to believe it will be used to manufacture a controlled substance is a violation of the Controlled Substances Act.

DEA approved NAG's application for registration to distribute List I chemicals July 6, 1999. Between July 23, 1999, and September 30, 1999, NAg ordered approximately 2,592,000 pseudoephedrine tablets from one manufacturer. In October of 1999, NAG attempted to obtain an additional 3–4 million pseudoephedrine tablets from two other manufacturers.

On September 14 and 15, 1999, law enforcement personnel seized approximately 11,300 bottles of pseudoephedrine tablets from clandestine methamphetamine laboratories in California. Using the lot numbers on the seized bottles, DEA traced the product back to NAG. On October 15, 1999, DEA seized 4000 bottles of pseudoephedrine tablets form a clandestine methamphetamine laboratory in Los Angeles, California. Using the lot numbers on the seized bottles, DEA traced the product back to NAG.

In December of 1999, a DEA Confidential Source revealed that Hesham (last name unknown) and three other individuals shipped 16 boxes, with an aggregate weight of 1000 pounds, to Portland, Oregon. On

December 17, 1999, DEA seized the boxes, and found them to contain approximately 668,160 pseudoephedrine tablets.

On January 7, 2000, a DEA Confidential Source revealed that Hesham Nabut was significantly involved in supplying pseudoephedrine to individuals for the illicit manufacture of methamphetamine. The Confidential Source further revealed that Nabut falsified documents, purportedly showing that he supplied pseudoephedrine to gift shops, but that in reality, the pseudoepherine is shipped to California and Oregon for the illicit manufacture of methamphetamine. A DEA Confidential Source also revealed that one of Nabut's shipments to Portland, Oregon was seized in late 1999 or early 2000.

On January 13, 2000, DEA investigators observed an associate of Nabut loading large cardboard boxes from NAG's warehouse into a van. Eleven of these boxes were subsequently seized in California, and were found to contain 45 cases of 60 mg. pseudoephedrine tablets. The shipping labels bore fictitious names for both the shipper and the receiver, and a fictitious address for the shipper.

On May 18, 2000, DEA investigators observed the owner of Denver Wholesale, a pseudoephedrine distributor also under investigation by DEA, arrive at the Orlando Airport where he was met by Nabut. On May 18 and 19, 2000, DEA investigators observed Nabut and this individual meet with several other individuals currently under investigation by DEA for the illicit diversion of pseudoephedrine.

On May 19, 2000, DEA investigators observed the delivery of 20 large boxes of pseudoephedrine to NAG. On June 7, 2000, DEA investigators observed the delivery of an additional 25 large boxes to NAG. These boxes appeared similar to those previously received by NAG that DEA had confirmed contained pseudoephedrine.

On June 8, 2000, DEA Diversion Investigators conducted an administrative inspection of NAG. The Diversion Investigators observed 45 boxes of pseudoephedrine tablets. Each box contained 27,648 dosage units, for a total of 1,244,160 dosage units of pseudoephedrine.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of NAG's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to § 824(d), these grounds also provide the basis for the revocation of NAG's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experiences in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety. Like the public interest for practitioners pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16.422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the DEA investigation reveals Nabut contacted DEA from Jordan on July 24, 2000, regarding the alleged theft of 45 boxes of pseudoephedrine by an individual currently under investigation by DEA in a related case. Nabut alleged that 45 boxes of pseudoephedrine were removed from NAG by his brother and transferred to a public storage unit facility. Nabut admitted that the storage unit was rented by the same individual that he claims stole the chemicals, and further, he admitted the individual is not a business associate. DEA obtained a copy of the rental agreement, which stated that only the individual renting the unit had access. Nabut had left the United States and as in Jordan during the time these events allegedly took place. The DEA investigation showed, however, that only three boxed were originally place in the storage unit, and that these boxes were removed by an unknown individual sometime before July 7, 2000. The location of the 45 boxes of pseudoephedrine that DEA investigators had observed at NAG during the June 8, 2000 administrative inspection is unknown. All 45 boxes were missing at the time a criminal search warrant was executed upon NAG July 29, 2000.

The Administrator finds the circumstances of this alleged theft very suspicious, and finds that regardless of the truth of the matter, NAG and Nabut failed to adequately protect this substantial amount of pseudoephedrine (totaling 1,244,160 dosage units) from diversion. Neither Nabut nor his brother was able to give investigators an adequate explanation regarding why the chemicals were removed from the NAG premises. The chemicals, or at least three boxes appearing to contain chemicals, were moved into a storage unit rented and controlled by a third party. Finally, Nabut apparently orchestrated the entire scenario from Jordan. The Administrator concludes that this finding alone provides ample basis for revocation of NAG's DEA registration.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter contains information from a reliable DEA Confidential Source relating to Nabut's involvement in diverting pseudoephedrine to the manufacture of methamphetamine. The information is as follows: Nabut is significantly involved in a criminal organization devoted to the illegal supplying of pseudoephedrine to clandestine methamphetamine laboratories. The organization operates in Chicago, Los Angeles, New York, Florida, and Oregon. Nabut purchases the chemical for approximately $220 per case, and he sells it for approximately $800–900 per case, and sometimes as high as $3600 per case. Nabut collects pseudoephedrine from various sources and distributes the chemical using UPS and other parcel service facilities, and also occasionally rental vans. The pseudoephedrine allegedly is distributed to retailers such as gift shops, and also to individuals not authorized to receive the chemical. The chemicals do not ever actually reach their purported destination, however, but are diverted through the organization to the illicit manufacture of methamphetamine. Nabut created false shipping and receiving records for the chemicals allegedly shipped to the retailers. These records were created for the specific purpose of deceiving DEA and other law enforcement agencies. Nabut has exported a 4-door Mercedes Benz automobile and approximately $1.5 million dollars to Jordan in

anticipation of fleeing the United States to avoid arrest.

The Administrator finds the Confidential Source information provides substantial evidence that NAG and Nabut are in violation of 21 U.S.C. 841(d)(1) (possession of a listed chemical with intent to manufacture a controlled substance); 841(d)(2) (possession/distribution of a listed chemical knowing or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance); 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); 842(a)(5) and (10) (failure to keep required records). (**Note:** subparagraphs (d) and (g) have been redesignated as (c) and (f)). Therefore, the Administrator finds NAG and Nabut significantly violated applicable federal law.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is not evidence that NAG or Nabut has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds NAG and Nabut significantly violated applicable law, as set forth in factor two above, and further, failed to adequately protect against the diversion of a substantial quantity of a List I chemical, as set forth in factor one, above.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that NAG and Nabut significantly violated applicable law by actively participating in the diversion of pseudoephedrine to the manufacture of methamphetamine, and the falsification of records to conceal such activity. Furthermore, Nabut has fled the United States in anticipation of possible prosecution for his crimes.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 004407NAY, previously issued to North American Group, be, and it hereby is, revoked; and any pending applications for renewal or modification of such registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Linden Barber, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Hesham Nabut, North American Group, 2792 Michigan Avenue, Suite 406, Kissimmee, Florida 34744.

Karen C. Grant.

[FR Doc. 02–5219 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Paragon Associates; Denial of Application

On or about May 4, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Paragon Associates (Paragon), located in City of Industry, California, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated April 23, 1999, for a DEA Certificate of Registration as an exporter of the List I chemical phenylpropanolamine (PPA), pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Paragon that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received May 16, 2001, as indicated by the signed postal receipt. On June 7, 2001, DEA received a letter from Paragon, purportedly responding to the issues set forth in the OTSC. This letter did not address whether Paragon would request or waive its right to the hearing. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Paragon is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. The Administrator has considered Paragon's letter received June 7, 2001, pursuant to 21 CFR 1309.53(b).

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). PPA is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant and its abuse is a growing problem in the United States.

The Administrator finds that on April 23, 1999, an application was received by the DEA Chemical Operations Registration section on behalf of Paragon for DEA registration as an exporter of the List I chemical phenylpropanolamine (PPA).

On June 17, 1999, DEA investigators conducted a pre-registration investigation of Paragon's proposed business premises, and interviewed the president, Mr. George Fan. Mr. Fan stated that Paragon had been an exporter of vitamins and food supplements since 1997, and now intended to export the List I chemicl PPA to a firm in Taipei, Taiwan.

DEA investigators were unable to verify the existence of Paragon's intended customer because of misleading information provided by Mr. Fan. The DEA investigation revealed Paragon had submitted an application for a permit to handle listed chemicals to the State of California, Bureau of Narcotic Enforcement (BNE). BNE records revealed that Paragon intended to export listed chemicals to China, not Taiwan. The DEA investigation further revealed BNE did not issue a permit to Paragon to allow listed chemicals to enter California.

The DEA investigation also revealed that neither Paragon nor its intended customer have been authorized by the Government of Taiwan to import any listed chemicals. DEA subsequently learned that Paragon had submitted an order to a U.S. supplier of PPA in June of 1999 and offered a copy of its application for DEA registration as proof of registration, despite Paragon's never having been registered to handle listed chemicals. Finally, the DEA investigation revealed that in 1997 and 1998, Paragon acquired domestic supplies of PPA without being authorized to do so, and shipped the chemicals without filing the required

export declaration with DEA, in violation of applicable law.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g., Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the Administrator finds that the DEA investigation revealed significant violations with regard to the applicant's security and recordkeeping arrangements. On July 9, 1998, Paragon purchased 485,000 PPA 75 mg. capsules from a supplier located in New York; and on March 5, 1999, Paragon purchased an additional 488,000 capsules of the same product from the same supplier. Mr. Fan admitted these chemicals were exported to Taiwan. Paragon failed to keep records of these regulated transactions, in violation of 21 U.S.C. 830(a) and 21 CFR 1310.03(a); 1310.04; and 1310.06. Paragon was a regulated person as defined by 21 U.S.C. 802(38) as a distributor and exporter of listed chemicals, and thus was required to keep records of regulated transactions. 21 U.S.C. 802(39)(A).

Regarding factor two, the applicant's compliance with applicable law, the Administrator finds that the evidence shows that Pentagon significantly violated applicable law by distributing List I chemicals on at least two separate occasions as set forth in the preceding factor, when not registered to do so, in violation of 21 U.S.C. 822 and 843(a)(9) and 21 CFR § 1309.21(a). In addition, Paragon exported List I chemicals without a DEA registration in violation of 21 U.S.C. 957(a)(2), and further failed to declare these exportations on the DEA Form 486, as required by 21 CFR 1313.21.

Regarding factor three, there is no evidence that Paragon nor Mr. George Fan has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the Administrator finds that the DEA investigation revealed that the applicant significantly violated applicable law, as set forth in factors one and two. In addition, Paragon exported List I chemicals without a DEA registration in violation of 21 U.S.C. 957(a)(2), and further failed to declare these exportations on the DEA Form 486, as required by 21 CFR 1313.21. The DEA investigation further revealed that pursuant to the State of California Health and Safety Code, Section 111001.1, businesses are required to report to BNE imports and exports of products containing PPA 21 days prior to the transaction date. Paragon never notified BNE of its PPA imports into California, set forth in factor one.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that Paragon significantly violated applicable law by distributing and exporting List I chemicals without being registered to do so, and by failing to keep and maintain required records of regulated List I chemicals transactions.

The DEA investigation further revealed Mr. Fan was not forthcoming with information concerning his customers. In response to questions, Mr. Fan provided misleading and incomplete information. Mr. Fan's proposed distribution network led through a number of parties whose relationships were not clear, and concerning whose relationships Mr. Fan failed to provide information. When specifically asked, Mr. Fan was unable to adequately describe Paragon's proposed distribution network. The investigation also revealed that Paragon's proposed Taiwan customer did not have the required Import License, and therefore was not authorized to import PPA from the U.S. or any other country.

In addition, review of Paragon's BNE application indicated that Paragon intended to export PPA to China, not Taiwan. Mr. Fan further alleged he initiated the registration process in 1997; in fact, the DEA registration process was not initiated until June of 1999.

The DEA investigation further revealed that, prior to initiating the DEA registration process, on April 23, 1999, Paragon had placed an order for 500,000 to 1,000,000 PPA capsules with a U.S.-based pharmaceutical manufacturer. When confronted with this order by DEA investigators on June 17, 1999, and notified that he was unauthorized to handle any listed chemicals until registered with DEA, Mr. Fan stated that, while he had completed the order in April of 1999, his secretary had only mailed it that week. Then Mr. Fan stated he placed the order in advance so that when he received his DEA registration, the order would be ready for shipment, because his customer in Taiwan was expecting this order.

Finally, the investigation revealed that Mr. Fan stated to DEA investigators that List I chemicals would comprise approximately ten percent of his business; however, on his application with BNE, Mr. Fan indicated that PPA would be his primary business.

The Administrator finds this lack of candor, taken together with Paragon's and Mr. Fan's demonstrated cavalier disregard of the statutory law and regulations concerning the registration, distribution, exporting, and recordkeeping requirements of List I chemicals, makes questionable Paragon's and Mr. Fan's commitment to the DEA regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. *Aseel Incorporated, Wholesale Division,* 66 FR 35,459 (2001); *Terrence E. Murphy,* 61 FR 2,841 (1996). The Administrator further finds that Paragon's letter received June 7, 2001, in response to the OTSC contained only unsupported allegations, and pursuant to 21 U.S.C. 1309.53(b), the Administrator concludes that this evidence is entitled to little, if any, weight. The Administrator notes that the letter does not substantively dispute the facts underlying the occurrence of the violations of law and regulations set forth above.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Paragon Associates. The evidence indicates that the applicant has significantly violated applicable law by distributing and exporting List I

chemicals while not registered with DEA, and by failing to keep and maintain required records concerning regulated transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Paragon Associates be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Wayne Patrick, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. George Fan, Paragon Associates, 1300 John Reed Court, #13, City of Industry, California 91745.

Karen C. Grant.

[FR Doc. 02–5227 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Performance Construction, Inc.; Denial of Application

On or about December 6, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Performance Construction, Inc. (Performance), located in Lakeland, Florida, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated June 30, 2000, for a DEA Certificate of Registration as a manufacturer of List I chemicals and deny any request to modify its application to distribute List I chemicals, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Performance that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received December 11, 2000, as indicated by the signed postal receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Performance is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that during a pre-registration inspection of Performance's premises on October 5, 2000, DEA investigators spoke with the president/owner of Performance, who stated that Performance was a general contractor, not engaged in the business of manufacturing, handling, or distribution of listed chemicals, nor did it have any knowledge or experience in this field. He further stated that Performance did not wish to manufacture listed chemicals, but proposed to be registered in order to make a one-time distribution of the List I chemical GBL to an individual also not engaged in the business of handling listed chemicals, purportedly for the purpose of stripping paint from a boat.

The Administrator notes that GBL (gamma-butrolactone) has use as an industrial solvent. GBL is also a known precursor chemical, however, and is readily synthesized into the Schedule I controlled substance GHB. Schedule I controlled substances have no known medical uses, and are highly subject to abuse. 21 U.S.C. 812(b).

DEA investigators contacted numerous marine manufacturers and boat refinishers in south Florida; however none were aware of the use of GBL in the marine industry or for the proposed use in vessel paint stripping. In fact, none of those contacted by DEA had even heard of GBL.

The Administrator further notes that a long-standing DEA policy prohibits the granting of registrations that are essentially ''shelf registrations,'' that is, registrations for which there is no intent to use. The granting of a registration for a one-time distribution of a chemical that is otherwise widely available from DEA registrants throughout the United States would be inconsistent with this long-standing DEA policy.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the pubic interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws related to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet*, 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

The Administrator finds that factors one and four are relevant to this case. The president/owner of Performance freely admitted his firm is a general contractor, and has no experience in handling listed chemicals. He further states he did not wish to manufacture the chemical, but only to make a one-time distribution pursuant to the request of a customer. There is no evidence concerning what measures, if any, Performance would take to prevent the diversion of the List I chemical. The DEA investigation showed Performance's proposed use of the chemical is not consistent with industry practice. The Administrator finds the public interest is not served by granting a DEA registration for a one-time distribution of a List I chemical to an entity with no experience in handling listed chemicals; having no intent to enter into the business of handling listed chemicals; for an alleged purpose inconsistent with industry practice; and where there is no evidence of controls to prevent the diversion of the chemical to the illicit manufacture of a Schedule I controlled substance.

Furthermore, granting this application would violate the long-standing DEA policy against ''shelf registrations.''

Therefore, for the above-stated reasons, the Administrator concludes that it woudl be inconsistent with the public interest to grant the application of Performance.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him

by 21 U.S.C. 823 adn 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Performance Construction, Inc., as a manufacturer and/or distributor, be denied. This order is effective April 14, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Wayne Patrick, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Daniel V. Heleski, Performance Construction, Inc., 308 West Highland Drive, Lakeland, Florida 33813.

Karen C. Grant.

[FR Doc. 02–5226 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

State Petroleum Inc.; Denial of Application

On or about January 23, 2001, the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to State Petroleum, Inc. (State Petroleum), located in Dearborn, Michigan, notifying it of an opportunity to show cause as to why the DEA should not deny in application, dated June 17, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrin, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified State Petroleum that, should no request for hearing be filed within 30 days, the right to a hearing would be waved.

The OTSC was received, as indicated by tbe signed postal return receipt, received by DEA February 12, 2001. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that State Petroleum is deemed to have waived its right to a hearing. After considering relevant material from the investigate file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act 21 u.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about June 17, 2001, an application was received by the DEA Chemical Operations Registration section on behalf of State Petroleum for DEA registration as a distributor of the two above-mentioned List I chemicals. The DEA pre-registration inspection on July 7, 2001, revealed that State Petroleum had no prior experience in distributing List I chemical products. A corporate representative stated to DEA investigators that State Petroleum was in the business of wholesaling automotive chemical and petroleum products. The DEA inspection revealed State Petroleum appeared unprepared to accept the responsibilities of a DEA registant. The inspection noted deficiencies in State Petroleum's proposed recordkeeping system that clearly show the firm's ability to comply with DEA's recordkeeping requirements. The DEA investigation also revealed a number of State Petroleum's proposed supplier was out of business and a random sampling of proposed customers either were not interested in distributing List I chemical products, or were already receiving List I chemical products from other suppliers.

Pursuant to 21 U.S.C. § 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet* 64 FR 14,269 (1999), *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

The Administrator finds factors one, four, and five relevant to this case.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate recordkeeping arrangements, in that State Petroleum intended to sell List I chemicals solely on a ''cash and carry'' basis, and there would be no computerized database with which to track sales to determine whether thresholds and recordkeeping requirements were being met. State Petroleum admitted that its proposed ''cash and carry'' plan for distribution of List I chemical products would be inadequate to meet DEA recordkeeping requirements.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that State Petroleum has no previous experience related to handling or distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that State Petroleum is unprepared to successfully meet the requirements of a DEA List I chemical registrant. State Petroleum admitted its proposed recordkeeping system would be inadequate to comply with DEA requirements. State Petroleum further could not explain any planned controls against diversion.

In addition, State Petroleum's proposed supplier was out of business, and a random sampling of its proposed customers either had no interest in List I chemical products, or were already receiving their List I chemical products from other suppliers. Thus State Petroleum failed to provide DEA with information demonstrating it had a legitimate source for List I chemical

products; and further failed to provide DEA with information demonstrating it had a legitimate customer base for List I chemical products.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of State Petroleum.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by State Petroleum, Inc. be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Wayne Patrick, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Mohammed Saghir, State Petroleum, Inc., 6200 Miller Road, Dearborn, Michigan 48126.

Karen C. Grant.

[FR Doc. 02–5225 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Transtar Distributors, Inc.; Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Transtar Distributors, Inc. (Transtar), located in Orlando, Florida, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Transtar's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Transtar and its owner/president, Nabil Maswadeh (Maswadeh) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004662TIY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Transtar that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On August 16, 2000, the OTSC was returned to DEA, marked ''Return To Sender—Unclaimed.'' No request for a hearing or any other response was received by DEA from Transtar or Maswadeh nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Transtar is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is inter alia a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that at the time of Transtar's pre-registration investigation on December 17, 1999, Maswadeh was personally served with the DEA notices informing him that ephedrine and pseudoephedrine are diverted for use in clandestine methamphetamine laboratories, as well as the notice of informing him that possession or distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance is a violation of the Controlled Substances Act.

The DEA investigation shows that by March, 2000, Transtar was amassing a large quantity of pseudoephedrine. On March 20, 2000, DEA investigators observed 19 large boxes containing approximately 100 cases of pseudoephedrine being delivered to Transtar. The shipment was received by a business associate of Maswadeh, who used a fictitious name when signing for the shipment. Maswadeh was present when this shipment was received.

Between March 20 and March 24, 2000, DEA investigators observed Maswadeh and his associate remove numerous large cardboard boxes from Transtar and place them into a storage unit. On March 24, 2000, DEA investigators observed Maswadeh ship three large boxes to California. A subsequent search of the boxes revealed approximately 3,036 bottles of pseudoephedrine, each bottle containing 120 tablets, for a total of 364,320 dosage units. The manufacturer's lot numbers and expiration dates had been scraped off of the bottles. The shipping label bore fictitious names for both the shipper and receiver, and also bore a fictitious address for the shipper.

During this same time period, DEA investigators on several occasions observed Maswadeh and his associate place items in a dumpster located near Transtar. A search of the dumpster revealed 24 large cardboard boxes bearing inscriptions indicating that the boxes had contained pseudoephedrine. A subsequent search of the dumpster revealed numerous labels containing lot numbers that had been scraped off pseudoephedrine bottles. Additional items recovered from the dumpster included: receipts and shipping documents indicating Transtar was receiving large amounts of pseudoephedrine from numerous suppliers; five sealed bottles of ephedrine with their lot numbers and expiration dates removed; and a Federal Express Airbill indicating that a 90 pound shipment was sent to California on March 3, 2000. The Airbill showed address information consistent with the California address to which Maswadeh had sent shipments of pseudoephedrine. The Airbill bore a fictitious name and address for the shipper.

On March 25 and 26, 2000, DEA investigators observed Maswadeh removing boxes of pseudoephedrine from the above-referenced storage unit. Also during this time, Maswadeh was observed placing items into a common

dumpster in his residential community. These items included the following: shipping documents and labels indicating Transtar received pseudoephedrine shipments from several manufacturers, and also hundreds of lot numbers that had been scraped off of pseudoephedrine bottles.

On April 19, 2000, DEA received information that Transtar was attempting to place an order with a pharmaceutical manufacturer in New York for 300,000 bottles of pseudoephedrine per month.

On June 1, 2000, DEA Confidential Source information revealed Maswadeh was willing to sell 240 cases of pseudoephedrine for the purpose of illegally manufacturing methamphetamine.

On June 7, 2000, a search warrant was served upon the above-referenced storage unit. DEA investigators seized approximately 240 cases of pseudoephedrine tablets. Some of the pseudoephedrine was still in bottles, and some was loose in plastic bags.

On June 10, 2000, Maswadeh met with an undercover DEA agent and agreed to transport the 240 cases of pseudoephedrine in a rented van.

Confidential Source information acquired by DEA indicates Maswadeh and his associates were selling pseudoephedrine to individuals on the West Coast knowing that the chemical was to be used in the illicit manufacture of methamphetamine.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Transtar's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to § 824(d), these grounds also provide the basis for the revocation of Transtar's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied *See, e.g. Energy Outlet*, 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., MD.*, 54 FR 16,422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Transtar and Maswadeh actively participated in the illegal diversion of pseudoephedrine knowing it would be used to manufacture methamphetamine.

Regarding the second floor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals substantial evidence indicating that Transtar and Maswadeh significantly violated applicable law. In shipping substantial quantities of pseudoephedrine using fictitious names and addresses and in removing or otherwise destroying labels and lot numbers, Maswadeh clearly was attempting to conceal his activities from law enforcement. In addition, Confidential Source information showed that Maswadeh was willing to sell 240 cases of pseudoephedrine for the stated purpose of illicit manufacture of methamphetamine, and even stated to a DEA undercover agent that he was willing to deliver the 240 cases of chemicals in a rented van he would provide. The Administrator finds these facts support the following violations of applicable law: Transtar and Maswadeh violated 21 U.S.C. 841(d)(1) (possession of a listed chemical with intent to manufacture a controlled substance); 841(d)(2) (possession/distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance); 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); 842(a)(5) and (10) (failure to keep required records); and 830(b)(1)(a) (failure to report any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)).

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Transtar or Maswadeh has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Maswadeh actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, as set forth in factor two, above.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that Transtar and Maswadeh significantly violated applicable law by illegally trafficking substantial quantities of pseudoephedrine knowing it was being diverted to the manufacture of methamphetamine and further by failing to keep and maintain required records and failure to report suspicious listed chemical transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 004662TTY, previously issued to Transtar Distributors, Inc., be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Linden Barber, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage

prepaid, registered return receipt to Mr. Nabil Maswadeh, Transtar Distributors, Inc., 6130 Edgewater Drive, Unit D, Orlando, Florida 32810.

Karen C. Grant.

[FR Doc. 02–5220 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Yemen Wholesale Tobacco and Candy Supply, Inc.; Revocation of Registration

On January 9, 2001, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Yemen Wholesale Tobacco and Candy Supply, Inc. (Yemen), located in Yonkers, New York, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible fro the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR §§ 0.100 and 0.104, the OTSC suspended Yemen's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Yemen of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 003952YAY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Yemen that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On January 9, 2001, a copy of the OTSC was served upon Hasham Alkaifi, Vice President of Yemen. No request for a hearing or any other response was received by DEA from Yemen or Alkaifi nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Yemen is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is *inter alia* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

Yemen became registered with the DEA January 25, 1999, as a distributor if List I chemicals. During the pre-registration inspection of Yemen's premises, Yemen was asked to provide a list of proposed suppliers of List I chemical products, and a list of proposed customers for its List I chemical products. DEA investigators subsequently attempted to contact each of the proposed suppliers and customers. Investigation showed that Yemen had made no arrangements with any of the suppliers or customers.

On or about August 18, 1999, 802 bottles of 60 count, 60 mg. pseudoephedrine tablets were sized en route to an individual in Oakland, California. The address was not a DEA registered location authorized to handle List I chemicals. The investigation showed the bottles originated from Yemen, and were sent to Oakland from a business called ''One Hour Photo'' in New York, also not authorized by DEA to buy or sell List I chemicals.

On August 30, 1999, DEA investigators seized 1,056 bottles of 120 count, 60 mg. pseudoephedrine tablets from a public storage facility in San Pablo, California. The storage facility was not a DEA registered location authorized to handle List I chemicals. An individual was arrested at the time of this seizure, and an additional 3,408 bottles of the same product were seized from his vehicle. The DEA investigation revealed all 4,464 bottles originated from Yemen.

On October 5, 1999, DEA investigators interviewed the arrested individual referenced in the preceding paragraph. That individual stated that Mr. Alkafa, President of Yemen, was one of a number of persons who diverted pseudoephedrine from the East Coast to the West Coast. He further stated that those who wanted to purchase pseudoephedrine for the illicit manufacture of methamphetamine would purchase a money order at his market, made payable to Alkafa. The money order would be sent to Alkafa, who would deliver the pseudoephedrine to California.

On or before December 8, 1999, Yemen received a Warning Letter from DEA. This letter informed Yemen that its List I chemical product, labeled ''Action Release'' pseudoephedrine, had been discovered in various illicit settings consistent with the illicit manufacture of the controlled substance methamphetamine. The letter specified two locations; one at San Pablo, California in August, 1999, the other at Oakland, California, in August, 1999.

The DEA investigation also revealed Yemen purchased in excess of 3,594,000 dosage units of 60 mg. pseudoephedrine tablets subsequent to the receipt of this Warning Letter, between February 4, 2000, and July 25, 2000.

On August 7, 2000, a criminal search warrant was served upon Yemen. The search revealed Yemen kept no records of its purchases or sales of pseudoephedrine. The DEA investigation showed, however, that Yemen purchased approximately 26 million dosage units of pseudoephedrine from various suppliers between November 22, 1999, until July 25, 2000.

Also during the August 7, 2000, execution of the search warrant, DEA investigators discovered Yemen had stored approximately 1.6 million dosage units of 60 mg. pseudoephedrine in an off-site storage unit at an unregistered address. This pseudoephedrine was seized, and Hasham Alkaifi, Vice President of Yemen and nephew of Alkafa, was interviewed. He stated to investigators that Alkafa was in Yemen (the country), but was continuing to order pseudoephedrine on behalf of Yemen Wholesale. Alkaifi had rented the storage unit and stored the pseudoephedrine there at Alkafa's director. Alkaifi was not aware of any customers for the 1.6 million dosage units at the storage facility.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Yemen's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to § 824(d), these grounds also provide the

basis for the revocation of Yemen's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under this section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Yemen and Alkafa actively participated in the illegal diversion of pseudoephedrine knowing it would be used to manufacture methamphetamine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file that Yemen and Alkafa, and Alkaifi significantly violated applicable law in the following primary instances: first, by trafficking List I chemicals knowing that they would be diverted to the illicit manufacture of methamphetamine; second, by failing to keep and maintain required records; and third, by failing to report suspicious transactions. The confession of the individual arrested in California implicated Yemen and Alkafa in the active diversion of pseudoephedrine to the illicit manufacture of methamphetamine; the DEA search of August 7, 2000, revealed Yemen failed to keep or maintain any records of its pseudoephedrine sales and purchases whatsoever; and the DEA investigation showed Yemen failed to report various suspicious transactions (money orders from California for List I chemical products; sales to individuals not registered with DEA as authorized to handle List I chemicals; failure to report transactions involving extraordinary quantities of a listed chemical).

The Administrator thus finds substantial evidence showing Yemen and Alkafa violated 21 U.S.C. 841(d)(1) (possession of a listed chemical with intent to manufacture a controlled substance); 841(d)(2) (possession/distribution of a listed chemical knowing or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance); 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); 842(a)(5) and (10) (failure to keep required records); and 830(b)(1)(a) (failure to report any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)).

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Yemen, Alkafa, or Alkaifi have any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Yemen and Alkafa actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, and completely ignored the responsibilities of a DEA registrant. Yemen was shipping pseudoephedrine individuals in California not registered with DEA. Yemen purchased almost 26 million dosage units of pseudoephedrine during an eight month period, yet failed to keep required records concerning these purchases and sales. At the time of the service of the criminal search warrant, Yemen continued to stockpile 1.6 million dosage units of pseudoephedrine in an unregistered off-site storage unit facility, for no stated legitimate purpose. The Administrator concludes that there is substantial evidence in the investigative file that this pseudoephedrine was also intended to be diverted to the illicit manufacture of methamphetamine.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that Yemen significantly violated applicable law by illegally trafficking millions of dosage units of pseudoephedrine knowing it was being diverted to the manufacture of methamphetamine and further by failing to keep and maintain required records and failure to report suspicious listed chemical transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 003952YAY, previously issued to Yemen Wholesale Tobacco and Candy Supply, Inc., be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Brian Bayly, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Nagi Alkafa, Yemen Wholesale Tobacco & Candy Supplies, Inc., 350 South Broadway, Yonkers, New York 10705

Karen C. Grant.

[FR Doc. 02–5222 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under review: new collection; Violent Criminal Apprehension Program (VICAP) Sexual Assault Crime Analysis Report.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following formation collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on October 5, 2001, in Volume 66, Number 194, page 51071.

The purpose of this notice is to allow for an additional 30 day for public comment until April 14, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office Of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Officer, Washington, DC 20503. Comments may also be submitted to Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20004.

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:* Violent Criminal Apprehension Program (VICAP) Sexual Assault Crime Analysis Report.)

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: to be assigned. Department of Justice, Federal Bureau of Investigation, Violent Criminal Apprehension Program Unit.

(4) *Affected public who will be asked or required to respond, as as well as a brief abstract:* Primary: State, Local, or Tribal Government. Brief Abstract: Collects data at crime scenes (e.g., unsolved sexual assaults) for analysis by VICAP staff of the FBI. Law enforcement agencies reporting similar pattern crimes will be provided information to initiate a coordinated multi-agency investigation to expedite identification and apprehension of violent criminal offenders (e.g., serial rapists).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 respondents at an average of one hour per response.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 10,000 total burden 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, 601 D Street, NW, Suite 1600, Washington, DC 20004. Public comment on this proposed information collection is strongly encouraged.

Dated: February 26, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–5150 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request.

ACTION: 60-Day notice of information collection under review; Application for waiver of passport and/or visa; Form I–193.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 6, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of Passport and/or Visa.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–193. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form will be used by an alien who wishes to waive the documentary requirements for passports and/or visas due to an unforeseen emergency. The INS will use the information to determine whether applicants are eligible for entry into the United States under 8 CFR parts 212.1(b)(3) and 212.1(g).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 10 minutes (.166) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,150 annual burden hours.

If you have additional comments, suggestions, or need a copy of the

proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–5196 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Employment authorization document; Form I–765.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 11, 2001 at 66 FR 51970, allowing for a 60-day public comment period. No public comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 4, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Employment Authorization Document.

Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–765, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form is used by the INS to determine eligibility for the issuance of the employment document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,873,296 responses at 205 minutes (3.42 hours) per response.*

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,406,672 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Solan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office. United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–5195 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: 60-Day notice information collection under review: New collection: needs assessment for service providers of trafficking victims telephone survey.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by March 13, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to

Marvene O'Rourke, 202–514–9802, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, 8107th Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. 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) *The title of the form/collection:* Needs Assessment for Service Providers of Trafficking Victims Telephone Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number. National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public Agencies and/or organizations who work with victims of trafficking in persons or advocate on their behalf. This collection will gather information related to assessing the needs of service providers who provide assistance to victims of trafficking in persons. The data will then be used to advise the Office of Justice Policy for the development of pilot data-driven programs to serve trafficking victims and ensure that these pilot programs are both responsive and effective in meeting the needs of trafficking victims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50 respondents will each complete a 1 hour telephone survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total hour burden to conduct this survey is 50 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW, Wasington, DC 20530.

Dated: February 27, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–5149 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)–1348]

Meeting of the Global Justice Information Network Federal Advisory Committee

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of a meeting of the Global Justice Information Network Federal Advisory Committee to discuss the Global Initiative, as described in Initiative A07 ''Access America: Re-Engineering Through Information Technology.''

DATES: The meeting will take place on Thursday, April 11, 2002, from 9 a.m. to 5 p.m. ET.

ADDRESSES: The meeting will take place at the Department of Justice, Office of Justice Programs, 3rd floor Ballroom, 810 7th Street, NW., Washington, DC, 20531; Phone: (202) 616–6500. All attendees will be required to sign in at the security desk, so please allow extra time.

FOR FURTHER INFORMATION CONTACT: To register to attend the meeting, please contact Karen Sublett, Global Designated Federal Employee, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street NW., Fourth Floor, Washington, DC 20531; Phone: (202) 616–3463. [This is not a toll-free number]. Anyone requiring special accommodations should contact Ms. Sublett at least seven (7) days in advance of the meeting. Due to security measures in the building, members of the public who wish to attend the meeting must register with Ms. Sublett at least (7) days in advance of the meeting. Access to the meeting will not be allowed without registration.

SUPPLEMENTARY INFORMATION:

Authority

The Global Justice Information Network Federal Advisory Committee was established pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended.

Purpose

The Global Justice Information Network Federal Advisory Committee (GAC) will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP, the Attorney General, the President (through the Attorney General), and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches and advocate for strategies for accomplishing a Global information sharing capability.

The Committee will meet to address the Global Initiative, as described in Initiative A07 ''Access America: Re-Engineering Through Information Technology''. This meeting will be open to the public, and registrations will then be accepted on a *space available* basis. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the Designated Federal Employee (DFE). Further information about this meeting can be obtained from Karen Sublett, DFE, at (202) 616–3463.

Dated: February 27, 2002.

Karen Sublett,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 02–5153 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 19, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–01–4, 32 items, 32 temporary items). Records relating to inventory control of medical supplies and equipment. Records include an electronic information system, source documents used for input into the system, records of transactions, and outputs, including financial reports, equipment management reports, and other reports. Also included are electronic copies of records created using electronic mail and word processing. Most of the series covered by this schedule were previously approved for disposal.

2. Department of Commerce, Office of Administrative Services (N1–40–01–5, 26 items, 25 temporary items). Records accumulated in the immediate Office of the Director and Management Support staff and in the Offices of Real Estate Policy and Programs, Administrative Operations, and Space and Building Management. Included are such records as program subject files, checkbook and parking permit databases, building delegations and lease files, personal property case files, electronic floor plans, building maintenance documents, and asbestos abatement and employee asbestos training files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are historical photographs of the construction of the Herbert Clark Hoover Building in 1929 and early views of the building.

3. Department of Commerce, Technology Administration (N1–40–01–1, 23 items, 13 temporary items). Program subject correspondence of the Deputy Under Secretary, chronological files, fellowship program files, unsuccessful nominations for the National Medal of Technology, records relating to the Partnership for a New Generation of Vehicles program, copies of briefing books and publications, and working papers. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as the program correspondence of the Under Secretary for Technology, trip and speech files, minutes of meetings, program files of the Office of Technology Policy, the Air and Space Commercialization Office, and the Interagency Global Positioning Satellite Evaluation Board, and grant files of the Experimental Program to Stimulate Competitive Technology.

4. Department of Defense, Joint Staff and Combatant Commands (N1–218–00–5, 41 items, 25 temporary items). Records relating to information and legal matters, including correspondence, case files, background papers, drafts, transcripts, press releases, and minutes of meetings. Records pertain to such subjects as interaction with the White House and Congress, public relations, general legal matters, military justice, financial disclosures, and patent matters. Also included are electronic copies of documents created using

electronic mail and word processing as well as electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of such files as substantive White House and Congressional correspondence, policy and procedures pertaining to public relations, speeches, public affairs releases, and precedent-setting legal opinions are proposed for permanent retention.

5. Department of Defense, Joint Staff and Combatant Commands (N1–218–00–8, 58 items, 43 temporary items). Records relating to communications and electronics matters, including correspondence, case files, background papers, drafts, transcripts, publications, and minutes of meetings. Records pertain to such matters as communications and electronic testing and equipment, frequency and spectrum management, networks and circuits, interoperability standards, cryptology, communication and message center operations, and satellite communications. Also included are electronic copies of documents created using electronic mail and word processing as well as electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of files pertaining to such subjects as the policies and procedures governing communications, electronics, frequency/spectrum management, cryptology, and satellite communications are proposed for permanent retention as are related publications.

6. Department of Defense, Defense Commissary Agency, (N1–506–02–1, 19 items, 19 temporary items). Records relating to the acquisition of supplies, equipment, and services through contracting and procurement activities. Included are such records as directives, contracting officer designations, advance planning files, program reviews, contract clause deviations, and status and inspection reports. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Defense, Defense Information Systems Agency (N1–371–02–2, 6 items, 6 temporary items). Year 2000 (Y2K) program records, including such records as reports, briefings, project plans, risk assessments, system identification criteria, and conversion strategies as well as files relating to administering the program. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Energy, Agency-wide (N1–434–01–8, 10 items, 8 temporary items). Copies of internal publications, such as newsletters and bulletins, and records of national and international conferences and conventions that do not have historical significance and/or are accumulated by offices other than the sponsoring office. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of internal publications and files relating to significant conferences and conventions sponsored by the agency or its contractors.

9. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–02–1, 25 items, 18 temporary items). Records accumulated by the Office of External Relations. Included are such files as mailing lists, Web site content records, and Web site management records. Proposed for permanent retention are recordkeeping copies of such files as annual reports to Congress, agency news releases, House Price Index publications, captioned photographs portraying significant agency events and personalities, public affairs videotapes, and speeches of the agency Director. Also included are electronic copies of documents created using electronic mail and word processing.

10. Department of Justice, Drug Enforcement Administration (N1–170–01–3, 12 items, 12 temporary items). Physical security files relating to measures taken for the protection of facilities. Included are such records as facilities survey and inspection files, pre-construction surveys, mid-construction surveys, and final acceptance files. Also included are correspondence, instructions, studies, messages, interpretations, and coordinating actions relating to the administration and operation of the physical security program as well as electronic copies of documents created using electronic mail and word processing.

11. Department of Labor, Occupational Safety and Health Administration (N1–100–02–1, 6 items, 4 temporary items). Electronic copies of records created using electronic mail and word processing relating to plans and policy decisions for the implementation of agency programs at the state level. Also included are extra copies of these records. Recordkeeping copies of these files are proposed for permanent retention.

12. Department of State, Bureau of Human Resources, N1–59–00–18, 32 items, 32 temporary items). Records relating to support services provided to Foreign Service Officers and civil service employees and their families. Included are such records as policy and procedures files, subject files, evacuation files, publications, and files that document the provision of information concerning available support services. Also included are electronic copies of documents created using electronic mail and word processing.

13. Department of State, Bureau of Human Resources (N1–59–00–9, 7 items, 7 temporary items). Records relating to hiring civil service employees, including position descriptions, applicant tracking systems, pre-appointment files, and files relating to the priority consideration of applicants. Also included are electronic copies of documents created using electronic mail and word processing.

14. Department of State, Bureau of Human Resources (N1–59–00–17, 9 items, 9 temporary items). Records relating to human resources planning, including class action lawsuit files, correspondence files, staffing statistical reports, and personnel planning studies. Also included are electronic copies of documents created using electronic mail and word processing.

15. Department of State, Bureau of Political and Military Affairs (N1–59–01–20, 16 items, 11 temporary items). Records relating to developing and implementing programs for the removal of mines for humanitarian purposes. Records include budget submissions, financial records, and funding allocation memorandums. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of chronological files, project files, policy and procedures files, interagency working group files, and a master set of publications.

16. Department of State, Bureau of Political and Military Affairs (N1–59–01–23, 10 items, 9 temporary items). Records relating to public and congressional affairs issues. Included are such records as chronological files, congressional inquiries, copies of legislative referral memorandums, and press guidance documents. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of briefing books prepared for senior officials are proposed for permanent retention.

17. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (N1–436–01–2, 7 items, 7 temporary items). Year 2000 (Y2K) conversion records. Included are such records as plans, lists of systems, risk assessments, contracts, and correspondence with vendors, Congress, the Office of Management and Budget, and the General Accounting Office. Also included are electronic copies of documents created using electronic mail and word processing.

18. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–01–10, 3 items, 3 temporary items). Log books, registers, and other tracking records used to control and account for the receipt status, maintenance, or use of records that contain Toxic Control Substances Act confidential business information. Also included are electronic copies of documents created using electronic mail and word processing. Copies of these records that are placed in case files will be retained with the related case records in accordance with the previously approved disposition instruction for case files.

19. Federal Emergency Management Agency, Office of Financial Management (N1–311–01–3, 3 items, 1 temporary item). Electronic copies of records created using word processing and electronic mail that pertain to budget policy and budget estimates and justifications. Recordkeeping copies of these files are proposed for permanent retention.

20. National Archives and Records Administration, Office of General Counsel (N1–64–02–5, 5 items, 5 temporary items). Records relating to the agency's alternative dispute resolution program, including policy documents, case files, and administrative files. Also included are electronic copies of records created using electronic mail and word processing.

21. United States Commission for the Preservation of America's Heritage Abroad, Agency-wide (N1–220–02–8, 14 items, 8 temporary items). Commission members' files, constituent mail, staff files, reports and projects working papers, extra copies of publications, procurement records, and records related to the Commission's Web site. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of Commission correspondence, meeting minutes and testimony, country files and agreements, Congressional and budget reports, and historical site reports. Also proposed for permanent retention is a Web site snapshot.

Dated: February 25, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–5136 Filed 3–4–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within 30 days of the publication of this notice. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

DESCRIPTION OF PERMIT MODIFICATION REQUESTED: The Foundation issued a permit (ACA #2001–025) to Dr. Daniel P. Costa on March 12, 2001. The issued permit allows the applicant to capture up to 25 Crabeater seals (Lobodon carcinophagus), and up to 10 each of Leopard (Thydrrurga leoptony), Weddell (Leptonyshotes weddellii), and Ross seals (Ommatophoca rossil) per season over the next 3 years for the purpose of collecting blood, tissue and stomach samples, take measurements, and attach satellite relay data loggers (SRDL) and VHF radio tags. The samples will be studied to determine and better understand the foraging strategies utilized by marine predators in the face of meso- and fine-scale ecological variability.

The applicant requests a modification to his permit to allow access to the Antarctic Specially Protected Areas of the Dion Islands (ASPA #107), Lagotellerie Island (ASPA #115), Avian Island (ASPA #117), and Rothera Point, Adelaide Island (ASPA #129) located in the Antarctic Peninsula. The applicant had difficulty locating seals in the Marguerite pack ice in the spring last season and requests to enter the specially protected areas locate seals hauled out on the shore. This would greatly improve chances of meeting sample goals and allowing vessel usage to be more optimized for the oceanographic studies underway. Access to sites will be by zodiac or small boat.

Location: Dion Islands (ASPA #107), Lagotellerie Island (ASPA #115), Avian Island (ASPA #117), and Rothera Point, Adelaide Island (ASPA #129).

Dates: April 1, 2001 to August 31, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 02–5238 Filed 3–4–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: 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:* NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters''.

2. *Current OMB approval number:* 3150–0013.

3. *How often the collection is required:* NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State, areas of exclusive Federal jurisdiction, or offshore waters. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form from a licensee engaging in activities under the general license.

4. *Who is required or asked to report:* Any licensees who hold a specific license from an Agreement State and want to conduct the same activity in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters under the general license in 10 CFR 150.20.

5. *The number of annual respondents:* 184 respondents from Agreement State licensees.

6. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,104 hours.

7. *Abstract:* Under the reciprocity provisions of 10 CFR part 150, any Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in Section 150.20, is required to file four copies of NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters,'' and four copies of its Agreement State license at least 3 days before engaging in such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

Submit, by May 6, 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 World Wide 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 27th day of February 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5179 Filed 3–4–02; 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: 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, new, revision, or extension:* Extension.

2. *The title of the information collection:*

—DOE/NRC Forms 741 & 741A—Nuclear Material Transaction Report;

—DOE/NRC Form 740M—Concise Note;

—NUREG/BR–0006 Revision 4—''Instructions for Completing Nuclear Material Transfer Reports DOE/NRC Forms 741, 741A, and 740M.''

3. *The form number if applicable:*

—NRC/DOE Forms 741/741A: 3150–0003; and

—NRC/DOE Form 740M: 3150–0057.

4. *How often the collection is required:*

—DOE/NRC Forms 741/741A: As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria. Licensees range from not submitting any forms to submitting over 5,000 forms in a year.

—DOE/NRC Form 740M: As necessary to inform the US or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement. On average, 15 licensees submit about 10 forms each per year—150 forms annually.

5. *Who will be required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the US eligible list who have been notified in writing by the Commission that they are subject to Part 75.

6. *An estimate of the number of responses:*

—DOE/NRC Forms 741/741A: 36,500;

—DOE/NRC Form 740M: 150.

7. *An estimate of the number of annual respondents:*

—DOE/NRC Forms 741/741A: 1,200;

—DOE/NRC Form 740M: 15.

8. *The number of hours needed annually to complete the requirement or request:*

—DOE/NRC Forms 741/741A: 27,375 hours for NRC and Agreement State licensees (.75 hour per response with an average of approximately 22.8 hours per respondent for 1,200 respondents);

—DOE/NRC Form 740M: 113 hours (.75 hour per response with an average of approximately 7.5 hours per respondent for 15 respondents).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* NA.

10. *Abstract:* NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Forms 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts of special nuclear material, or for transfer or receipt of 1 kilogram or

more of source material. Licensees affected by Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the US or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S./IAEA Safeguards Agreement. The use of Forms 740M, 741, and 741A, together with NUREG/BR–0006 Revision 4, the instructions for completing the forms, enables NRC to collect, retrieve, analyze as necessary, and submit the data to IAEA to fulfill its reporting responsibilities.

A copy of the final 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 World Wide 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 April 4, 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 (3150–0003 & –0057), NEOB–10202, Office of Management, 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 27th day of February 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5178 Filed 3–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of March 4, 11, 18, 25, April 1, 8, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 4, 2002

Monday, March 4, 2002

2 p.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 11, 2002—Tentative

There are no meetings scheduled for the Week of March 11, 2002.

Week of March 18, 2002—Tentative

Tuesday, March 19, 2002

9:30 a.m.
Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: James Johnson, 301–415–6802)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, March 20, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 25, 2002—Tentative

There are no meetings scheduled for the Week of March 25, 2002.

Week of April 1, 2002—Tentative

There are no meetings scheduled for the Week of April 1, 2002.

Week of April 8, 2002—Tentative

Friday, April 12, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (if needed)

* This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 28, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–5272 Filed 3–1–02; 10:10 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 8, 2002 through February 21, 2002. The last biweekly notice was published on February 19, 2002 (67 FR 7410).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 4, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public

Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: September 10, 2001.

Description of amendment request: The proposed amendment would revise the requirements in Technical Specifications (TSs), Sections 3.4.A.7.c and 3.4.A.8.c, to determine operability of core spray pumps and system components by verification rather than testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are not associated with accident initiators. The proposed changes are, however, associated with emergency core cooling requirements for loss of coolant mitigation. This event is a loss of coolant from the reactor vessel when the plant is shutdown and was evaluated in the NRC [Nuclear Regulatory Commission] Safety Evaluation Report supporting License Amendment No. 12, dated January 21, 1976. The proposed changes contained in this request do not affect the assumptions or conclusions of that evaluation and do not impact the physical characteristics of the core spray and fire protection systems. Therefore, the proposed changes do not degrade the ability of the core spray and fire protection systems to perform their intended accident mitigation function. The proposed changes to core spray pump/component and fire protection system operability verification versus demonstration in TS 3.4.A.7.c and core spray pump/component operability verification versus demonstration in TS 3.4.A.8.c provide an alternate means of determining equipment operability without reliance on frequent testing. The clarification of the extent of core spray system operability verification in TS 3.4.A.7.c does not change any existing requirements. Therefore, the proposed changes to TS 3.4.A.7.c and 3.4.A.8.c do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are not associated with accident initiators. They are changes that provide an alternate means of determining equipment operability while eliminating frequent testing.

The proposed changes to TS 3.4.A.7.c and 3.4.A.8.c do not involve the addition of any new plant structure, system or component (SSC). Similarly, the proposed TS changes do not involve physical changes to an existing SSC nor do they modify any current operating parameters. Providing an alternate means of determining equipment operability does not alter the functional capability of any accident mitigation system. The clarification of the extent of core spray system operability verification in TS 3.4.A.7.c does not change any existing requirements. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes to TS 3.4.A.7.c and 3.4.A.8.c are not associated with accident initiators and do not introduce new SSCs or physically impact existing SSCs. They are changes that provide an alternate means (i.e., verification) of determining core spray and fire protection system component operability. The capability of the necessary core spray and fire protection components to provide the required core cooling flow is demonstrated during surveillance testing. While the proposed changes revise the method of determining the operability of the core spray and fire protection system in the reduced availability mode, they do not degrade the ability of the systems to perform their intended function. The clarification of the extent of core spray system operability verification in TS 3.4.A.7.c does not change any existing requirements. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Joel Munday, Acting.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: September 11, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications, Section 3.9, ''Refueling,'' to incorporate compensatory provisions which permit fuel-handling operations without the refueling interlocks operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis and has performed its own, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The proposed amendment involves refueling interlock operability requirements during refueling operations. The only design-basis accident described in the Oyster Creek Updated Final Safety Analysis Report (UFSAR) for cold shutdown or refueling conditions is a postulated fuel handling (dropped bundle) accident. The refueling interlocks are not postulated to cause, and are not involved in the mitigation of such an accident. Thus, the proposed amendment does not affect the safety function of the refueling interlocks. The proposed alternative actions provide an equivalent level of protection against inadvertent criticality during fuel handling operations. Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not affect accident initiators or precursors because it does not alter any design parameter, condition, equipment configuration, or manner in which the unit is operated. Further, it does not alter or prevent the ability of structures, systems, or components to perform their intended safety or accident mitigating functions. Accordingly, the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

No. The proposed amendment does not change any design parameter, analysis methodology, safety limits or acceptance criteria. The revised requirement (i.e., proposed alternative) will continue to ensure against inadvertent criticality during fuel handling operations. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the

NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Joel Munday, Acting.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: August 14, 2001.

Description of amendment request: The proposed amendment revises Section 6, ''Administrative Controls,'' of the Technical Specifications (TSs) to delete Section 6.5.4, ''Independent Onsite Safety Review Group,'' and all associated subsections. The licensee will revise its Operational Quality Assurance Plan to incorporate conforming changes to provide its proposed alternative independent nuclear safety oversight provisions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change involves deletion of the TS requirements for the Independent Onsite Safety Review Group [IOSRG]. To satisfy the NUREG–0737 [''Clarification of TMI Action Plan Requirements,'' November 1980] guidance concerning organizational independence, the proposed IOSRG alternative provides for technical expertise by onsite engineering and licensing organizations. These site engineering and licensing organizations report through the Site Vice-President and are independent of the production reporting chain through the plant manager. Additionally, high-level management positions are located in the corporate and regional offices for these engineering and licensing organizations which set policy and have responsibility for governance and oversight of these functional areas. These corporate and regional high-level positions are not in the management chain for power production.

Organizational and procedural changes at TMI Unit 1 [Three Mile Island Nuclear Station, Unit 1] following the issuance of NUREG–0737 have resulted in improvements to the review processes that meet the intent of the requirements [of] NUREG–0737 for an IOSRG. Therefore, inclusion of the IOSRG in the plant or plant support organization is unneccessary. In light of the considerable improvement in the processes listed above, the contribution of three full time engineers assigned as a separate group to address nuclear safety oversight is not significant in comparison to the contribution of the overall organization. This change does not affect assumptions contained in the plant safety analyses, the physical design and/or operation of the plant, nor does it affect Technical Specifications that preserve safety analysis assumptions. No Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected by this change. The proposed change does not alter design, function, operation, or reliability of any plant component. This change does not involve a physical modification to the plant, a mode of operation, or a change to the UFSAR [Updated Final Safety Analysis Report] transient analyses. Normal and accident dose to plant personnel or to the public are unaffected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change to remove the IOSRG from the TS[s] is administrative in nature and does not affect the assumptions contained in the plant safety analyses, the physical design and/or modes of plant operation defined in the plant operating license that preserve safety analysis assumptions.

This proposed change does not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. The proposed change does not alter the design, function, or operation of any plant system or component.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

This change only involves Technical Specification Section 6, ''Administrative Controls,'' which does not include any margins of safety. None of the proposed changes involve a physical modification to the plant, a new mode of operation, an instrument setpoint, or a change to the UFSAR transient analyses. No Limiting Safety System Setting, Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Joel T. Munday (Acting).

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: September 10, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.9.7 and corresponding Bases to address use of a single-failure-proof handling system, as defined by NUREG–0612 (''Control of Heavy Loads at Nuclear Power Plants'') and NUREG–0554 (''Single-Failure-Proof Cranes For Nuclear Power Plants''). The modifications will allow handling loads in excess of 1,800 pounds near or over the Spent Fuel Pool. The anticipated types of heavy loads include the combination of a spent fuel storage canister and transfer cask.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Concerning the application of a single-failure-proof handling system for handling heavy loads near or over the Spent Fuel Pool, NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants'' asserts that the probability of an accidental load drop while handling loads over the spent fuel is insignificant.

Under the proposed amendment, the evaluation criteria of NUREG–0612, Section 5.1 are satisfied by the combination of (a) the continued implementation of procedures and the practices for both the Fuel Handling Cranes and the Yard Crane that provide conformance with the guidelines of Section 5.1.1 of NUREG–0612, and (b) the application of a single-failure-proof handling system that satisfies the criteria of NUREG–0612, Sections 5.1.2(1) and 5.1.6 for the movement of any load with a weight greater than 1800 pounds either (i) over any spent fuel assembly in the Spent Fuel Pool or (ii) near or over any area of the Spent Fuel Pool, including the Spent Fuel Cask Laydown Area.

The proposed amendment retains existing restrictions on crane travel for the Fuel Handling Cranes, which are not qualified to the single-failure-proof criteria of NUREG–0612. These retained restrictions continue to support the existing safety analysis of Section 15.2.2, ''Fuel Handling Accident'' of the

UFSAR [Updated Final Safety Analysis Report], Reference (9) [Haddam Neck Plant UFSAR Change 34 dated August 2, 2000].

Additionally, the proposed amendment corresponds to the application of a single-failure-proof handling system to fulfill the NUREG–0612 Phase II condition that is required prior to the handling of a spent fuel cask near or over any area of the Spent Fuel Pool.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will allow the handling by a single-failure-proof handling system of loads in excess of 1800 pounds over fuel assemblies in any region of the Spent Fuel Pool, including the Spent Fuel Cask Laydown Area.

Additionally, the proposed changes correspond to the application of a single-failure-proof handling system for the fulfillment of the required condition for the handling of spent fuel casks near or over any area of the Spent Fuel Pool. This required condition is identified in the documentation for the NRC Issuance of License Amendment 125, Ref. (7) [Letter from US NRC to CYAPCO, dated April 26, 1990] and it is acknowledged in the CYAPCO submittal for the proposed license amendment that was issued as License Amendment 188, Ref. (5) [Letter from J. F. Opeka (CYAPCO) to US NRC, ''Haddam Neck Plant Proposed Revision to Technical Specifications Spent Fuel Pool Capacity Expansion,'' Letter Number B15136, dated March 31, 1995.] and the NRC Issuance of License Amendment 195, Ref. (6) [Letter from T. L. Fredrichs (NRC) to R. A. Mellor (CYAPCO), ''Haddam Neck Plant-Issuance of Amendment RE: Relocation of Requirements to Licensee—Controlled Documents (TAC No. MA5756),'' dated October 19, 1999].

NUREG–0612, Section 5.1.2 identifies that the capability of a single-failure-proof handling system to handle heavy loads has been identified as equivalent in risk to the capabilities of a non-single-failure-proof heavy load handling system that complies with the criteria of one of the other three alternative sets from NUREG–0612 (including alternative criteria that include analyses concerning postulated heavy load drops).

A structural evaluation of the heavy load interfaces within the Spent Fuel Cask Laydown Area and the Cask Transfer Bay was performed per the requirements of EDR–1 [(Reference 2) Generic Licensing Topical Report EDR–I (P)–A, ''EDERER's Nuclear Safety Related eXtra Safety And Monitoring (X–SAM) CRANES,'' Revision 3, Amendment 3, dated October 8, 1982] Appendix B and C (Attachments 2 and 3 [attachments to this application]). The results of the evaluation confirmed the design bases for the Spent Fuel Pool and the Spent Fuel Building are maintained.

As such, use of a single-failure-proof handling system precludes the possibility of a heavy load drop which could cause an accident outside of the existing design bases.

Additionally, the proposed changes retain existing restrictions on the travel of non-single-failure-proof cranes over fuel assemblies in the Spent Fuel Pool. These retained restrictions continue to support the existing safety analysis of Section 15.2.2, ''Fuel Handling Accident'' of the UFSAR, Reference (9).

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Section 5.1.2 of NUREG–0612 identifies that each of the four alternative sets of criteria for the handling of heavy loads near or over the Spent Fuel Pool, including over fuel assemblies, provides a level of safety that is essentially equivalent to the level of safety provided by any of the other three alternative sets of criteria.

The proposed change corresponds to the application of the first of the four alternative sets of criteria, which is described in NUREG–0612 Section 5.1.2(1), implementation of a single-failure-proof handling system.

Additionally, the proposed change includes the retention of existing crane travel restrictions for the Fuel Handling Cranes, therefore, maintaining the existing margin of safety concerning the operation of those other cranes.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Robert K. Gad, III, Ropes & Gray, One International Plaza, Boston, Massachusetts 02110–2624.

NRC Section Chief: Stephen Dembek.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The amendments would revise the Technical Specifications (TS) to eliminate the use of the term ''unreviewed safety question.'' The change is proposed by the licensee to reflect changes in the NRC's regulations in 10 CFR 50.59 as noticed in the **Federal Register** on October 4, 1999. The proposed changes in the license amendment request are consistent with an NRC approved Technical Specifications Task Force Standard TS Traveler (TSTF–364).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications [TS] made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the Catawba licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10CFR50.59 regulation. Implementation of the revised 10CFR50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The amendments would revise Technical Specification 5.6.5.b to eliminate the revision number and dates of the topical reports that contain the analytical methods used to determine the core operating limits. This proposed change is consistent with TSTF (Technical Specification Task Force)-363.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to TS 5.6.5.b, Core Operating Limits Report (COLR), affecting a list of documents that are separately reviewed and approved by the NRC. The changes proposed to TS 5.6.5.b have no substantive impact on the Catawba licensing bases. Only NRC-approved methodologies will be used to generate the core operating limits. Based on these considerations, it has been determined that the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The analytical methodologies used to generate the core operating limits are unchanged by this LAR. As such, this LAR has no affect on margins of safety. Future changes to these methodologies will remain subject to NRC review and approval. Therefore, this proposed amendment does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specification 5.6.5.b to eliminate the revision number and dates of the topical reports that contain the analytical methods used to determine the core operating limits. This proposed change is consistent with TSTF (Technical Specification Task Force)-363. This notice supersedes in its entirety the previous notice issued on February 5, 2002 (67 FR 5326) for the Oconee December 20, 2001, application, which contained the incorrect licensee analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to TS 5.6.5.b, Core Operating Limits Report (COLR), affecting a list of documents that are separately reviewed and approved by the NRC. The changes proposed to TS 5.6.5.b have no substantive impact on the Oconee licensing bases. Only NRC-approved methodologies will be used to generate the core operating limits. Based on these considerations, it has been determined that the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The analytical methodologies used to generate the core operating limits are unchanged by this LAR. As such, this LAR has no affect on margins of safety. Future changes to these methodologies will remain subject to NRC review and approval. Therefore, this proposed amendment does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 8, 2002.

Description of amendment request: The amendment would delete the Technical Specification (TS) requirements governing the reactor vessel material surveillance program; would change the TS Sections 4.2, ''Inservice Inspection and Testing,'' 5.2.C, ''Design Features—Containment,'' and 6.4, ''Administrative Controls—Training,'' to correct errors; and would change TS Section 6.1, ''Responsibility,'' and 6.2, ''Organization,'' to reflect the organizational changes resulting from the license transfer to Entergy Nuclear Operations, Inc. (ENO).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

The proposed change to TS Section 3.1.B involves deleting specific TS requirements that duplicate the requirements of 10 CFR [Code of Federal Regulations] 50.60, 10CFR50 Appendix G, and 10CFR50 Appendix H. The proposed change does not result in a change to the design or operation of any plant structure, system or component. Therefore any assumptions of the operability or performance of any structure, system or component in accident evaluations are unchanged.

The proposed change to TS 4.2.1 simply corrects an improper reference to the CFR. There are no physical changes to IP2 or to the operation of any system, structure, or component.

The proposed change to TS 5.2.C makes the design feature description consistent with TS Limiting Condition for Operation 3.3.B wherein the requirements for the method of post-accident iodine removal are specified. Making the Design Feature consistent with the appropriate LCO has no effect on the assumptions and the results of the accident analyses.

TS sections 6.1, 6.2, and 6.4 are administrative controls. Changing an administrative control has no affect on accident analyses.

Therefore, there will be no increase in the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to TS Section 3.1.B does not affect the effectiveness of ENO's implementation of the requirements of 10CFR50.60 that ensure the reactor vessel continues to be protected against non-ductile failure.

There is no change to any system, structure, or component as a result of any of the proposed changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed TS changes simplify the methods of controlling the schedule for the reactor vessel surveillance specimen withdrawal schedule in that a duplicative control is removed. The effectiveness of ENO compliance with 10CFR50.60 and 10CFR50 Appendices G and Appendix H is not adversely affected by this change. The level of regulatory control for the reactor vessel pressure/temperature limits is not changed.

The effectiveness of IP2's [Indian Point 2] inservice testing program is not affected by the correction of the improper CFR reference in TS 4.2.1. ENO is required to comply with 10CFR55 at IP2. The effectiveness of ENO's compliance with 10CFR55 is not affected by deleting the improper CFR citation from TS 6.4. Similarly, ENO's compliance with the IP2 license and the all applicable laws and regulations is not affected by the proposed changes to the TS sections for responsibility and organization.

The change to the Design Features to properly identify the method specified in TS 5.2.B for post-accident iodine removal does not affect the margin of safety.

This change does not affect any design function for or the operation of any plant structure, system, or component.

Therefore, the change [* * *] does not result in a change to any of the safety analyses or [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel Munday, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 8, 2002.

Description of amendment request: The amendment would incorporate the use of a more conservative equation to calculate the power range high neutron trip setpoint when one or more main steam safety valves are inoperable during four loop operation—Technical Specification (TS) 3.4, ''Steam and Power Conversion System.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed change to the setpoints will cause a reactor trip on high neutron flux for a decreased heat removal event at an earlier (more conservative) condition. The consequences of an accident with the proposed setpoints are less severe than those predicted with the use of the current setpoints.

The main steam line code safety valves, in conjunction with the high neutron flux reactor trip mitigate the consequences of decreased heat removal and uncontrolled rod cluster assembly bank withdrawal events. The systems acting together do not initiate or cause any accident. Therefore, the probability of analyzed accidents is unchanged by the proposed TS change.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no change to either the design or operation of the main steam line code safety valves. This proposed change only changes the high neutron flux trip setpoints in response to the inoperable main steam line code safety valves. This feature currently exists both in the plant and in the TS.

Therefore, the proposed change does not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The current TS setpoints have been determined to be non-conservative and insufficient to guarantee safety. The proposed change would impose limits that were anticipated in the original TS and are conservative with respect to the current TS. Therefore, the margin of safety as defined in the TS (protection of the secondary system from overpressurization so that it is available for decay heat removal) will be restored to that intended with the original TS.

The ability to keep the core cooled in spite of the inoperability of some main steam line code safety valves is enhanced by the proposed change. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel Munday, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 8, 2002.

Description of amendment request: The amendment would revise the Technical Specification (TS) Section 3.7.C, ''Gas Turbine Generators,'' and Section 4.6, ''Emergency Power System Periodic Tests,'' by changing the requirement to maintain a minimum amount of fuel oil stored on site from 54,200 gallons to 94,870 gallons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The Gas Turbine Generators only provide a Licensing Basis Event mitigating function. There is no previously evaluated accident or event that is initiated by the Gas Turbine Generators or their associated fuel storage system. The ability of the Gas Turbine Generators to provide power, as a backup to the Emergency Diesel Generators, is enhanced by the proposed change to increase the amount of fuel stored on site and dedicated to Gas Turbine Generator operation. The increase in minimum load has an insignificant affect because the Gas Turbine Generators are capable of loads far in excess of the proposed minimum load.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no physical change to the plant. The currently existing fuel oil storage facilities will be used. The only change is to increase the minimum amount of fuel oil that must be maintained at the plant.

Therefore, the proposed change does not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not

involve a significant reduction in [a] margin of safety.

The proposed limit for Gas Turbine Generator fuel oil storage ensures compliance with the current licensing basis that the Gas Turbine Generators be able to power all the loads required by 10 CFR [Code of Federal Regulations] 50 Appendix R to place the plant into a safe shutdown condition following a fire and maintain safe shutdown for three days. The increase in the minimum load rating ensures that each Gas Turbine Generator will support operation of additional components to enhance operational flexibility in response to an event.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel Munday, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 8, 2002.

Description of amendment request: The amendment would delete the Technical Specification (TS) requirements governing the Fuel Storage Building Air Filtration System. The proposed changes affect TS 3.8, ''Refueling, Fuel Storage and Operations with the Reactor Vessel Head Bolts Less Than Fully Tensioned,'' and TS 4.5.F, ''Fuel Storage Building Air Filtration System.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

The fuel storage building air filtration system is not involved in the initiation of any accident nor does it function to prevent any accident. The fuel storage building air filtration system was an accident mitigating system. Therefore there is no affect on the probability of occurrence of a fuel handling accident in the fuel storage building.

The fuel storage building air filtration system was designed to provide an accident mitigation function by filtering the radionuclides that might have been released from a damaged fuel assembly in the event of a fuel handling accident. The charcoal adsorber was the primary component that supported this filtration function. However, based on the recent IP2 [Indian Point 2] analyses to show compliance with 10CFR [Code of Federal Regulations] 50.67, it has been shown that the doses to the public and to control room operators due to a fuel handling accident remain well within regulatory limits even assuming no credit for either isolation or filtration. Therefore, the charcoal filtration function is not required in the event of a fuel handling accident.

There would be no change to the radiological consequences of the fuel handling accident in the fuel storage building analysis as a result of the proposed change. The proposed changes ensure that the assumptions of the fuel handling accident analysis for the release of radioactivity from a damaged fuel assembly in the fuel storage building are maintained.

Therefore, there will be no increase in the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The fuel storage building air filtration system is not an accident initiator. It was designed as an accident mitigation system to filter the radionuclides that may be released from a damaged fuel assembly during a fuel handling accident. The fuel storage building air filtration system does not affect any accident initiator.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The margin of safety is defined by 10CFR50.67 and 10CFR50 Appendix A Criterion 19. The radiological consequences of a fuel handling accident in the fuel storage building have been shown to be well within the regulatory requirements even when assuming no credit for the fuel storage building air filtration system operation.

The proposed change ensures that the assumptions of the current fuel handling analysis for the release of radioactivity from a damaged fuel assembly are maintained.

Therefore, the change does not result in a change to any of the safety analyses or [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear. Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel Munday, Acting.

Exelon Generation Company, LLC, Docket No. 50–237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of amendment request: September 5, 2001.

Description of amendment request: The proposed amendments would revise the battery terminal voltage on float charge for the alternate battery.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is to a SR 3.8.4.1 acceptance criterion that will continue to ensure equipment operability. By continuing to ensure equipment operability, the probability or consequences of an accident previously evaluated are not increased. Float charge is the condition in which the charger is supplying the continuous charge required to overcome the internal losses of a battery and maintain the battery in a fully charged state. The voltage requirements are based on the nominal design voltage of the battery and are consistent with the initial voltages assumed in the battery sizing calculations. The 125 VDC alternate battery continues to provide reliable DC power for operation of the required equipment. The number of cells in the alternate battery was increased from sixty to sixty-three and the acceptable float voltage needed to be revised to reflect the additional cells. The addition of the three cells has been evaluated and documented in calculations. These calculations demonstrate that the batteries are appropriately sized to supply the required loads following a loss of offsite power. The ability of the battery to perform its intended function remains unchanged. In addition, the proposed change has no impact on any initial condition assumptions for accident scenarios. Onsite or offsite dose consequences resulting from an accident previously evaluated are not affected by this proposed amendment request.

Accordingly, there is no significant change in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed license amendment provides a change in a TS Surveillance Requirement that continues to ensure equipment operability. The increase in terminal voltage specifically supports the increase in the number of cells for the battery. The operation of the safety-related equipment and components remains unchanged. As such, the relationship between the 125 VDC power

system and plant transient response is maintained. The change in the acceptance criterion ensures that the equipment remains operable.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not involve a significant reduction in the margin of safety. The proposed change continues to ensure equipment operability. The increase in terminal voltage specifically supports the increase in the number of cells for the alternate battery. Since the change maintains the necessary level of system reliability, it does not involve a significant reduction in the margin of safety. The change in acceptance criterion is to reflect the increase in battery cells from sixty to sixty-three. This acceptance criterion ensures that the equipment remains operable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: January 10, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated January 10, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determined that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: December 10, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) to incorporate the Nuclear Regulatory Commission (NRC)-approved generic change TSTF–287, Revision 5, to the ''Standard Technical Specifications for General Electric Plants (BWR/4),'' NUREG–1433, Revision 1. Specifically, the proposed changes would: (a) insert a note in the Limiting Condition for Operation (LCO) in TS 3.7.3 to state that the control room habitability envelope boundary may be opened intermittently under administrative control; (b) insert a new LCO Action B in TS 3.7.3 to allow 24 hours to restore the control room habitability envelope boundary to

operable status if two control room emergency outside air supply (CREOAS) subsystems should become inoperable due to an inoperable control room habitability envelope boundary in Modes 1, 2 and 3; (c) re-label the existing LCO Actions b, c, d, and e to c, d, e, and f respectively; and (d) revise the existing LCO Action D to require immediate entry into LCO 3.0.3 when two CREOAS subsystems are inoperable for situations other than when the inoperability is due to an inoperable control room habitability envelope boundary. Minor formatting and editorial changes are also made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change relaxes the Required Actions of LCO 3.7.3 by allowing 24 hours to restore an inoperable control room habitability envelope pressure boundary to OPERABLE status. Required Actions and their associated Completion Times are not initiating events for any accidents previously evaluated. The accident analyses do not assume that required CREOAS equipment is out of service prior to the analyzed event. Consequently, this change in Required Actions does not significantly increase the probability of occurrence of any accident previously evaluated. The Required Actions in the proposed change have been developed to provide assurance that appropriate remedial actions are taken in response to the degraded condition, considering the operability status of the CREOAS system and the capability of minimizing the risk associated with continued operation. As a result, the consequences of any accident previously evaluated are not significantly increased. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical modification or alteration of plant equipment (no new or different type of equipment will be installed) or a change in the methods of governing normal plant operation. The Required Actions and associated Completion Times in the proposed change have been evaluated to ensure that no new accident initiators are introduced. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The relaxed Required Actions do not involve a significant reduction in the margin of safety. The proposed change has been evaluated to minimize the risk of continued operation with the control room habitability envelope pressure boundary inoperable. The operability status of the CREOAS system, a reasonable time for repairs or replacement of required features, and the low probability of a design basis accident occurring during the repair period have been considered in the evaluation. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Joel T. Munday, Acting.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: December 14, 2001.

Description of amendment request: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 14, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the

rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard J. Laufer, Acting.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 31, 2002.

Brief description of amendment request: The proposed amendment would revise the technical specifications by replacing the peak linear heat rate safety limit with a peak fuel centerline temperature safety limit.

*Date of publication of individual notice in **Federal Register:*** February 11, 2002 (67 FR 6279).

Expiration date of individual notice: The comment period expires on February 25, 2002, and the hearing period expires on March 13, 2002.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 31, 2002.

Brief description of amendment request: The proposed amendment would replace the Technical Specification (TS) Safety Limit 2.1.1.2, ''Peak Linear Heat Rate,'' (PLHR) with a Peak Fuel Centerline Temperature Safety Limit and update the Index accordingly. The associated TS Bases changes are also made to appropriately reflect the proposed new Safety Limit.

*Date of publication of individual notice in **Federal Register:*** February 11, 2002 (67 FR 6281).

Expiration date of individual notice: The comment period expires on February 25, 2002, and the hearing period expires on March 13, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 21, 2001, as supplemented January 11, 2002.

Brief description of amendment: The amendment revises the actions taken for an inoperable battery charger, revises the battery charger testing criteria, and relocates certain safety-related battery surveillance requirements from the Technical Specifications to a licensee-controlled program.

Date of issuance: February 15, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 142.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** November 14, 2001 (66 FR 57118). The letter of January 11, 2002, provided clarification and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 19, 2000, as supplemented on September 24, 2001.

Brief description of amendment: The amendment revises the Oyster Creek Technical Specifications, Section 3.17, to remove reference to the current licensing basis control room calculated dose consequences and substitute the associated regulatory dose limits that apply for control room habitability in

accordance with General Design Criterion (GDC) 19 of 10 CFR part 50 and Standard Review Plan Section 6.4. Concurrent with this requested change, AmerGen Energy Company (AmerGen) recalculated control room relative concentration (X/Q) values using the ARCON96 methodology to demonstrate its capability to meet GDC–19 dose requirements. The NRC staff finds acceptable the use of the diffuse source X/Q values calculated by AmerGen because they appear to be more limiting than assuming a point source release through a building penetration.

Date of Issuance: February 7, 2002.

Effective date: February 7, 2002 and shall be implemented within 30 days of issuance.

Amendment No.: 225.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44163). The September 24, 2001, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 7, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: September 20, 2000, as supplemented August 2 and September 28, 2001.

Brief description of amendment: The Technical Specification (TS) changes deleted the specification for hydrogen monitoring instrumentation from TS Sections 3.5.5.2, 3.6, and Tables 3.5–3 and 4.1–4, corrected a typographical error in Item 8 of Table 4.1–4, deleted the specifications for hydrogen recombiners in TS Section 4.4.4, and changed the Bases for TS Section 4.12.2 to delete its reference to hydrogen purge and hydrogen recombiners.

Date of issuance: February 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days including the designation of hydrogen monitoring instrumentation as Category 3 variables as defined in Regulatory Guide 1.97.

Amendment No.: 240.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57118). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: November 19, 2001.

Brief description of amendment: The amendment increases the allowed outage time of one train of the control room emergency ventilation system from 10 to 14 days (for the loss of the emergency power supply only). This is a one-time change to support corrective maintenance and inspections of the 1A Diesel Generator during the Unit 1 refueling outage.

Date of issuance: February 13, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 223.

Renewed License No. DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 926). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 29, 2000, as supplemented on October 16, 2000, and January 25, April 4, and September 21, 2001.

Brief description of amendment: The amendment modifies Technical Specification (TS) Sections 3.3.2, ''Instrumentation—Engineered Safety Features Actuation System Instrumentation;'' 3.7.7, ''Plant Systems—Control Room Emergency Ventilation System;'' 3.7.8, ''Plant Systems—Control Room Envelope Pressurization System;'' 3.7.9, ''Plant Systems—Auxiliary Building Filter System;'' 3.9.1.1, ''Refueling Operations—Boron Concentration;'' 3.9.1.2, ''Refueling Operations—Boron Concentration;'' 3.9.2, ''Refueling Operations—Instrumentation;'' 3.9.4, ''Refueling Operations—Containment Building Penetrations;'' 3.9.9, ''Refueling Operations—Containment Purge and Exhaust Isolation System;'' 3.9.10, ''Refueling Operations—Water Level—Reactor Vessel;'' and 3.9.12, ''Refueling Operations—Fuel Building Exhaust Filter System.'' The changes are associated with the revised fuel handling accident analyses, and integrity of the Control Room and the Fuel Building boundaries. Several administrative changes were also made to reflect Millstone Unit 3 terminology, remove unnecessary information, and eliminate confusion by providing consistency between LCO's (limiting conditions for operations), Action Requirements, and Surveillance Requirements. The TS changes are associated with the revised containment fuel handling accident analysis which results in an increase in the consequences of a containment fuel handling accident since the current analysis of a containment fuel handling accident does not assume the release of any radioactive material from containment. The revised analysis assumes a release of radioactive material because it assumes both personnel access hatch doors are open and at least one hatch door is closed within 10 minutes of a fuel handling accident inside containment.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 203.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 29, 2000 (65 FR 71136). The letters dated October 16, 2000, January 25 April 4, and September 21, 2001, provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination or expand the scope of the application as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 22, 2001, as supplemented by letter dated October 11, 2001.

Brief description of amendments: The amendments revised the Technical Specifications (TS) surveillance requirement (SR) for the methodology and frequency for the chemical analyses of the ice condenser ice bed. Also, these amendments add a new TS SR to address sampling requirements for ice

additions to the ice bed. In addition, the amendments revise the current TS surveillance requirement acceptance criteria and surveillance frequency for the inspection of ice condenser ice basket flow channel areas.

Date of issuance: February 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 195 and 188.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36339). The supplement dated October 11, 2001, provided clarifying information that did not expand the scope of the original **Federal Register** notice or the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 13, 2001.

Brief description of amendment: The amendment deleted Technical Specification (TS) Tables 3.6–1, ''Non-Automatic Containment Isolation Valves Open Continuously or Intermittently for Plant Operation,'' and 4.4–1, ''Containment Isolation Valves.'' The amendment also revised other TS sections that reference these tables. The removal of the tables is in accordance with the guidance in NRC Generic Letter 91–08, ''Removal of Component Lists from Technical Specifications.''

Date of issuance: February 12, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 223.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44166). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 16, 2001, as supplemented January 11, 2002.

Brief description of amendment: The amendment updates the pressure-temperature limit curves for Indian Point Nuclear Generating Unit No. 2.

Date of issuance: February 15, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 224.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 8, 2001 (66 FR 41613). The January 11, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 23, 2001, as supplemented by letters dated September 21, and November 8, 2001.

Brief description of amendment: This submittal requests a change to administrative Technical Specification (TS) 6.15. The change postpones the next Type A test performed after May 12, 1991, to no later than May 11, 2006, resulting in an extended interval of 15 years for the performance of Integrated Leak Rate Test.

Date of issuance: February 14, 2002.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 178.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44169). The September 21, and November 8, 2001, supplemental letters contained clarifying information that did not change the scope of the July 23, 2001, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 23, 2001, as supplemented December 11, 2001.

Brief description of amendment: As a follow-up response to a commitment identified in the Nuclear Regulatory Commission (NRC) staff letter dated December 22, 2000, ''Completion of Licensing Action for Generic Letter (GL) 96–06, Assurance of Equipment Operability and Containment Integrity During Design-Basis Accident Conditions,'' Entergy Operations Inc., (Entergy, the licensee) has proposed to revise their Waterford Steam Electric Station, Unit 3 (Waterford 3) Final Safety Analysis Report (FSAR) to resolve the ten containment penetrations susceptible to thermally induced overpressurization through an evaluation, detailed analysis, or installation of physical modifications prior to startup from the spring 2002 refueling outage. Entergy determined a change to Waterford 3's license basis, through procedural controls, risk analysis, and engineering analysis, for seven penetrations, as discussed in this license basis change request was necessary. Permanent resolution to the GL 96–06 issues for the remaining three penetrations will be satisfied through the installation of physical modifications.

Date of issuance: February 19, 2002.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented prior to startup from Refuel 11 scheduled for March 2002. Implementation of the amendment is the incorporation into the FSAR of the changes to the description of the facility as described in the licensee's application dated July 23, 2001, as supplemented by letter dated December 11, 2001.

Amendment No.: 179.

Facility Operating License No. NPF–38: The amendment revised the FSAR.

Date of initial notice in ***Federal Register:*** September 19, 2001 (66 FR 48285). The December 11, 2001, supplement contained clarifying information that did not change the scope of the July 23, 2001, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: July 6, 2001, as supplemented by letters dated October 25, 2001, and December 17, 2001.

Brief description of amendments: The amendments revise technical specifications (TS) Section 3.3.1.1, ''Reactor Protection System Instrumentation,'' to modify the description for Reactor Protection System (RPS) Function 7.a, ''Scram Discharge Volume Water Level—High.'' This change supports a planned upgrade to the scram discharge volume level instrumentation from Fluid Components International thermal switches to Magnetrol float switches. These float switches are more reliable than the existing thermal switches, which are highly sensitive to a steam environment, since they respond to actual water level increases within the scram discharge volume. These types of Magnetrol float switches are used successfully in various applications at Quad Cities.

Date of issuance: February 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 203 and 199.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** January 11, 2002 (67 FR 1520). The October 25, 2001, and December 17, 2001, supplements provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 13, 2001, as supplemented by letters December 17 and December 26, 2001, and January 10, 2002.

Brief description of amendments: The amendments revise the Technical Specifications to support the licensee's planned upgrade of the reactor water level instrumentation, including changes to surveillance requirements frequencies, functional testing, and allowable values.

Date of issuance: February 12, 2002.

Effective date: As of the date of issuance and shall be implemented for Unit 1 prior to reaching Startup (i.e., Mode 2) following refueling outage 17, scheduled for completion in November 2002, and for Unit 2 prior to reaching Startup (i.e., Mode 2) following refueling outage 16, scheduled for completion in February 2002.

Amendment Nos.: 204 and 200.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 17, 2001 (66 FR 52800). The December 17 and December 26, 2001, and January 10, 2002, supplements provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Beaver County, Pennsylvania

Date of application for amendment: June 29, 2001, as supplemented by letters dated October 4, and December 1, 2001.

Brief description of amendment: The amendment revised the pressure-temperature curves and the cold overpressure protection limits. The changes are supported by a new fluence determination based on evaluation of a surveillance capsule, and the use of the American Society of Mechanical Engineers Code Case N–640.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No: 249.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 17, 2001 (66 FR 52801). The supplemental letters provided additional information but did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of application for amendment: March 28, 2001, as supplemented by letter dated September 25, 2001.

Brief description of amendment: The amendment revised the technical specifications associated with crediting soluble boron for reactivity control in the spent fuel pool.

Date of issuance: February 11, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No: 128.

Facility Operating License No. NPF–73: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 8, 2001 (66 FR 41620). The September 25, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of application for amendment: June 28, 2001, as supplemented September 13, 2001, December 19, 2001, and January 21, 2002.

Brief description of amendment: The amendment revised the technical specification (TS), 3.1.1.4, upper limit for the moderator temperature coefficient (MTC), from 0×10^{-4} change in reactivity per degree Fahrenheit ($\Delta k/k/°F$) to $+0.2 \times 10^{-4}$ $\Delta k/k/°F$ for power levels up to 70 percent of rated thermal power (RTP), and ramping linearly to 0×10^{-4} $\Delta k/k/°F$ from 70 percent to 100 percent RTP. The change is needed to address future core designs with higher energy requirements, associated with plant operation at higher capacity factors.

Date of issuance: February 21, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No: 129.

Facility Operating License No. NPF–73. Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 31, 2001 (66 FR 55019). The September 13, 2001,

December 19, 2001, and January 21, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: April 1, 2001.

Brief description of amendment: FirstEnergy Nuclear Operating Company submitted License Amendment Request (LAR) 00–0003 for Davis-Besse Nuclear Power Station, Unit 1, for review and approval. This amendment request proposes to revise references in the Technical Specification (TS) to the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (ASME Code), Section XI, as the source of requirements for the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. The TS will reference the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code).

Date of issuance: January 31, 2002.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 250.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29375). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 22, 2001, as supplemented by letters dated November 15, 2001, February 12, 2002, and electronic transmission dated February 19, 2002.

Brief description of amendment: This amendment revised Davis-Besse Nuclear Power Station (DBNPS) Technical Specifications in accordance with Framatone Technologies Incorporated Topical Report BAW–2303P, Revision 4, ''OTSG Repair Roll Qualification Report.'' The changes revise the existing DBNPS Once-Through Steam Generators (OTSGs) repair roll requirements to (1) use updated limiting tensile tube loads, (2) define new exclusion zones within the steam generator in which application of the repair roll is prohibited, (3) allow the repair roll to be used in the lower tubesheet area, (4) remove the limitation of only one repair roll per OTSG tube, and (5) replace the requirement that the repair roll be one inch in length with a requirement that the repair roll be installed in accordance with Topical Report BAW–2303P, Revision 4.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 252.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 8, 2001 (66 FR 41621). The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 15, 2001, as supplemented by letter dated February 8, 2002.

Brief description of amendment: This amendment revises Technical Specification (TS) 3/4.9.4, ''Refueling Operations—Containment Penetrations,'' TS 3/4.9.12, ''Refueling Operations—Storage Pool Ventilation,'' and associated Bases. The changes will allow the containment equipment hatch cover to be removed during core alterations and movement of irradiated fuel inside containment provided the Emergency Ventilation System is operable with the ability to filter any radioactive release.

Date of issuance: February 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 251.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34284). The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: December 5, 2001.

Brief description of amendment: This amendment revised Technical Specification 5.5.11, ''Technical Specifications (TSs) Bases Control Program,'' to reflect Technical Specification Task Force (TSTF) Standard Technical Specification Traveler, TSTF–364, Revision 0, ''Revision to Technical Specification Bases Control Program to Incorporate Changes to 10 CFR 50.59.''

Date of Issuance: February 21, 2002.

Effective Date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 121.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 927). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: March 29, 2001, as supplemented October 30, 2001.

Brief description of amendment: The amendment revised the Technical Specifications (TS) and TS Bases to eliminate the requirements for certain engineered features operability during core alterations and movement of irradiated fuel which had decayed for at least 2 days.

Date of issuance: February 11, 2002.

Effective date: As of the date of issuance, to be implemented prior to Refueling Outage 8.

Amendment No.: 101.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29358). The licensee's October 30, 2001, supplement withdrew portions of the

original application, leaving the balance unchanged.

The staff's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2002.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station (SSES), Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 17, 2001, as supplemented July 26, and October 15, 2001.

Brief description of amendments: The amendments update the reactor pressure vessel pressure-temperature limit curves for SSES–1 and 2.

Date of issuance: February 7, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 200, 174.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50471). The July 26, and October 15, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 7, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: November 8, 2001, as supplemented on December 14, 2001.

Brief description of amendments: The amendments add the following to the Technical Specifications: (1) The phrase, ''or if open, capable of being closed'' to Limiting Condition for Operation 3.9.4 for the equipment hatch, during core alterations or movement of irradiated fuel assemblies inside containment, and (2) the requirement to verify the capability to install the equipment hatch in a new Surveillance Requirement (SR) 3.9.4.2. The previous SR 3.9.4.2 was renumbered SR 3.9.4.3, but not changed.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance, including the incorporation of the changes to the Technical Specification Bases as described in the licensee's application dated November 8, 2001.

Amendment Nos.: 93 and 93.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64307). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or

if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 4, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: February 8, 2002, as supplemented February 10, 2002.

Description of amendment request: The amendment adds a license condition allowing a one-time limited duration exception from the Technical Specification (TS) Surveillance Requirement (SR) to verify that the opening, closing, and frictional torque of the ice condenser inlet doors are within specified limits as required by TS SRs 4.6.5.3.1.b.3, 4.6.5.3.1.b.4, and 4.6.5.3.1.b.5, respectively.

Date of issuance: February 14, 2002.

Effective date: As of the date of issuance, to be implemented immediately.

Amendment No.: 265.

Facility Operating License No. (DPR–58): Amendment revises the Operating License.

Public comments requested as to proposed no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated February 14, 2002.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: William D. Reckley, Acting Section Chief.

Dated at Rockville, Maryland, this 25th day of February, 2002.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–5000 Filed 3–4–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25446; 812–12018]

The Vantagepoint Funds and Vantagepoint Investment Advisers, LLC; Notice of Application

February 26, 2002.

AGENCY: Security and Exchange Commission (''Commission'').

ACTION: Notice of an application under: (a) Section 6(c) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act; (b) sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) of the Act.

*Summary of Application:*Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer that is an affiliated person of an investment adviser to another portion, subject otherwise to the limits in rule 12d3–1 under the Act.

Applicants: The Vantagepoint Funds (the ''Fund'') and Vantagepoint Investment Advisers, LLC (''VIA'').

*Filing Dates.*The application was filed on March 7, 2000 and amended on February 26, 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 March 21, 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, 777 North Capitol Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 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 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company registered under the Act and currently consists of nineteen investment portfolios (''Portfolios''). VIA is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is a wholly-owned subsidiary of ICMA Retirement Corporation. VIA serves as investment adviser to the Portfolios, including Portfolios (''Multi-Managed Portfolios'') that are advised by VIA and investment subadvisers (''Subadvisers''). Each Subadviser is registered under the Advisers Act or is exempt from registration. Each Subadviser is responsible for making independent investment and brokerage allocation decisions for a discrete portion of a Multi-Managed Portfolio based on its own research and credit evaluations. Each Subadviser is compensated directly by the Fund based on a percentage of the average daily net assets of the discrete portion of the Multi-Managed Portfolio allocated to the Subadviser. VIA also may directly advise a discrete portion of a Multi-Managed Portfolio.

2. Applicants request relief to permit: (a) A broker-dealer that serves as a Subadviser or is an affiliated person of a Subadviser (the broker-dealer, an ''Affiliated Broker-Dealer;'' the Subadviser, an ''Affiliated Subadviser'') to engage in principal transactions with a portion of a Multi-Managed Portfolio that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Subadviser (the portion, an ''Unaffiliated Portion''; the other Subadviser, an ''Unaffiliated Subadviser''); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to use such brokerage services, without complying with rule 17e–1(b) or (d) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or a person of which an Affiliated Subadviser is an affiliated person (''Affiliated Underwriter''); (d) a portion advised by an Affiliated Subadviser (''Affiliated Portion'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 under the Act, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions; and (e) an Unaffiliated Portion to purchase securities issued by an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser, that is involved in securities-related activities (''Securities Affiliate''), subject otherwise to the limits in rule 12d3–1 under the Act.[1]

3. Applicants request that the exemptive relief apply to any open-end management investment company registered under the Act or current or future portfolio of such company for which VIA or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with VIA currently or in the future acts as an investment adviser. The Fund is the only registered investment company that currently intends to rely on the order. VIA will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

[1] The terms ''Unaffiliated Subadviser'' and ''Subadviser'' include VIA and the term ''Unaffiliated Portion'' includes the discrete portion of a Multi-Managed Portfolio directly advised by VIA, provided that VIA manages its portion of the Multi-Managed Portfolio independently of the portions managed by other Subadvisers to the Multi-Managed Portfolio, and VIA does not control or influence any other Subadviser's investment decisions for its portion of the Multi-Managed Portfolio. VIA does not currently manage directly any portion of a Multi-Managed Portfolio

Applicants' Legal Analysis

A. Principal Transactions Between Unaffiliated Portions and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter (''second-tier affiliate''). Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Multi-Managed Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus a second-tier affiliate of a Multi-Managed Portfolio, including the Unaffiliated Portions. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Multi-Managed Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a)(1) and (2).

2. Applicants seek relief under section 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a)(1) and (2) where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Managed Portfolio.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser were to purchase securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the average daily net assets of the portion of the Multi-Managed Portfolio allocated to their management. The execution of a transaction to the disadvantage of an unaffiliated Portion would also disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further state that VIA's power to dismiss Subadvisers or to change the portion of a Multi-Managed Portfolio allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of its own portion of the Multi-Managed Portfolio.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Multi-Managed Portfolio. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants that VIA does not dictate brokerage allocation or investment decisions for any Multi-Managed Portfolio, or have the contractual right to do so, except for any portion of a Multi-Managed Portfolio advised directly by VIA. Applicants submit that, in managing a discrete portion of a Multi-Managed Portfolio, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Multi-Managed Portfolio, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and policies of the Multi-Managed Portfolio as described in its registration statement. Applicants assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Multi-Managed Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

B. Payment of Brokerage Compensation by Unaffiliated Portions to Affiliated Broker-Dealers

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as a broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interest persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another portion of a Multi-Managed Portfolio) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request relief under section 6(c) from section 17(e). Applicants request relief under section 6(c) from section 17(e) of the Act and rule 17e–1 under the Act to the extent necessary to permit the Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker Dealer acting as broker in the ordinary course of business without complying with the requirements of rule 17e–1(b) and (d). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Managed Portfolio.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c) of the Act. Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker Dealers only if the fees charged are reasonable and fair, as required by rule 17e–1(a). Applicants note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) when a principal underwriter of the security, or an affiliated person of the principal writer, is an officer, director, member of an advisory board, investment adviser, or employee of the investment company. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser although under contract to manage only a discrete portion of a Multi-Managed Portfolio, is an investment adviser to the Multi-Managed Portfolio. Therefore, all purchases of securities by an Unaffiliated Portion from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, would be subject to section 10(f).

3. Applicants request relief under section 10(f) to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent that those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Multi-Managed Portfolio. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase is in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from the underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Managed Portfolios because a decision by an Unaffiliated Subadviser to a discrete portion of a Multi-Managed Portfolio to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants state that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

D. Purchases of Securities Issued by Securities Affiliates

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under Act exempts certain transactions from the prohibitions of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in paragraph (c) of rule 12d3–1, provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment adviser, promoter, or principal underwriter.

2. Applicants state that because each Subadviser to a Multi-Managed Portfolio is considered to be an investment adviser to the entire Multi-Managed Portfolio, an Unaffiliated Portion may not purchase securities of a Securities Affiliate in reliance on rule 12d3–1. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Portion to acquire securities issued by a Securities Affiliate subject to the limits in rule 12d3–1, except for paragraph (c) to the extent that the paragraph applies solely because the Securities Affiliate is an Affiliated Subadviser, or an affiliated person of an affiliated Subadviser. The requested relief would not extend to securities by the Subadviser making the purchase, VIA, or an affiliated person of any of these entities.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Multi-Managed Portfolio. Further, applicants submit that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of shareholders by preventing the Unaffiliated Subadviser form achieving optimal investment results.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Managed Portfolio will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser, and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter, or Securities Affiliate (except by virtue of serving as Subadviser to a discrete portion of a Multi-Managed Portfolio) will be an affiliated person or a second-tier affiliate of (a) VIA, (b) any Unaffiliated Subadviser, (c) any principal underwriter or promoter of the Multi-Managed Portfolio, or (d) any officer, director or employee of the Multi-Managed Portfolio.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions or concerning the purchase of the securities issued by Securities Affiliates. Subadvisers may consult with VIA in order to monitor regulatory compliance, including compliance with the limits of rule 12d3–1.

4. No Affiliated Subadviser will participate in any arrangement whereby

the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5146 Filed 3–4–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45479; File No. SR–CBOE–2001–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Minimum Trading Increments for Spread, Straddle, and Combination Orders in Options on the S&P 500 Index

February 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or the ''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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 6.42, *Minimum Increments for Bids and Offers,* to require that bids and offers on spread, straddle, or combination orders in options on the S&P 500 Index, except for box spreads, be expressed in decimal increments no smaller than $0.05. The text of the proposed rule change appears below. New text is in *italics.*

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Chapter VI—Doing Business on the Exchange Floor

Section C: Trading Practices and Procedures

* * * * *

Rule 6.42. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum trading increments for options traded on the Exchange. When the Board of Directors determines to change the trading increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission, provided, however, that no change may be made to the minimum trading increment as set forth in this Rule for options trading in decimals that is inconsistent with the Decimals Implementation Plan (''Plan'') submitted to the Commission on July 24, 2000, and that otherwise changes the minimum trading increment for options trading in decimals unless the change has been filed with the Commission pursuant to rule 19b–4(f)(6) under section 19(b) of the Exchange Act. Subject to the foregoing, the following minimum trading increments shall apply to options traded on the Exchange:

(1) Subject to paragraph (2) below, bids and offers shall be expressed in decimal increments no smaller than $0.10 for option classes trading in decimals or eighths of $1 (e.g., 3⅛) for option classes trading in fractions, unless a different increment is approved by the appropriate Floor Procedure Committee for an option contract of a particular series.

(2) Bids and offers for all option series quoted below $3 a contract shall be expressed in decimal increments no smaller than $0.05 for options trading in decimals or sixteenths of a dollar (e.g., 1/16) for options trading in fractions.

(3) Bids and offers on spread, straddle, or combination orders as defined in Rule 6.53 may be expressed in any decimal or fractional price regardless of the minimum increments otherwise appropriate to the individual legs of the order. *Notwithstanding the foregoing sentence, bids and offers on spread, straddle or combination orders in options on the S&P 500 Index, except for box spreads, shall be expressed in decimal increments no smaller than $0.05.* Spread, straddle or combination orders expressed in net price increments that are not multiples of the minimum increment are not entitled to the same priority under Rule 6.45 as such orders expressed in increments that are multiples of the minimum increment.

Interpretations and Policies

.01–.04 Unchanged.

.05 For purposes of this rule, ''box spread'' means an aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same aggregate current underlying value, and are structured as either: (A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

CBOE Rule 6.42 establishes the minimum trading increments for options traded on the Exchange. CBOE Rule 6.42(1) provides that, subject to Rule 6.42(2), bids and offers shall be expressed in decimal increments no smaller than $0.10 unless a different increment is approved by the appropriate Floor Procedure Committee for an option contract of a particular

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

series. CBOE Rule 6.42(2) provides that bids and offers for all option series quoted below $3.00 a contract shall be expressed in decimal increments no smaller than $0.05. CBOE Rule 6.42(3) provides that bids and offers on spread, straddle, or combination orders as defined in CBOE Rule 6.53 may be expressed in any decimal or fractional price regardless of the minimum increments otherwise appropriate to the individual legs of the order.[3]

The proposed rule change amends CBOE Rule 6.42(3) to require that bids and offers on spread,[4] straddle,[5] or combination[6] orders in options on the S&P 500 Index (''SPX''), excluding box spreads, be expressed in decimal increments no smaller than $0.05. Expressing spread, straddle and combination orders in decimal increments no smaller than $0.05 will increase the efficiency of SPX traders in executing these types of orders. In addition, the proposed rule change adds new interpretation .05 to CBOE to define the term ''box spreads.''[7]

Spread, straddle, and combination orders are complex and multi-part orders, which involve special pricing and handling. A member holding a spread, straddle or combination order typically bids and offers on the basis of a total debit or credit for the order.[8] After a spread, straddle, or combination order has been executed at the total debit or credit, the parties to the trade record on a trade ticket the contract quantities and prices for each component option of the order. This task is straightforward and uncomplicated when the total debit or credit for a spread, straddle, or combination trade is expressed in the minimum increment under CBOE Rule 6.42.[9]

When spread, straddle and combination orders are expressed in increments smaller than $0.05, it results in ''split'' prices for each of the component options in order to reach the quoted debit or credit price and thus ''split'' contract quantities. SPX traders, particularly floor brokers, have found that when such orders are expressed in decimal increments smaller than $0.05, it is difficult and time consuming for the parties to perform the mathematical calculations to break down the order into the required contract quantities and prices.[10] This difficulty is exacerbated when the quantity of such an order is an odd lot quantity (such as 106 contracts). The result is that on active trading days, SPX floor brokers executing these types of orders cannot be as efficient in representing other customer orders that they are holding.

CBOE believes that the proposed rule change will enable SPX traders to more efficiently execute these types of transactions by permitting the parties to execute the trades more expeditiously and with less component parts in the transaction. In addition, CBOE believes that the proposed rule change is appropriate given the complexity of these orders, the size of the underlying S&P 500 index, and the participants in the SPX market, which are primarily institutional.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act.[11] It is designed to promote just and equitable principles of trade, and protect investors and the public interest by increasing the efficiency of execution for spread, straddle and combination orders in SPX options.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) 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

[3] *See* Securities Exchange Release No. 34–34764 (September 30, 1994), 59 FR 51223 (October 7, 1994) (order approving amendments to CBOE Rule 6.42).

[4] A spread order is an order to buy a stated number of option contracts and to sell the same number of option contracts, or contracts representing the same number of shares at option, of the same class of options. CBOE Rule 6.53(d).

[5] A straddle order is an order to buy a number of call option contracts and the same number of put option contracts on the same underlying security which contracts have the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts on the same underlying security which contracts have the same exercise price and expiration date. For example, an order to buy two XYZ July 50 calls and to buy two July 50 XYZ puts is a straddle order. In the case of adjusted option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares at option. CBOE Rule 6.53(f).

[6] A combination order is an order involving a number of call option contracts and the same number of put option contracts in the same underlying security. In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares at option. CBOE Rule 6.53(e).

[7] Under the proposed rule change, the term ''box spread'' is defined to mean an aggregation of positions in a long call option and a short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same underlying component or index and time expiration, and are based on the same aggregate current underlying value, and are structured as either: (A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price. In other words, a box spread is a synthetic long position at one strike price and a synthetic short position at another strike price.

[8] For example, if option A is bought at 5 and option B sold at 6, the order is executed at a net credit of one, or if option A is sold at 5.10 and option B is bought at 6.10, the order is executed at a net debit of one.

[9] For example, assume the market for the December SPX 1150 calls is 18 bid, 19 asked, and the market for the December SPX 1175 calls is 6.50 bid and 7.50 asked. The fair value of a call spread comprised of these two options is 11.50 (the difference between the prices quoted for each option). If an order to buy 100 of the 1150 calls and to sell 100 of the 1175 calls is quoted and executed at a net debit of 11.50 (expressed in a multiple of the minimum increment), the parties to the trade can easily determine and record on a trade ticket a price for each component option that comprises the spread. Any combination of purchase and sale prices within the quoted ranges for the component options that yield a net debit or credit of 11.50 could be used (*e.g.,* 18.50 for the 1150 calls, and 7 for the 1175 calls).

[10] Using the example in footnote 9, if instead the call spread is quoted and executed at a net debit of 11.48 instead of 11.50, in order to determine prices for the component options that are expressed in a multiple of $0.05 the trader must perform a series of calculations. In this case, the trader might determine that the trade must be split up into a 40 contract spread that traded at a net debit of 11.45 and a 60 contract spread that traded at a net debit of 11.50, which together yield a net debit of 11.48 for the entire order.

[11] 15 U.S.C. 78f(b)(5).

Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2001–62 and should be submitted by March 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5143 Filed 3–4–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45478; File No. SR–CHX–2002–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Provide for Rebilling of Costs Related to Member Firm Connectivity With the MAX System

February 26, 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 February 1, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (''Schedule'') to provide for rebilling of certain costs relating to member firm connectivity with the Exchange's automatic execution system. The text of the proposed rule change is below. Proposed new language is in italics.

Membership Dues and Fees

* * * * *

H. Equipment, Information Services and Technology Charges

MAX Connection Charges If the Exchange incurs direct costs relating to a member firm's connection to the MAX System, including costs associated with installation of equipment, telecommunication lines, telecommunication services and maintenance charges, such costs will be rebilled to the member firm at cost, provided, however, that the Exchange will not seek reimbursement of those connection-related costs deemed reasonable and necessary by the Exchange if the member firm to which the costs are allocable has routed an average of not less than 100,000 trades per month to the Exchange via the MAX System, during the 6 months preceding the billing date.

* * * * *

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 CHX proposes to amend the Schedule to provide for rebilling of costs incurred by the Exchange relating to member firm connectivity with the MAX System.[4] The Exchange currently pays such costs with respect to several high-volume order sending firms although it has no stated policy regarding where it will absorb such costs.

To provide high-volume order sending firms with continued incentive to route orders to the Exchange, consistent with their best execution obligations, the proposed rule change includes a provision by which the Exchange would waive its right to reimbursement of MAX connectivity charges if an order sending firm had routed an average of 100,000 trades per month to the CHX during the six-month period preceding the billing date.

The CHX believes that the proposed rule change constitutes an equitable means of recovering its often-substantial technology costs, while recognizing that in certain instances, business considerations warrant the Exchange's absorption of such costs. The Exchange recognizes the Commission's interest in making available information regarding the magnitude of the MAX connectivity charges that the Exchange would waive for firms meeting the requisite volume criteria. Accordingly, while the Exchange cannot provide one fixed number due to varying utility rates and connectivity needs for each order-sending firm, the Exchange notes that the approximate average charge per month for MAX connectivity charges (*i.e.* telecommunications utility charges) will be approximately $4,000. Additionally, one-time initial hardware, software and setup charges range by order-sending firm, up to $50,000.[5]

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] The CHX Midwest Automated Execution system, commonly referred to as the ''MAX System,'' is the principal system by which orders are routed to the CHX and executed automatically.

[5] With regard to one-time initial hardware, software and setup charges, the decision not to seek reimbursement applies only to order-sending firms that are establishing new connectivity to the MAX System. For order-sending firms that were already connected with the MAX System at the time the CHX filed this proposed rule change, the initial hardware, software and setup charges are moot under this proposed rule change. For order-sending firms that establish new connectivity to the MAX System, the CHX will look back six months from the CHX billing date to determine whether an order-sending firm has routed an average of 100,000 trades per month to the CHX. If so, the CHX will not seek reimbursement for initial hardware, software and setup. Were an order-sending firm establishing new connectivity to the MAX System to fall below the 100,000-trade-routing threshhold within the six-month look-back period from the CHX billing date, the order-sending firm would be charged the costs of initial hardware, software and setup, as well as any monthly connectivity charges. Once six months have passed since the initial hardware, software and setup charges have been incurred, the only connectivity charges eligible for a waiver of reimbursement are the monthly connectivity charges. February 26, 2002 telephone conversation between Kathleen M. Boege, Associate

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] 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 inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–2002–04, and should be submitted by March 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5144 Filed 3–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45480; File No. SR–Phlx–2002–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing Fees for Equity Trading Permit Holders

February 26, 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 February 6, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to: (1) Adopt new fees applicable to holders of equity trading permits (''ETPs'') and ETP organizations;[3] (2) establish that certain fees, dues and charges currently applicable to members and member organizations will also be applicable to ETP holders and ETP organizations; and (3) amend the Exchange's member credit program to provide that monthly fees charged to ETP holders and ETP organizations are credit-eligible, and to clarify certain aspects of the Exchange's member credit program as it applies to ETPs.[4] The text of the proposed rule change is available at the Phlx's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On January 9, 2002, the Commission approved a proposed rule change to adopt Exchange Rule 23, which provides for ETPs.[5] Specifically, Exchange Rule 23(a) provides that the Exchange shall issue up to 75 ETPs outstanding from time to time. The Exchange anticipates commencing an ETP program in the near future. Accordingly, the purpose of the proposed rule change is to: (1) Establish that certain fees, dues and charges currently applicable to members and member organizations will be applicable to ETP holders and ETP organizations under Exchange Rule 23; (2) adopt new fees applicable to members by virtue of being ETP holders and to ETP organizations; and (3) amend the Exchange's member credit program to provide that monthly fees charged to ETP holders and ETP organizations are

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General Counsel, CHX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, and Joseph Morra, Special Counsel, Division, Commission.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange defines an ETP organization as a broker-dealer whose associated person has qualified the firm as an ''ETP organization'' pursuant to Exchange Rule 23(g).

[4] The fees proposed herein would be applicable to ETP holders, which, according to the Exchange, are members although they are not entitled to certain rights under Delaware corporate law. *See* Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (SR–Phlx–00–03, Amendment 3, footnote 1). Therefore, the fees that are proposed herein to be imposed on ETP holders are member fees. Hence, this proposed rule change is effective on filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder.

[5] *See* Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002)(approving SR–Phlx–00–02 and SR–Phlx–00–03). The Exchange notes, as a preliminary matter, that ETPs are not required in order to trade equities on the Exchange. ETPs are simply being made available pursuant to Exchange Rule 23 as an alternative to owning or leasing a membership on terms and conditions that reflect the Exchange's reasonable business judgment.

credit'eligible and to clarify certain aspects of the Exchange's member credit program as it applies to ETPs. Therefore, the Exchange proposes to amend Appendix A to the Exchange's Schedule of Dues, Fees and Charges to reflect the changes discussed herein.[6]

As discussed further below, the purpose of the proposed rule change is to generate revenue for the Exchange in order to enable it to provide a marketplace for its members and ETP holders. The Exchange anticipates that in permitting ETP Monthly Fees to be ''credit eligible,'' ETPs would become more attractive because they would enable ETP organizations, which are also member organizations, to maximize the value of the monthly member credits extended to their qualified members.[7] In addition, the Exchange believes that making ETP Monthly Fees ''credit-eligible'' should free up funds for trading activity on the Exchange that would otherwise be used for the payment of such fees.

A. Applicability of Existing Member/ Member Organization Fees and Charges

Inapplicable Existing Fees. Exchange Rule 23(e) provides that an ETP holder shall be subject to the Exchange's fees and other charges, as applicable, provided that an ETP holder shall not be subject to annual membership dues, technology fees or capital assessments. Additionally, the Exchange would not charge its current $1500.00 Initiation Fee to new ETP holders, whether or not they were previously members, Foreign Currency Option (''FCO'') participants or approved lessors.[8]

The Exchange also proposes to add clarifying language to its fee schedule with respect to the Trading Floor Personnel Registration Fee, which is imposed on member/participant organizations for individuals who are employed by such member/participant organizations and who work on the Exchange's trading floor, such as clerks, interns, stock execution clerks and other associated persons, but who are not registered as members or participants. The Exchange proposes to add language to a footnote in order to clarify that this fee is not to be billed to ETP organizations with respect to its ETP holders who work on the Exchange's trading floor.

Applicable Existing Fees. Except as indicated above, all other Exchange fees and charges applicable to Exchange members and member organizations would apply to ETP holders and ETP organizations.[9] However, ETP organizations, which are also member organizations by virtue of holding memberships, and which are subject to fees and charges assessed against member organizations, would not also be assessed such fees and charges a second time in their separate capacity as ETP organizations.[10]

B. New Fees Not Applicable to Current Members

The Exchange proposes to adopt a number of new fees which are to be applicable to ETP holders and ETP organizations.

1. ETP Monthly Fees

The Exchange proposes an Off-Floor ETP Fee, a Regular ETP RCS Fee, a Regular ETP 3-Seat Fee, and a Regular ETP Fee (collectively, the ''ETP Monthly Fees'') as described below.

Off-Floor ETP Fee. An Off-Floor ETP Fee of $500.00 per month would be charged for Off-Floor ETP holders.

Regular ETP RCS Fee. A Regular ETP RCS Fee of $1,000.00 per month would be charged in lieu of the Regular ETP Fee for ETP holders whose Exchange business is limited to operating as a remote competing specialist.[11]

Regular ETP 3-Seat Fee. A Regular ETP 3-Seat Fee of $1,350.00 per month would be charged for Regular ETP holders and ETP organizations in lieu of the Regular ETP Fee if the ETP organization has at all times at least three associated persons who are members of the Exchange by virtue of a membership, whether owned or leased.[12] For every 3 memberships, up to 3 ETPs would qualify for this lower rate.

Regular ETP Fee. A Regular ETP Fee of $3,500.00 per month would be charged for Regular ETP holders and ETP organizations, which are not eligible for the lower Regular ETP 3-Seat Fee or Regular ETP RCS Fee.

2. Other New Fees

ETP Organization Initiation Fee. A non-recurring ETP Organization Initiation Fee of $1,000.00 would be charged for an ETP organization when it is first qualified as such if it is not, at the time it first becomes so qualified, an FCO participant organization or member organization. For instance, if an existing member organization seeks an ETP, then no such fee applies because that member organization has already paid a membership-related Initiation Fee. At the same time, a completely new organization which gets an ETP and thereby becomes an ETP organization must pay this fee. The Exchange intends for this fee to cover the Exchange's expenses associated with a new firm commencing Exchange business.[13]

ETP Intra-Firm Transfer Fee. Finally, the Exchange proposes that a $500.00 fee would apply to intra-firm transfers of ETPs.[14]

C. Credit-Eligibility of ETP Monthly Fees

ETP holders would not, by virtue of the ETP, be holders of equitable title to Exchange memberships and thus would not be subject, by virtue of the ETP, to the Exchange's $1,500.00 capital funding fee.[15] Furthermore, an ETP holder who is also an owner of an Exchange membership would not be entitled, by virtue of the ETP, to the monthly credit of up to $1,000.00 to be applied against certain fees, dues, charges and other amounts owed to the Exchange in connection with the ETP.[16]

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[6] The Exchange states that it intends to separately file a proposed rule change to adopt an Application Fee for applicants for ETPs.

[7] The term ''qualified member'' is defined in the notice adopting the member credit for 36 months. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001). The term includes Phlx members who own the membership by which they are a member (''member owners'') and certain other categories of members described in the notice.

[8] The Exchange proposes to add a footnote to the fee schedule to provide that the Exchange's existing Initiation Fee would not be imposed on ETP holders. For members, the Initiation Fee is applicable upon admission to membership and is thus a member fee. *See* Securities Exchange Act Release No. 20651 (February 14, 1984), 49 FR 6817 (February 23, 1984). The Exchange proposes a different initiation fee, discussed below (the ''ETP Organization Initiation Fee''), with respect to ETP organizations.

[9] *See supra,* note 4.

[10] Exchange Rule 23(g) provides that ''[a]n individual ETP holder who is associated with a broker-dealer shall qualify such broker-dealer as an ETP firm or ETP corporation (either, an 'ETP Organization')''. Since it is possible that an existing member organization may have associated persons who are members at the same time it has associated persons who are ETP holders, it is possible that a firm will be both a member organization and an ETP organization at the same time. Fees currently assessed on ''member organizations'' (such as the Examinations Fee) would not be assessed twice because of this dual status.

[11] *See* Exchange Rule 461, PACE Remote Specialist; *See also,* Securities Exchange Act Release No. 45184 (December 21, 2001) 67 FR 622 (January 4, 2002) (approving SR–Phlx–2001–98).

[12] The Exchange states that these members would not need to conduct business on the Exchange's physical trading floor and need not be ''qualified members'' as that term is defined for purposes of the Exchange's member credit program.

[13] Like the Exchange's current Initiation Fee, the proposed ETP Organization Initiation Fee would apply after the organization has become an ETP Organization and is thus imposed on a ''member'' organization.

[14] The Exchange states that ETPs are not transferable except within the ETP organization as provided in Exchange Rule 23(f).

[15] Exchange membership owners (also referred to as seat owners) are assessed a monthly capital funding fee of $1,500.00. See Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 132 (July 10, 2000).

[16] *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001).

(These dues, fees and charges are identified on the Exchange's fee schedule by a mark which ''denotes fee eligible for monthly credit of up to $1,000.'')

The Exchange is proposing that the ETP Monthly Fees be made ''credit-eligible'' so that a member organization's aggregate monthly member credits may be applied to them.[17]

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(4),[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members. Also for the reasons described below, the Exchange believes that the application of the fees, dues and charges as described herein to ETP holders and ETP organizations is consistent with the requirement of Section 6(b)(5) of the Act,[20] which requires that the rules of the Exchange not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

1. ETP Monthly Fees

By assessing ETP Monthly Fees, the Exchange states that it is requiring ETP holders to make an economic contribution to the Exchange, as members and holders of equitable title have done in the past and continue to do. The Exchange believes that this economic contribution is reasonable and equitable in view of the fact that the Exchange provides the benefits of an Exchange marketplace to both members and ETP holders alike.

In light of the limitations on the number of ETPs the Exchange currently has authority to issue under Rule 23(a) (*i.e.,* 75), and the Exchange's prudential concerns relating to the potential effect on membership prices if existing members in large numbers were to choose to sell their seats to acquire permits, the Exchange has chosen to establish a fee structure for ETPs that the Exchange believes will allow the benefit of the program to the Exchange to be maximized while treating various constituencies fairly.

Off-Floor ETP Monthly Fees. The Exchange states that it wants to encourage order flow providers to send business to the Exchange. An Off-Floor ETP Monthly Fee of only $500.00 is designed to provide an incentive (or, stated otherwise, to remove the disincentive of a high access fee) to send order flow to the Exchange. Under Exchange Rule 23, the Exchange business of Off-Floor ETP holders is limited to the provision of order flow. Off-Floor ETP holders are not eligible to do business on the Exchange's physical trading floor and are not eligible to conduct a specialist business. Because an Off-Floor ETP holder's trading rights are circumscribed in this respect, and because an ETP holder operating from the Exchange floor would be able to take advantage of more Exchange facilities, utilizing Exchange resources and benefiting from the advantages floor presence affords, the Exchange believes that it is fair to charge less for Off-Floor ETP holders' trading rights than for trading rights which may be exercised by a Regular ETP holder, either at the Regular ETP Fee rate, the Regular ETP RCS Fee rate, or the Regular ETP 3-Seat Fee rate, as applicable.

Regular ETP RCS Fee. The Exchange states that it also wants to encourage the success of its Remote Competing Specialist Initiative program (''RCSI''), and is offering a lower fee than will be available to on-floor ETP holders to remote specialists in order to induce broker-dealers to participate in the RCSI program as remote specialists. The Exchange represents that the availability of a Regular ETP RCS Fee rate which is lower than the Regular ETP Fee rate or the Regular ETP 3-Seat Fee rate is designed to accomplish what the Exchange believes is a reasonable and legitimate business objective. The monthly Regular ETP RCS Fee also reflects the fact that remote specialists will not take up space and resources on the Phlx trading floor or use floor services to the same extent as Phlx floor-based specialists. The Exchange believes that it is fair that remote competing specialists be permitted to acquire trading rights at less cost than an ETP holder trading on the Exchange floor and utilizing Exchange resources and benefiting from the advantages floor presence affords.

Regular ETP 3-Seat Fee and Regular ETP Fee. The Exchange also represents that a goal of the ETP program is to make ETPs available to the Exchange's existing floor members without causing a drastic decline in seat values. The Exchange believes that the requirement that existing members retain 3 seats in order to qualify for the lower Regular ETP 3-Seat Fee will allow the Exchange to do this while creating a disincentive for members to sell all their memberships and replace them with ETPs.

The Exchange recognizes that seat owners who are not themselves members traditionally have, while benefiting from their memberships, also made contributions to the Exchange by making it possible for certain members (in particular, lessee-members) to trade without the member being first required to make a large capital investment in an Exchange membership. In creating the ETP program, the Exchange represents that it has carefully considered the effects on memberships, and has similarly done so respecting the fee structure proposed herein. Specifically, the Exchange states that its business strategy includes a concern not to unnecessarily create a sudden and drastic dislocation in seat prices. Accordingly, the lower Regular ETP 3-Seat Fee is designed to permit some of the ETPs to be issued to existing floor members while creating an incentive for firms which choose to take advantage of ETPs to cause legal title to 3 memberships to be retained by its members. The Exchange believes that making 3 ETPs available at the reduced ETP 3-Seat Fee for each 3 memberships a member organization maintains will result in the optimal mix of Exchange members and ETP holders.

The Exchange states that SROs have filed exchange fee and credit arrangements that do not treat all members (or other persons covered by Sections 6(b)(4) and (5)) equally, such as credits and discounts based on transaction volume, fees based upon the usage by certain members of equipment or other services or resources of an exchange, and fee structures that distinguish among the various activities of persons and firms.[21] Such measures

However, consistent with the Exchange's current general practice of invoicing the member organization rather than the member, thus aggregating the members' credit-eligible fees, a member organization which is also an ETP organization may include credit-eligible charges incurred by an ETP holder in the total amount that the member organization may offset with member credits. At no time shall the aggregate amount of member credits available to the member organization exceed $1,000.00 per membership per month.

[17] The Exchange notes that this would represent a change to the currently-approved member credit program, which excepted ''any fees paid by equity trading permit holders respecting any trading permits the Exchange may issue'' from the definition of ''credit-eligible fees''. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(5).

[21] *See, e.g.,* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (adopting a monthly credit of up to $1,000 to qualified members for an aggregate period of 36 months). The Exchange clarified that SRO fee filings made pursuant to Section 19(b)(3)(A) of the Act are noticed, and not approved, by the Commission, but are rather effective upon filing

Continued

are designed to promote and encourage certain behaviors.[22] In the case of the Regular ETP 3-Seat Fee, this fee is being made available as an alternative to the Regular ETP Fee to member organizations that are contributing to the value of Exchange memberships. The Exchange, in its business judgment, believes that to a certain degree the value of Exchange memberships is important to the well-being of the Exchange as a whole. The Exchange believes that the Regular ETP 3-Seat Fee is reasonably designed to further those interests and is available to any ETP organization by changing the manner in which it secures trading rights on the Exchange and the number of memberships it maintains.

2. Other Fees

With respect to the applicability and inapplicability of the existing fees to ETP holders and ETP organizations, the Exchange represents that the proposal is reasonable and equitable because the Exchange believes that the proposal generally treats ETP holders/organizations the same as other members/member organizations doing business on the Exchange in terms of fees assessed on the basis of transactions or the use of particular Exchange facilities or services. For instance, ETP holders executing transactions on the equity floor will be subject to equity transaction fees such as the equity transaction value charge. Similarly, ETP holders who utilize post space will be subject to post fees. By extending the applicability of fees currently applicable to existing members and member organizations (except as provided herein) to ETP holders and ETP organizations, the Exchange believes that ETP holders and ETP organizations be treated equally with members and member organizations doing business on the Exchange in terms of fees assessed on the basis of transactions or the use of particular Exchange facilities or services.

The Exchange believes that the one-time $1,000.00 ETP Organization Initiation Fee is fair and equitable. By assessing a one-time $1,000.00 ETP Organization Initiation Fee for new ETP organizations (and by not assessing the $1,500.00 Initiation Fee for new ETP holders) the Exchange states that it is affording ETP organizations new to the Exchange an initial comparative fee advantage relative to new members associated with member organizations. The Exchange believes this advantage is reasonable, however, in that it is designed to result in an optimal mix of ETPs and memberships as determined by the Exchange in the exercise of its reasonable business judgment. This comparative initial advantage is also reflective of the fact that ETP holders will not have voting privileges and that ETPs will not be transferable, except intra-firm to the extent permitted by Exchange Rule 23.

The Exchange proposes a $500.00 ETP Intra-Firm Transfer Fee be charged in the context of ETP transfers, which do not involve the transfer of legal or equitable title. ETP transfers are permitted on an intra-firm basis to the extent provided in Exchange Rule 23. The Exchange believes that this transfer fee is reasonable and equitable because the Exchange would devote administrative resources to ETP transfers as it currently does with transfers of legal and equitable title to memberships.

3. Credit-Eligibility

With respect to the credit eligibility of ETP Monthly Fees, the Exchange believes that this aspect of the proposal is reasonable and equitable, because ETP Monthly Fees will be ''credit-eligible'' across-the-board, such that any member organization which incurs them may apply any available member credits to them. By making the ETP Monthly Fees ''credit-eligible'' the Exchange intends to enhance the attractiveness of ETPs, which the Exchange believes is an appropriate, nondiscriminatory business strategy.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[23] and Rule 19b–4(f)(2) hereunder.[24] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 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–Phlx–2002–10 and should be submitted by March 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5145 Filed 3–4–02; 8:45 am]

BILLING CODE 8010–01–P

with the Commission. *See* telephone conversation between Carla Behnfeldt, Director, Phlx, and Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, on February 26, 2002.

[22] The Exchange clarified certain language regarding its views on the effects of such fees. *See* telephone conversation between Carla Behnfeldt, Director, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission, on February 26, 2002.

[23] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[24] 17 CFR 240.19b–4(f)(2).

[25] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of Veterans Affairs, Compensation and Pension Service) Match 1008

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as

amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138, or writing to the Acting Associate Commissioner for Program Support, 2-Q–16 Operations Building 6401 Security Boulevard, Baltimore, MD 21235.

All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving records of Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the match agreements by the Data Integrity Boards of the participating Federal Agencies.

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computers matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 25, 2002.

Frederick G. Strekewald,

Assistant Deputy Commissioner for Disability, and Income Security Programs.

Notice of Computer Matching Program, Department of Veteran Affairs (VA) With Social Security Administration (SSA).

A. Participating Agencies

SSA and VA.

B. Purpose of the Matching Program

To identify certain Supplemental Security Income (SSI) and Special Veterans Benefit (SVB) recipients under title XVI and title VIII of the Social Security Act (''Act'') respectively, who receive VA-administered benefits, and to update their SSI/SVB records to reflect the presence of such payments. To determine under section 1144 of the Act, potential eligibility for Medicare Savings Programs (MSP) and enable SSA, in turn, to identify these individuals to the States.

C. Authority for Conducting the Matching Programs

The legal authority for SSA to conduct this matching activity is contained in sections 1631(e)(1)(B) and 1631(f) of the Act, 42 U.S.C. 1383(e)(1)(B) and 1383(f) (SSI), section 806(b) of the Act, 42 U.S.C. 1006(b)(SVB) and section 1144 of the Act, 42 U.S.C 1320b-14.

D. Categories of Records and Individuals Covered by the Matching Program

The VA will provide SSA with electronic files containing compensation and pension data from its system of records entitled Compensation and Pension, Education and Rehabilitation Records—VA (58VA21/22). SSA will then match VA's data with SSI/SVB payment information maintained in the SSR SSA/OSR 60–0103.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after notice of this matching program is sent to Congress and OMB or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 02–5133 Filed 3–4–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3937]

Notice of Proposal to Extend U.S.-Mali Agreement

AGENCY: Department of State.

ACTION: Notice.

Pursuant to the authority vested in me under Department of State Delegation of Authority No. 236–3, and pursuant to 19 U.S.C. 2602(f)(1), I hereby propose extension of the Agreement between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger River Valley and the Bandiagara Escarpment, signed on September 19, 1997. Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee will be requested.

A copy of this Memorandum of Understanding, the designated list of restricted categories of material, and related information can be found at the following web site: *http://exchanges.state.gov/education/culprop.*

Dated: February 26, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–5204 Filed 3–4–02; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3935]

Bureau of Political-Military Affairs; Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR 120 to 130) on persons convicted of violating or conspiring to violate section 38 of the Arms Export Control Act (''AECA'') (22 U.S.C. 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Chief, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 633–2700.

SUPPLEMENTARY INFORMATION: Section 38 (g)(4) of the AECA, 22 U.S.C. 2778, prohibits licenses and other approvals for the export of defense articles or defense services to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA.

In implementing this section of the AECA, the Assistant Secretary of State for Political-Military Affairs is authorized by § 127.7 of the ITAR to prohibit any person who has been convicted of violating or conspiring to violate the AECA from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required. This prohibition is referred to as ''statutory debarment''.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States court, and as such the administrative debarment proceedings outlined in part 128 of the ITAR are not applicable.

The period for debarment will normally be three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4) of the AECA and in accordance with section 127.11(b) of the ITAR. Unless licensing privileges are reinstated, the person/entity will remain debarred.

Department of State policy permits debarred persons to apply to the Director of the Office of Defense Trade Controls for an exception from the period of debarment beginning one year after the date of the debarment, in accordance with section 38(g)(4)(A) of the AECA and § 127.11(b) of the ITAR. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied. If the exception is granted, the debarment will be suspended.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), 126.7, 127.1(c), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating or of conspiring to violate the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for Arms Control and International Security for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision, in accordance with 22 CFR 127.7(d) and 128.13(a).

Pursuant to section 38 of the AECA and section 127.7 of the ITAR, the following persons have been statutorily debarred by the Assistant Secretary of State for Political-Military Affairs for a period of three years following their conviction for AECA:

(1) A & C International Trade, Inc., April 13, 2000, U.S. District Court of Washington, D.C., Docket # 99–CR–21–ALL.

(2) John Raymond Thompson, October 28, 1999, U.S. District Court, Central District of California, Western Division, Docket # 98–CR–708–ALL.

(3) Daniel A. Malloy, March 4, 1999, U.S. District Court of Newark, New Jersey, Docket # 98–CR–177–ALL.

(4) Shalom Shaphyr, October 4, 1999, U.S. District Court, Eastern District of Virginia (Alexandria), Docket # 99–CR–288–ALL.

(5) Siraj International, Inc., February 17, 2000, U.S. District Court, Eastern District of Wisconsin (Milwaukee), Docket # 98–CR–189–ALL.

(6) Gia An Du a.k.a. Anthony Huynh, a.k.a. Simon Du, a.k.a. Gia Simon Du, March 2, 1999, U.S. District Court, District of Maryland (Baltimore), Docket #98–CR–462–ALL.

(7) Michael Nathan Kitundu, November 10, 1999, U.S. District Court, Eastern District of Virginia (Alexandria), Docket # 99–CR–278–ALL.

(8) Morris Rothenberg & Son, Inc. d.b.a. Rothco, July 19, 1999, U.S. District Court, Eastern District of New York (Uniondale), Docket # 99–CR–564–ALL.

(9) Far East Trading Company, Inc. a.k.a. FETCO, Inc., U.S. District Court, Eastern District of Virginia (Alexandria) Docket # 01–CR–119–ALL.

This notice is provided in order to make the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for each respective US District Court, citing the court docket number where provided.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls pursuant to 22 CFR 126.3. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interest; whether an exception would further law enforcement concerns which are not inconsistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist which are not inconsistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affair function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: January 3, 2002.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 02–5202 Filed 3–4–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 3936]

Notice of Meeting of the Cultural Property Advisory Committee

AGENCY: Department of State.

ACTION: Notice.

The Cultural Property Advisory Committee will meet on Monday and Tuesday, April 15 and 16, from approximately 9 a.m. to 5 p.m.; and on Wednesday, April 17, from approximately 9 a.m. to 2 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC, to review the proposals to extend: (1) the ''Agreement between the Government of the United States of America and the Government of the

Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger River Valley and the Bandiagara Escarpment,'' which expires on September 23, 2002; and (2) the ''Agreement between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Objects and Materials from the Pre Columbian Cultures of Guatemala,'' which expires on October 3, 2002.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). A copy of the Act, the subject agreements, and related information may be found at this web site: *http://exchanges.state.gov/education/culprop.*

During its meeting on Monday, April 15, the Committee will hold an open session, from 10 a.m. to 12 Noon to receive oral public comment on the proposals to extend these agreements. Persons wishing to attend this open session should notify the Cultural Property office at (202) 619–6612 by Tuesday, April 9, 2002, to arrange for admission, as seating is limited. Those who wish to make oral presentations should also request to be scheduled, and must submit a written text of the oral comments, by April 9, to allow time for distribution of them to Committee members prior to the meeting. Oral comments will be limited to five minutes each to allow time for questions from members of the Committee and must specifically address the proposals to extend the Agreements with particular attention to determinations that will be made under Section 303 (a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602. The Committee also invites written comments and asks that they be submitted by April 9. All written materials, including the written texts of oral statements, should be faxed to (202) 260–4893.

Other portions of the meeting on April 15, 16 and 17 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: February 26, 2002.

Patricia S. Harrison,

Assistant Secretary of State for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–5203 Filed 3–4–02; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the March 22, 2002, meeting of the Trade and Environment Policy Advisory Committee will be held from 9 a.m. to 11:30 a.m. The meeting will be closed to the public from 9 a.m. to 11 a.m. and open to the public from 11 a.m. to 11:30 a.m.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on March 22, 2002, from 9 a.m. to 11:30 a.m. The meeting will be closed to the public from 9 a.m. to 11 a.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 11 a.m. to 11:30 a.m., when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for March 22, 2002, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Gianini, Office of the United States Trade Representative, (202) 395–6120.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–5166 Filed 3–4–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–243]

WTO Consultations Regarding ''United States—Rules of Origin for Textiles and Apparel Products''

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on January 11, 2002, India requested consultations with the United States under the Understanding on Rules and Procedures Governing the Settlement of Disputes (''DSU''), the General Agreement Regarding Tariffs and Trade 1994 (''GATT 1994''), and the Agreement on Rules of Origin (''ROO Agreement'') regarding the rules of origin for textiles and apparel products set out in Section 334 of Uruguay Round Agreements Act and Section 405 of the Trade and Development Act of 2000, and implementing legislation. The European Communities (''EC'') and Bangladesh subsequently requested to join the consultations as third parties. India alleges that Section 334 and its modification, Section 405, are inconsistent with certain obligations of the United States under the ROO Agreement. Pursuant to Article 4.3 of the DSU, such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and the requesting parties. Consultations were held on February 7, 2002, and may be followed by subsequent consultations. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 27, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0015@ustr.gov,* Attn:''US-India Textile ROO Dispute'' in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: India Textile ROO Dispute, with a confirmation copy sent electronically or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Mélida N. Hodgson, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3852.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the Consultation Request

Section 334 changed certain rules of origin applicable to textile and apparel products to harmonize U.S. practice with that of our trading partners. Section 405 amended Section 334 to resolve certain concerns raised by the EC. The consultation request alleges that Section 334's changes to rules of origin wrongly differentiated between textile and apparel products and industrial products in order to protect U.S. industry from competition. Similarly, India alleges that the changes made in Section 405 to the textile and apparel rules of origin were adopted to achieve specific trade objectives. These changes, India alleges are inconsistent with Article 2(b)–(e) of the ROO Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0015@ustr.gov,* with ''India Textile ROO Dispute'' in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–234, US-India Textile ROO Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Christine Bliss,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–5137 Filed 3–4–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Lake Charles Regional Airport, Lake Charles, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Airport District No. 1, Calcasieu Parish, Louisiana, for Lake Charles Regional Airport under the provisions of title 49 U.S.C, chapter 475 (hereinafter referred to as ''Title 49'') and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Lake Charles Regional Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before August 5, 2002.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is February 5, 2002. The public comment period ends March 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mr Michael J. Saupp, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0640, (817) 222–5645. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Lake Charles Regional Airport are in compliance with applicable requirements of Part 150, effective February 5, 2002. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 5, 2002. This notice also announces the availability of this

program for public review and comment.

Under title 49, an airport operator may submit to the FAA noise exposure maps, which meet applicable regulations, and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Airport District No. 1, Calcasieu Parish, Louisiana, submitted to the FAA on December 18, 2000, noise exposure maps, descriptions and other documentation which were produced during the FAR Part 150 Noise Study initiated by Federal Grant 3–22–0026–21 on August 17, 1999. It was requested that the FAA review this material as the noise exposure maps, as described in Title 49, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Airport District No. 1, Calcasieu Parish. The specific maps under consideration are Exhibit 6–1, 1999 DNL Noise Contours, Exhibit 6–2, 2004 DNL Noise Contours, Appendix Exhibit 1, and 2020 DNL Noise contours in the submission.

The FAA has determined that these maps for Lake Charles Regional Airport are in compliance with applicable requirements. This determination is effective on February 5, 2002. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Lake Charles Regional Airport, also effective on February 5, 2002. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 5, 2002.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. The FAA to the extent will consider all comments, other than those properly addressed to local land use authorities, practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

Lake Charles Regional Airport, Mr. Alan Kratzer, Airport Manager, P.O. Box 5820, Lake Charles, LA 70606–5820, (337) 477–6051.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, *February 5, 2002.*

William J. Flanagan,

Acting Manager, Airports Division.

[FR Doc. 02–5214 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 199: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 199 meeting

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Airport Security Access Control Systems.

DATES: The meeting will be held on March 19, 2002 starting at 9 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 199 meeting. The agenda will include:

- March 19:
- Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview, Review Minutes of Previous Meeting, Action Items from Last Meeting)
- Workgroup Reports and Discussions on Developments, New Standard Test and Comments from Members (Sections 1–4, Biometrics workgroup, Smart card workgroup, Database workgroup)
- Closing Session (Any Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–5212 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on March 2022, 2002, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 8339339; fax (202) 8339434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- March 20:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Minutes of Previous Meeting)
  - Program Management Committee Actions: SC–198 Working Group 3 Document
  - Status of Working Group 4, VHF Data Link (VDL) 3 Implementation
  - Status of Working Group 5, OHA/ Safety and Performance Requirements (SPR) for Next-Generation Air/Ground Communications System (NEXCOM) VDL–3
  - Status of Working Group 6, Interoperability of NEXCOM
  - Closing Plenary Session (Date and Place of Next Meeting)
- March 21, 22:
  - Working Groups 4, 5 and 6

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–5213 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Tuesday, March 19, 2002, at its headquarters. The meeting runs from 1 p.m. to 5 p.m.

The General Session includes the following items: (1) Housekeeping Items: Welcome, Introductions, Antitrust statement; (2) Minutes—approval of minutes from meeting #41 (10/24/01); (3) President's Report; (4) Coordinating Council Reorganization (D/A); and (5) Closing Housekeeping.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Tuesday, March 19, 2002 from 1 p.m.–5 p.m.

ADDRESSES: Hilton Scottsdale Resort and Villas, 6333 North Scottsdale, Scottsdale, Arizona, 85250–5428. Phone (877) 768–9330.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: February 28, 2002.

Jeffrey Paniati,

Program Manager, ITS Joint Program Office, Department of Transportation.

[FR Doc. 02–5156 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork from gas service line operators to ensure that customers receiving gas pipeline service are aware of the availability of excess flow valves (EFV's). This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the paperwork collection on EFV's, ways to minimize the burden on operators who must respond, ways to enhance the quality of the information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on pipeline operators. By advising customers of the availability of excess flow valves, the notices give customers information to help them decide if they would like to purchase excess flow valves for their line.

DATES: Comments on this notice must be received by May 6, 2002 to ensure consideration.

ADDRESSES: Please address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the docket number RSPA–98–4957 at the beginning of you comments, and you should submit two copies of your comments. If you wish to receive confirmation that RSPA received your comments, include a self-addressed, stamped postcard. You may also submit comments by the Internet to *http://dms.dot.gov* Once on the DMS Web site scroll down the page and click on ''Electronic Submission'' and follow the instructions.

You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday except Federal Holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http.//dms.dot.gov/search*. Once on the search page, type in the last four digits of the docket number shown at the beginning of this notice (in this case 4957) and click on ''search.''

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, U.S. Department of Transportation (DOT), 400 Seventh Street, SW., Washington, DC 20950, telephone (202) 366–6205 or e-mail marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: *Title of Information Collection:* Excess Flow Valves, Customer Notification.

OMB Number: 2137–0593.

Abstract: 49 U.S.C. 60110 directed DOT to prescribe regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and the costs associated with installation. The regulations provide that, except where installation is already required, the operator will install an EFV that meets prescribed performance criteria at the customer's request, if the customer pays for the installation.

Respondents: Gas Distribution Pipeline Operators.

Estimated Number of Respondents: 1590.

Estimated Total Annual Burden on Respondents: 20,000 hours.

As used in this notice, the terms 'paperwork information' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this customer notification requirement including completing paperwork, gathering information and conducting telephone calls.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4479 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork information from gas distribution service line operators to ensure that those operators who do not maintain all of their piping notify their customers that they must maintain the piping. This notice is published to measure the need for the proposed paperwork collection, ways to minimize the burden on operators who must respond, ways to enhance the quality of the information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on the regulated industry. By advising customers of the need to maintain their buried gas piping, the notices reduce the risk of accidents.

DATES: Comments on this notice must be received by May 6, 2002 to be assured of consideration.

ADDRESSES: Please address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the docket number RSPA–98–4957 at the beginning of you comments, and you should submit two copies of your comments. If you wish to receive confirmation that RSPA received your comments, include a self-addressed, stamped postcard. You may also submit comments by the Internet to *http://dms.dot.gov* Once on the DMS website scroll down the page and click on ''Electronic Submission'' and follow the instructions. You may review the public docket containing comments in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http./ /dms.dot.gov/search*. Once on the search page, type in the last four digits of the docket number shown at the beginning of this notice (in this case 4957) and click on ''search.''

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, Department of Transportation (DOT), 400 Seventh Street, SW., Washington, DC 20590 or call at (202) 366–6205 by e-mail to *marvin.fell@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: *Title of Information Collection:* Customer-Owned Service Lines, Customer Notification.

Type of Request: Existing information collection.

Abstract: RSPA regulation (49 CFR 192.16) requires operators of gas service lines who do not maintain buried customer piping up to building walls or certain other locations to notify their customers of the need to maintain that piping. Congress directed DOT to take

this action in view of service line accidents. By advising customers of the need to maintain their buried gas piping, the notices may reduce the risk of further accidents.

In addition, each operator must make the following records available for inspection by RSPA or a State agency participating under 49 U.S.C. 60105 or 60106: (1) A copy of the notice currently in use; and (2) evidence that notices have been sent to customers within the previous 3 years.

As used in this notice, the terms 'information collection' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this customer notification requirement including completing paperwork, gathering information and conducting telephone calls.

Estimate of Burden: Minimal.

Respondents: Gas transmission and distribution operators.

Estimated Number of Respondents: 1,590,

Estimated Number of Responses per Respondent: 350.

Estimated Total Annual Burden on Respondents: 9,137 hours.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4480 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork information from state agencies that maintain programs to regulate pipelines. The purpose of the paperwork requested from the state agencies is to ensure that these states are properly monitoring the operations of pipeline operators in their states, and to determine Federal grant amounts for these states. This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the paperwork collection from these state agencies, ways to minimize the burden on states that must respond, ways to enhance the quality of information collected, and to verify the accuracy of the RSPA's estimate of the burden (measured in work hours) on states. The RSPA published a notice on October 12, 2001 requesting public comment. No comments were received. This notice also seeks approval from the Office of Management and Budget to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by April 4, 2002 to be assured of consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957. Comments can be mailed directly to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer for DOT.

Interested persons are invited to send comments regarding the burden estimated or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, RSPA, DOT, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–6205 or by e-mail at *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: Chapter 601, Title 49, United States Code (49 U.S.C.) authorizes DOT to regulate pipeline transportation. While DOT is primarily responsible for developing, issuing, and enforcing minimum pipeline safety regulations, Chapter 601, 49 U.S.C., provides for state assumption of all or part of the regulatory and enforcement responsibility for intrastate pipelines.

Section 60105 of 49 U.S.C. set forth specific requirements a state must meet to qualify for *certification* status to assume regulatory and enforcement responsibility for intrastate pipelines, *i.e.*, state adoption of minimum federal safety standards, state inspection of pipeline operators to determine compliance with the standards, and state provision for enforcement sanctions substantially the same as those authorized by Chapter 601, 49 U.S.C. A participating state must annually submit a section 60105(a) Gas Pipeline Safety Program Certification and/or a Hazardous Liquid Pipeline Safety Program Certification to the Office of Pipeline Safety (OPS) signifying compliance with the terms of the certification.

As used in this notice, 'information collection' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Certification and Agreement Forms for the Gas and Hazardous Liquid Pipeline Safety Program.

OMB Approval Number: 2137–0584.

Frequency: Annually.

Use: This collection is used by RSPA to ensure that State agencies attesting they have regulatory jurisdiction over pipeline safety have adopted and are complying with minimum Federal safety standards. This information is used to calculate grants to States.

Estimated Number of Respondents: 61.

Respondents: State Agencies.

Total Annual Hours Requested: 3,649.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4481 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957]

Submission for Office of Management and Budget Approval and Public Comment Request

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Request for public comments and Office of Management and Budget (OMB) approval of an existing information collection.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork information from liquefied natural gas operators to ensure that these operators are properly operating and maintaining their facilities. This notice is published (pursuant to the Paperwork Reduction

Act of 1995) to measure the need for the proposed paperwork collection, ways to minimize the burden on operators who must respond, ways to enhance the quality of information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on pipeline operators. The RSPA published a notice on October 12, 2001, requesting public comment. No comments were received. This notice also seeks approval from the Office of Management and Budget to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by April 4, 2002 to assure consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957. Comments can be mailed directly to the Office of Regulatory Affairs, OMB, 726 Jackson Place, NW, Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation.

Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6205 or by e-mail at *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: 49 U.S.C. 60103 titled ''Standards for Liquefied Natural Gas Pipeline Facilities'' delegates the responsibility for ensuring safe operation of LNG facilities to the Secretary of Transportation. Regulations for enforcing this legislation are found in 49 CFR part 193 ''Liquefied Natural Gas Facilities: Federal Safety Standards.'' These regulations include recordkeeping requirements that allow Federal and State inspectors to ensure that these facilities are operated and maintained in a safe manner.

Type of Information Request: Renewal of an existing information collection.

Title of Information Collection: Recordkeeping for Liquid Natural Gas (LNG) Facilities.

OMB Approval Number: 2137–0048.

Frequency: On occasion.

Use: This collection is used by RSPA to ensure that LNG facilities are being operated in a safe manner.

Estimated Number of Respondents: 150.

Respondents: LNG facility operators.

Total Annual Hours Requested: 18,000 hours.

As used in this notice, the terms ''information collection'' and ''paperwork collection'' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4477 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of Existing Information Collection

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork information from gas pipeline operators. The purpose of the paperwork requested from gas operators is to ensure that these operators are properly operating and maintaining their pipelines. This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the paperwork collection from gas operators, ways to minimize the burden on operators who must respond, ways to enhance the quality of information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on pipeline operators. The RSPA published a notice on October 12, 2001, requesting public comment. No comments were received. This notice also seeks approval from the Office of Management and Budget to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by April 4, 2002 to be assured of consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957. Comments can be mailed directly to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, Attn: Desk Officer for the Department of Transportation (DOT).

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, DOT, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–6205, or by e-mail at *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: *Title of Information Collection:* Recordkeeping for Gas Pipeline Operators.

OMB Number: 2137–0049.

Type of Request: Renewal of a currently approved information collection.

Abstract: 49 U.S.C. 60117 explains that, in order to enable the Secretary of Transportation to decide whether a person transporting gas is complying with Federal safety standards, this statute requires the maintenance of records and reports and that these and other requested information be provided to DOT upon request. These records help ascertain compliance and provide information for incident investigation.

Estimate of Burden: The average burden hours per operator is 41.5.

Respondents: Gas Pipeline operators.

Estimated Number of Respondents: 22,700.

Estimated Total Annual Burden on Respondents: 940,991.

As used in this notice, 'information collection' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4478 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34122]

Dallas, Garland & Northeastern Railroad, Inc.—Acquisition of Trackage Rights Exemption—Dallas Area Rapid Transit

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323–25 for Dallas, Garland & Northeastern Railroad, Inc., to acquire trackage rights over certain lines of railroad in the vicinity of Dallas, TX, that are owned by Dallas Area Rapid Transit.

DATES: This exemption is effective on April 4, 2002. Petitions to stay must be filed by March 20, 2002. Petitions to reopen must be filed by April 1, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34122 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative, Gary Laakso, Dallas, Garland & Northeastern Railroad, Inc., 5300 Broken Sound Blvd. NW., Boca Raton, FL 33487.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services at 1–800–877–8339.]

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: February 26, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–5216 Filed 3–4–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–156 (Sub–No. 21X)]

Delaware & Hudson Railway Company—Discontinuance of Trackage Rights Exemption—in Niagara and Erie Counties, NY

Delaware & Hudson Railway Company, d/b/a Canadian Pacific Railway (D&H), has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 26.7+/′mile portion of trackage owned by CSX Transportation, Inc. from a point near the base of the international railway bridge at Niagara Falls, Niagara County, NY, to Buffalo, Erie County, NY (line). The line is described as the following track segments: (i) Lockport Branch—milepost 75.8+/−to milepost 70.4+/−; (ii) Niagara Branch—milepost 19.7+/−to milepost 5.6+/−; and (iii) Belt Line Branch—milepost 7.2+/−to milepost 0.0+/−. The line traverses United States Postal Service Zip Codes 14304, 14305, 14120, 14150, 14206, 14207, 14211, 14212, 14214, 14216, and 14217.

D&H has certified that: (1) No local traffic has been handled to or from any customer for at least 2 years; (2) any overhead traffic routed over the line can be and has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1152.50(d)(1) (notice to governmental agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 4, 2002, unless stayed pending reconsideration. Petitions to stay [1] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by March 15, 2002. Petitions to reopen must be filed by March 25, 2002, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to D&H's representative: Diane P. Gerth, Esq., Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–4927 Filed 3–4–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c)(6).

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket BTS–2001–10909]

Agency Information Collection Activities Under OMB Review: OMB No. 2139–0002 and 2139–0004 (Financial and Operating Statistics for Motor Carriers of Property)

AGENCY: Bureau of Transportation Statistics (BTS), U.S. DOT.

ACTION: Notice.

SUMMARY: The BTS announces that two Information Collection Requests (ICR) described in this notice have been sent to the Office of Management and Budget (OMB) for review and approval. The BTS is requesting OMB's renewal of the information collections required for the Financial and Operating Statistics for Motor Carriers of Property. The ICRs describe each information collection and its expected cost and burden. The **Federal Register** notice allowing for a 60-day comment period on the two information collections was published on November 5, 2001 (66 FR 55981). The BTS is required to send ICRs to OMB under the Paperwork Reduction Act.

DATES: Comments must be submitted by April 4, 2002.

ADDRESSES: Send comments to the U. S. Department of Transportation, Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No. BTS–2001–10909, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Comments should identify the docket number and be submitted in duplicate. If you would like the Department to acknowledge receipt of your comments, you must submit a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–2001–10909. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251.

If you wish to file comments using the Internet, you may use the DOT DMS Web site at *http://dms.dot.gov.* Please follow the online instructions for submitting an electronic comment.

We particularly request your comments on the accuracy of the estimated burden; ways to enhance the quality, usefulness, and clarity of the collected information; and ways to minimize the collection burden without reducing the quality of the information collected including additional use of automated collection techniques or other forms of information technology. The OMB requests comments within 30 days of publication of this notice to process the ICR expeditiously.

FOR FURTHER INFORMATION CONTACT: Paula R. Robinson, Compliance Program Manager, Office of Motor Carrier Information, K–13, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–2984; fax: (202) 366–3364; e-mail: *paula.robinson@bts.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

You may view all comments submitted to Docket BTS–2001–10909

online through the Document Management System at *http://dms.dot.gov.*

Title: Financial and Operating Statistics for Motor Carriers of Property

OMB Approval Numbers: 2139–0002 (Form QFR) and 2139–0004 (Form M)

Following the publication of the November 5, 2001 Notice, the BTS received three comments. The issues raised in the comments are also addressed in the agency's supporting statement that was submitted previously to OMB. Requests for information on the supporting statement should be directed to the Information Contact named in this notice.

Background: The Quarterly Report of Class I Motor Carriers of Property (Form QFR) and Annual Report of Class I and Class II Motor Carriers of Property (Form M) are mandated reporting requirements for for-hire motor carriers. Motor carriers required to comply with the BTS regulations are classified on the basis of their gross annual operating revenues. Under the financial and operating statistics (F&OS) program, the BTS collects balance sheet and income statement data along with information on tonnage, mileage, employees, transportation equipment, and other related data. The data and information collected are made publicly available and used by the BTS to determine a motor carrier's compliance with the F&OS program requirements prescribed in the BTS regulations (49 CFR 1420). The regulations were formerly administered by Interstate Commerce Commission (ICC) and later transferred to the U.S. Department of Transportation on January 1, 1996, by the ICC Termination Act of 1995 (the Act), Public Law 104–88, 109 Stat. 803 (1995) (codified at 49 U.S.C. 14123).

The BTS published the required notice offering a 60-day comment period on two ICRs on November 5, 2001 (66 FR 55981). The agency received three comments to the docket. The commenters were: The Central Analysis Bureau, Inc.(CAB); International Brotherhood of Teamsters (IBT); and Inland Marine Underwriters Association (IMUA).

The first commenter, the CAB supported the agency's need for the data collection and categorized themselves as a ''major user'' of the F&OS data. They did however, point out that one ICR, the Form M, could be completed in substantially less time than 9 hours based on a motor carrier's efforts to compile the same data for corporate and tax purposes. The CAB felt the burden estimate for the second ICR, the Form QFR, was reasonable. Additionally, CAB recommended the agency include additional data items on the Form M.

The second commenter, the IBT, made similar comments to those made by the CAB, estimating that the agency may have overstated the burden hours for Form M, and commented on other specific issues. Regarding the IBT's recommendation about ''an explanatory statement,'' BTS does now include detailed instructions with the forms and does solicit ''explanatory statement[s] * * * setting forth [any alternative] methodology used'' by filing motor carriers, as suggested by the IBT.

Based on the fact that BTS collects F&OS data of critical importance, the agency recognizes the need to improve compliance as commenters suggested. BTS now carefully documents all communication (phone calls, faxes, e-mails, letters, etc.) and is adding staff in preparation for continuing to decrease the number of motor carriers not in compliance with BTS regulations.

Furthermore, the IBT commented on the need for a more automated system to track nonfilers and remind late-filers. BTS has, within the past year, developed and implemented a detailed, automated quality control and edit-check (QC/EC) system to improve the completeness of filed reports and the accuracy of the data submitted on them. In combination with motor carriers filing their Form M and Form QFR data over the Internet, which was implemented in the past year, this provides a system to track and remind carriers who aren't filing regularly. BTS notes that motor carriers are increasingly using electronic filing methods provided by the agency—diskettes, CDs, and the Internet.

In response to the IBT's comments on new-entrant classification, BTS recognizes the challenges in correctly classifying new-entrant carriers and welcomes suggestions of the IBT and other commenters to improve the system. The IBT states that ''[a]lthough the regulations provide for [classification] * * * on the basis of estimated annual revenues, 49 CFR 1420(b)(2), in practice this is not done. Instead, new entrant carriers are automatically placed in Class III, where they may remain until BTS discovers that they have revenues sufficient to be in Class I or II.'' In practice, according to 49 CFR 1420.2(b)(1), BTS uses the three-year/$3-million rule to classify carriers: ''Upward and downward classification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.'' However, applying that rule to new entrants is particularly challenging and requires using private sector data in the absence of a new-entrant carriers abiding by the mandatory self-classification requirement: ''Carriers must notify [BTS] of any change in classification'' (49 CFR 1420.2(b)(4)). BTS is working to remedy that new-entrant classification conundrum (no data upon which to estimate) by working with the Federal Motor Carrier Safety Administration (FMCSA) to include revenue data in the proposed Motor Carrier Replacement Information/Registration System. The BTS expects the revenue information on the proposed form, combined with number-of-power-units and other information, will improve the basis for carrier classification by providing public sector revenue-estimating information where there is none now (prior to a carrier's filing its Form M). However, BTS encourages the IBT and other commenters to provide information to BTS for new-entrant and other carrier classification purposes.

BTS recognizes the challenges that will arise as new Mexican carrier entrants appear in U.S. commerce. The IBT suggested that BTS use procedures to classify Mexican motor carriers based on annual earnings from their existing operations in Mexico combined with estimated or actual revenues from U.S. operations. With regard to the new-entrant classification regulations in 49 CFR 1420.2(b)(2), BTS understands the IBT is suggesting that [Mexican] revenue earned by Mexican carriers in Mexico could be used to estimate whether and how much a Mexican carrier likely began to earn over $3 million gross operating revenue while traveling on U.S. highways. Such estimates would be used to classify the Mexican carrier as Class I, II or III. BTS will investigate that possibility, although BTS is not aware of the availability of public sector individual-carrier revenue-size data for Mexican carriers operating in Mexico. The point made by the IBT is that a more active effort needs to be taken to classify and include new-entrant North American carriers earning revenue on U.S. highways and intermodally. While this comment goes beyond the immediate paperwork burden issues, BTS will work with the available private sector data sources and develop FMCSA and other public sector sources. BTS recognizes this challenge and will continue to place emphasis on this issue.

The third commenter, the Inland Marine Underwriters Association (IMUA), supported the agency's need to renew the data collection and placed great value on the data and information collected by BTS. However, the IMUA, like the CAB, suggested that BTS

expand Form M to include suggested refinements to line items to collect what they consider useful data. With respect to the IMUA's recommendation about ''names of corporate officers,'' it is instructive to point out that those data were collected in the past on predecessor forms to Form M and, as a result of a previous rulemaking, after receiving public comments, line items of limited value, including the listing of corporate officers were eliminated from predecessor forms to Form M. BTS is a statistical and a data agency specializing in numerical data for analysis. Although useful to some users, directory-like information would probably fall below the threshold of usefulness when compared with the additional burden to collect it. For public companies, this type of corporate information is a matter of record in the state of incorporation and easily retrieved by interested parties.

BTS thanks CAB, IBT, and IMUA for their comments and assures them and other potential commenters that BTS will continue to balance the need for a reduction in the paperwork burden against the need for additional financial information. The CAB and IMUA provided no estimates for the additional data items suggested and the agency is reluctant to impose additional burdens without accurate estimates. Based on its previous efforts, BTS has found that the shorter the form, the easier it is for carriers to file; the easier it is for carriers to file, the more numerous the carriers that file; the greater the number of carriers that file, the less time needs to be devoted to compliance activities. Additional resources can then be put toward increasing data accuracy and report completeness to make the F&OS data more useful to thousands of users who value the increased comprehensiveness BTS has accomplished within the past year (approximately 50% increase in the number of motor carriers filing the 2000 Form M when compared to the number filing the 1999 Form M).

For additional information, interested parties may review the supporting statement the agency submitted to OMB.

(1) *Title:* Quarterly Report of Class I Motor Carriers of Property.

OMB Control No.: 2139–0002.

Respondents: Class I Motor Carriers of Property.

Number of Respondents: 1,000 (per quarter).

Estimated Time Per Response: 1.8 hours (27 minutes per quarter)

Total Annual Burden: 1,800 hours.

(2) *Title:* Annual Report of Class I and Class II Motor Carriers of Property. OMB Control No. 2139–0004.

Form No.: BTS Form M.

Respondents: Class I and Class II Motor Carriers of Property.

Number of Respondents: 3,000 (per year)

Estimated Time Per Response: 9 hours.

Total Annual Burden: 27,000 hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.73.

Issued on: February 26, 2002.

Russell B. Capelle, Jr.,

Assistant BTS Director for Motor Carrier Information, Department of Transportation.

[FR Doc. 02–5155 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 4, 2002 to be assured of consideration.

Departmental Offices/Assistant Secretary to International Affairs/Office of Program Services

OMB Number: 1505–0123.

Form Number: TD F SHL–1 and SHL–2 (and in different years, TD F SHLA–1 and SHLA–2).

Type of Review: Revision.

Title: Survey of Foreign Portfolio Investment in the United States.

Description: This survey determines the level of foreign portfolio investment in the United States, the types of investors, and foreign investment patterns. The data is used for policy formulation, the computation of the U.S. balance of payments accounts and international investment position, and to satisfy 22 U.S.C., 3101. The affected publish consists of major U.S. corporations.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 435.

Estimated Burden Hours Per Respondent/Respondent: 68 hours.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 30,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–5141 Filed 3–4–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 26, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 4, 2002 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1755.

Form Number: IRS Form 8878.

Type of Review: Extension.

Title: IRS e-file Signature Authorization–Application for Extension of Time to File.

Description: Form 8878 is used to allow taxpayers to enter their PIN on their electronically filed application for extension of time to file.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Minutes
Learning about the law or the form	3
Preparing the form	12

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 610,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–5142 Filed 3–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of Veterans Affairs gives notice that the Special Medical Advisory Group has scheduled a meeting on March 27, 2002. The meeting will convene at 9 a.m. and end at 2 p.m. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The purpose of the meeting is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include an update on VHA Quality and Performance program and an update on Capital Asset Realignment for Enhanced Services (CARES) program.

All sessions will be open to the public. Those wishing to attend should contact Celestine Brockington, Office of the Under Secretary for Health, Department of Veterans Affairs. Her phone number is 202.273.5878.

Dated: February 26, 2002.

By Direction of the Secretary of Veterans Affairs.

Nora Egan,

Committee Management Officer.

[FR Doc. 02–5135 Filed 3–4–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held on March 12–14, 2002, from 8:30 a.m. until 5 p.m., at the Department of Veterans Affairs Central Office (VACO), 810 Vermont Avenue, NW., Conference room 230, Washington, DC.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to healthcare, rehabilitation, compensation, outreach, and other programs and activities administered by the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

All sessions will be open to the public. Those who plan to attend should contact Ms. Maryanne Carson, Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–6193. Tentative agenda follows:

Tuesday, March 12

8:30a Full Advisory Committee—Conference Room 230, Welcome and Introduction of New Members, Dr. Irene Trowell-Harris, Director Center for Women Veterans
9:00a Presentation of Appointment Certificates & Photo Op, The Honorable Anthony Principi, Secretary of Veterans Affairs
9:30a Review Agenda, Review March and June 2001 Minutes, Colonel Karen Ray, Chair
9:45a Welcome and Greet Committee, Dr. Leo Mackay, Deputy Secretary of Veterans Affairs (awaiting confirmation)
10:00a Briefing: Assistant Secretary for Congressional & Legislative Affairs, The Honorable Gordon H. Mansfield
10:30a BREAK
10:45a Briefing: Acting, Under Secretary for Health, Frances M. Murphy; Update—Veterans Health Administration Issues (awaiting confirmation)
11:15a Briefing: National Cemetery Administration
11:30a LUNCH
1:15p Veterans Benefits Administration, Lynda Petty, Women Veterans Coordinator
2:00p Briefing: VA Pharmacy Service (awaiting confirmation)
2:30p Briefings: National Strategic Work Group on Women Veterans Health Programs and Women Veterans Coordinator Study, Carole Turner, Director, Women Veterans Health Program
3:00p BREAK
3:15p Update on Center for Women Veterans, Dr. Irene Trowell-Harris
3:30p Advisory Committee Follow-up: Chair, Discussions: Full Committee
- Summit 2000 Proceedings
- Advisory Committee 2000 Report
- Agenda for Visit to the Hill

5:00p Adjourn

Wednesday, March 13

8:30a Update: Survey of Veterans, Susan Krumhaus, Office of Policy and Planning (awaiting confirmation)
10:00a Update: Center for Minority Veterans, Charles W. Nesby, Director
10:30a BREAK
10:45a Briefing: VA Funded Research on Women Veterans, John R. Feussner, MD, MPH, Chief, Research and Development Officer (awaiting confirmation)
11:30a Briefing: Veterans Benefits Administration, Robert Epley, Director, Compensation and Pension Service (awaiting confirmation)
12n LUNCH
1:15p Meeting with Congressional Staffers, (Depart VACO 1:30p) (awaiting confirmation)
3:00p Return to VACO
3:15p BREAK
3:30p Discussion: Full Committee, Debrief: Meeting on the Hill, 2001 Boston Site Visit: Minutes and Follow-up
5:00p Adjourn

Thursday, March 14

Executive Session

9:00a Update: Facilities with Areas of Concern, Carole Turner
9:30a Budget Update—Office of Finance, Kathleen Hamilton, Budget Analyst
10:00a Discussion—Chair, Agenda Items, FY 2002 Objectives, Missed Meetings, National Agenda for Women, Vision Statement
10:30a BREAK
10:45a (Discussion Continued)
11:00a 2002 Site Visit Designation, Agenda for Site Visit Target: ''Hot'' Areas
11:30a 2002 Advisory Committee Report, 2002 Timeline, Title of Report
12n LUNCH
1:30p (Discussion Continued)
2:00p Discussion: Committee, Individual Updates
3:30p Next Meeting
Adjourn

Dated: February 27, 2002.

By Direction of the Secretary:

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–5167 Filed 3–4–02; 8:45 am]

BILLING CODE 8320–01–M

Notices

Federal Register
Vol. 67, No. 43
Tuesday, March 5, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention disclosed in Patent Cooperation Treaty Application PCT/US01/45457, ''Cucurbitacin-Containing Insecticidal Compositions,'' filed October 24, 2001, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Florida Food Products, Inc., of Eustis, Florida, an exclusive license to this invention.

DATES: Comments must be received within ninety (90) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Florida Food Products, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,
Assistant Administrator.
[FR Doc. 02–5200 Filed 3–4–02; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the large-seeded Kabuli chickpea variety designated ''Sierra,'' which is resistant to ascochyta blight, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the Washington State University Research Foundation of Pullman, Washington, an exclusive license to this variety.

DATES: Comments must be received within ninety (90) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's intellectual property rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,
Assistant Administrator.
[FR Doc. 02–5199 Filed 3–4–02; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–008–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations governing the importation of solid wood packing material into the United States.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by May 6, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–008–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–008–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–008–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except

holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on the regulations governing the importation of solid wood packing material into the United States, contact Ms. Cynthia Stahl, Program Analyst, Port Operations, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–5281. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Wood Packing Material from China.

OMB Number: 0579–0135.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing the introduction and spread of plant pests into or through the United States. The Plant Protection Act authorizes the Department to carry out this mission. APHIS' Plant Protection and Quarantine (PPQ) program is responsible for implementing the regulations that carry out the intent of the Act.

The regulations in 7 CFR 319.40–1 through 319.40–11 are intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles into the United States. Section 319.40–5 governs, in part, the importation of solid wood packing material (such as pallets or crates) from the People's Republic of China. Under § 319.40–5(g), solid wood packing material accompanying merchandise exported from the People's Republic of China (including Hong Kong) must be heat treated, fumigated and aerated, or treated with preservatives prior to exportation. Since solid wood packing material could harbor plant pests, treatment is necessary to help prevent the introduction of plant pests into the United States.

These requirements necessitate the use of information collection activities. If solid wood packing material is used in a shipment, the regulations require the completion of an importer statement and a treatment certificate stating that the solid wood packing material used in the shipment was treated, fumigated and aerated, or treated with preservatives. If solid wood packing material is not used in the shipment, then an exporter document is required stating that the shipment contains no solid wood packing material.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.087 hours per response.

Respondents: Exporters, foreign plant health protection authorities.

Estimated annual number of respondents: 29,000.

Estimated annual number of responses per respondent: 29.3103.

Estimated annual number of responses: 850,000.

Estimated total annual burden on respondents: 73,950 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 27th day of February, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–5198 Filed 3–4–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Big Sur, Sisquoc, and Sespe National Wild and Scenic Rivers, Los Padres National Forest, Monterey Santa Barbara, and Ventura Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The USDA Forest Service, Washington Office, is transmitting the final Boundaries of the Big Sur, Sisquoc, and Sespe National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Rich Phelps, Special Areas Coordinator (805) 934–9654 or Jim Turner, Forest Planner (805) 961–5752, Los Padres National Forest, 6755 Hollister Avenue, Goleta, CA 93117.

SUPPLEMENTARY INFORMATION: The Big Sur, Sisquoc, and Sespe Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenues SW., Washington, DC 20024; Pacific Southwest Regional Office, 1323 Club Drive, Vallejo, CA 94592; and, Los Padres National Forest, 6755 Hollister Avenue, Goleta, CA 93117.

The Los Padres Condor Range and River Protection Act (Public Law 102–301) 1992, designated the Big Sur, Sisquoc, and Sespe Rivers, California, as National Wild and Scenic Rivers, to be administered by the Secretary of Agriculture. The boundaries have been delineated on the appropriate USGS Quad Sheets since 1995 and used for day to day management. Unless changed by Congress, the boundary decision will be implemented ninety days after Congress receives this transmittal.

Dated: February 25, 2002.

Jeanine Derby,

Forest Supervisor.

[FR Doc. 02–5215 Filed 3–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Delegation of Authority From the Regional Forester, Eastern Region, to Forest Supervisors, Eastern Region, for Forest Road and Trail Act (FRTA) Easements

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Regional Forester, Eastern Region, hereby delegates the authority to grant FRTA easements, to public road agencies, to all Forest Supervisors in the Easter Region, Forest Service.

Forest Supervisors are also authorized to terminate FRTA easements, to public road agencies, with the consent of the grantee.

Dated: February 7, 2002.

Donald L. Meyer,

Acting Regional Forester.

[FR Doc. 02–5148 Filed 3–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 022802B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Billfish Angler Survey.

Form Number(s): NOAA Form 88–10.

OMB Approval Number: 0648–0020.

Type of Request: Regular submission.

Burden Hours: 63.

Number of Respondents: 750.

Average Hours Per Response: 5 minutes.

Needs and Uses: Volunteer recreational anglers are asked to report on their fishing catch and effort for billfish throughout the Pacific area. The information received is used to study the health and activity of the billfish resources in the Pacific.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5231 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–22–S]

DEPARTMENT OF COMMERCE

[I.D. 022802A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Raised Footrope Trawl Exempted Fishery.

Form Number(s): None.

OMB Approval Number: 0648–0422.

Type of Request: Regular submission.

Burden Hours: 230.

Number of Respondents: 288.

Average Hours Per Response: 2 minutes

Needs and Uses: Framework 35 to the Northeast Multispecies Fishery Management Plan modified existing multispecies regulations to allow for a seasonal whiting raised footrope trawl exempted fishery. Persons holding multispecies Federal Fisheries Permits and wanting to participate in the exempted fishery must: (1) request a certificate to fish in the fishery, and (2) provide notification when they withdraw from the fishery. Requests for certificates must include the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. The information is needed for management of the fishery and enforcement.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5232 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Format for Petition Requesting Relief Under U.S. Antidumping Duty Law; Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 6, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at *MClayton@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Jim Nunno, Import Administration, Office of Policy, Room 3713, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–0783, and fax number: (202) 501–7952.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty law. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA–357P, '' Format for Petition Requesting Relief Under the U.S. Antidumping Duty Law,'' is designed for U.S. companies or industries that are unfamiliar with the antidumping law and the petition process. The Form is designed for potential petitioners that believe that an industry in the United States is being injured because a foreign competitor is selling a product in the United States at less than fair value. Since a variety of detailed information is required under the law before initiation of an antidumping duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

II. Method of Data Collection

Form ITA–357P is sent by request to potential U.S. petitioners.

III. Data

OMB Number: 0625–0105.

Form Number: ITA–357P.

Type of Review: Regular Submission.

Affected Public: U.S. companies or industries that suspect the presence of unfair competition from foreign firms selling merchandise in the United States below fair value.

Estimated Number of Respondents: 55.

Estimated Time Per Response: 40 hours.

Estimated Total Annual Burden Hours: 2,200 hours.

Estimated Total Annual Costs: Assuming the number of petitioners remains the same, the estimated annual cost for this collection is $544,500 ($396,000 for respondents and $148,500 for federal government).

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 costs) 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 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: February 27, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5180 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S.-Japan Semiconductor Agreement Data Collection Program; Proposed Collection; Comment Request

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 6, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th & 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 and instructions should be directed to: Dorothea Blouin, Office of Microelectronics, Medical Equipment and Instrumentation, Room 1015, Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230; phone (202) 482–1333, fax number (202) 482–0975 or via the Internet at *Dorothea_Blouin@ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Data Collection Form is the vehicle by which individual ''Foreign'' (non-Japanese) semiconductor companies voluntarily report their sales to Japan. The information provided by the Data Collection Program (DCP) is used by the U.S. Government to calculate foreign market share in the Japanese semiconductor market to ensure access to the Japanese market gained under the 1986 and 1991 U.S.-Japan Semiconductor Arrangement continues under the 1996 Semiconductor Agreement.

II. Method of Data Collection

The Department of Commerce distributes Form ITA–4115P and the instruction manual to semiconductor companies after their eligibility is checked. The applicant completes the form and then forwards it to Price Waterhouse, who submits a summary report to the U.S. Department of Commerce/ Office of Microelectronics for calculation of foreign (non-Japanese) share of the Japanese market.

III. Data

OMB Number: 0625–0211.

Form Number: ITA–4115P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit companies.

Estimated Number of Respondents: 38.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 456 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $41,040 ($34,200 for respondents and $6,840 for federal government).

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 costs) 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 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: February 27, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5181 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Final results of changed circumstances review.

EFFECTIVE DATE: March 5, 2002.

SUMMARY: On November 15, 2001, the Department of Commerce (''the Department'') published a notice of initiation and preliminary results of a changed circumstances review for a revocation of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands at the request of a letter dated September 18, 2001 from Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and United States Steel LLC (collectively, ''petitioners''). The Department issued its preliminary results and intent to revoke the antidumping duty order, retroactive to August 19, 1993, given that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order (*see Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Initiation and Preliminary Results of Changed Circumstances Review*, 66 FR 57415 (November 15, 2001)). In our preliminary results we invited interested parties to comment on our preliminary results. We received no comments. Therefore, our final results of the changed circumstances review remain the same as our preliminary results and the Department hereby revokes this order with respect to all unliquidated entries for consumption of the subject merchandise made from August 19, 1993 through January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier or Abdelali Elouaradia, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1394 or (202) 482–1374, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published in the **Federal Register** the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (*see Antidumping Duty Order and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 58 FR 44172 (August 19, 1993)). On December 15, 2000, the Department published in the **Federal Register** a revocation of the order effective January 1, 2000 (*see Revocation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products From Canada, Germany, Korea, the Netherlands, and Sweden*, 65 FR 78467). On September 18, 2001, Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and United States Steel LLC (collectively, ''petitioners'') requested that the order be revoked retroactively to August 19, 1993. In this letter, petitioners indicated that their revocation request applies to all unliquidated entries for consumption of the subject merchandise made from August 19, 1993 through January 1, 2000, and that domestic producers accounting for at least 85 percent of production have expressed a lack of interest in the order with respect to this period prior to January 1, 2000. On November 15, 2001, the Department published a notice of initiation and preliminary results the a changed circumstances review for a revocation of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. The Department issued its preliminary results and intent to revoke the antidumping duty order, retroactive to August 19, 1993, given that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order.

Final Results of Review: Revocation of the Antidumping Duty Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 782(h)(2) of the Act and § 351.222(g)(1)(i) of the Department's regulations provide that the Secretary may revoke an order, in whole or in part, based on changed circumstances if ''{p}roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * have expressed a lack of interest in the order, in whole or in part. * * *'' In this context, the Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product (*see, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews, Revocation of Orders, and Recission of Administrative Reviews*, 65 FR 13713, 13714 (March 14, 2000)).

Petitioners are domestic interested parties as defined by section 771(9)(C) of the Act and 19 CFR 351.102(b). Petitioners indicate that they, along with other domestic producers that have expressed a lack of interest in the order retroactive to August 19, 1993, represent at least 85 percent of the domestic production of the domestic like product to which this order pertains, and thus account for ''substantially all'' of the production of the domestic like product.

In this changed circumstances review we have determined to revoke the order in part, retroactive to August 19, 1993, for unliquidated entries in light of the submission by petitioners and particularly in light of the fact that the parties to the litigation concerning these entries have agreed to withdraw their appeals; there is only one importer of record; and we received no comments following our preliminary results of November 15, 2001. We hereby notify the public of our revocation in whole the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands retroactive to August 19, 1993.

Upon dismissal by the courts of the pending appeals, we will instruct the Customs Service to refund any estimated antidumping duties collected for all unliquidated entries of certain cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for

consumption on or after August 19, 1993. We will also instruct the Customs Service to pay interest on any refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 19, 1993, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and § 351.216 of the Department's regulations.

Dated: February 26, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–5209 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–821]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Notice of Preliminary Results of Changed Circumstances Review, Preliminary Intent to Revoke the Antidumping Duty Order, and Preliminary Rescission of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances review, preliminary intent to revoke the antidumping duty order, and preliminary rescission of antidumping duty administrative reviews.

SUMMARY: In response to a request by KBA North America, Inc., Web Press Division, a U.S. producer of subject merchandise and an interested party in this proceeding, on November 5, 2001, the Department of Commerce initiated a changed circumstances review to consider revocation of the antidumping duty order on large newspaper printing presses from Germany. We have preliminarily determined that the producers accounting for all or substantially all of the production of the domestic like product to which the order pertains do not have an interest in maintaining the order. Consequently, we preliminarily intend to revoke the order on large newspaper printing presses from Germany with an effective date of September 1, 1999. In addition, the Department is rescinding preliminarily the ongoing administrative reviews of this order. These reviews cover the periods September 1, 1999, through August 31, 2000, and September 1, 2000, through August 31, 2001. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Irene Darzenta Tzafolias AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–0922, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (2001).

Background

On September 4, 1996, the Department issued the antidumping duty order on large newspaper printing presses (LNPPs) from Germany (61 FR 46623). On September 24, 2001, Koenig & Bauer AG and KBA North America, Inc. Web Press Division (KBA NA, a domestic producer of the subject mercandise; collectively, K&B) requested that the Department revoke the antidumping duty order on LNPPs from Germany through initiation of a changed circumstances review. K&B provided information that Goss, the petitioner in the antidumping duty order proceeding, closed its sole U.S. production facility on August 31, 2001, and is no longer a producer of the merchandise subject to the antidumping duty order. On November 2, 2001, KBA NA stated that it accounts for substantially all of the production of the domestic like product and no longer has an interest in the continuation of the antidumping order. In addition, prior to K&B's request, on September 19, 2001, MAN Roland Druckmaschinen AG and MAN Roland Inc. (collectively, MAN Roland), a foreign producer/exporter of the subject merchandise and its U.S. affiliate, requested that the Department revoke the antidumping duty order on LNPPs from Germany through a changed circumstances review. MAN Roland provided information similar to K&B's regarding the status of Goss's U.S. production facility. Both K&B and MAN Roland submitted additional material regarding Goss on October 19, 2001, and MAN Roland provided further information on October 29, 2001. In their submissions, both K&B and MAN Roland requested that the order be revoked with respect to any entries of LNPPs that have not yet been the subject of a completed administrative review.

On October 3, 2001, the Department requested Goss to state for the record whether it is a domestic producer of LNPPs. Goss responded on October 19, 2001, stating that it continues to perform certain manufacturing functions at a U.S. facility and thus continues to be a manufacturer, producer, or wholesaler in the United States within the meaning of section 771(9) of the Act. On that basis, Goss contended that the Department should reject the requests for a changed circumstances review.

Based on the information submitted by KBA NA and KBA NA's assertions that it accounted for substantially all of the production of the domestic like product and had no interest in maintaining the order, the Department determined that there was sufficient evidence of changed circumstances to warrant a review under section 751(b)(1) of the Act and 19 CFR 351.222(g) and 351.216, and consequently, initiated a changed circumstances review on November 5, 2001. (See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order, 66 FR 56798 (November 13, 2001) (Initiation Notice).) In the Initiation Notice, we stated that we would consider whether there is interest in continuing the order on the part of the U.S. industry. We also stated that we would publish in the Federal Register a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), prior to the issuance of the final results of the review.

Since the Department's notice of initiation of this review, the following events have occurred. On December 7, 2001, the Department issued a questionnaire to Goss seeking to better understand its current operations and to assess its status as a domestic producer of LNPPs. While it never responded directly to the questions in this questionnaire, on December 21, 2001, Goss filed a letter stating that it was no longer interested in participating in any of the current antidumping proceedings concerning LNPPs from Germany (and Japan), including the changed circumstances review, and therefore was withdrawing from them. Subsequent to the filing of Goss's letter, on December 31, 2001 and January 8, 2002, MAN Roland and K&B, respectively, submitted letters urging the Department to conclude based on the facts of the record that Goss is not a domestic producer of the subject merchandise and to revoke the order on the basis of changed circumstances with respect to all unliquidated entries of the subject merchandise, including those that are subject to the current administrative reviews. Specifically, K&B requested that the effective date of revocation of the order be September 1, 1999. On January 31, 2002, MAN Roland specified an effective revocation date of September 1, 2000. Other than the additional comments filed by K&B and MAN Roland, no other interested parties filed comments.

Scope of Order

The products covered by the order are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the order includes the five press system components. They are: (1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non–subject elements before or after importation, is included in the scope of this order. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the order, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the Harmonized Tariff Schedule of the United States (HTSUS): the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start–up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this order. Used presses are also not subject to this order. Used presses are those that have been previously sold in an arm's–length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this order covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this order are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Preliminary Results of Changed Circumstances Review and Preliminary Intent to Revoke the Antidumping Duty Order

We interpret Goss's withdrawal from all of the ongoing LNPP proceedings to mean that Goss no longer has interest in the maintenance of this order. Both Goss, the original petitioner, and KBA NA, a U.S. producer of LNPPs which claims it accounts for substantially all of the production of the domestic like product, are no longer interested in the maintenance of this order, and no other interested party has filed any objection to the revocation of this order pursuant to the Department's solicitation of comments in its Initiation Notice.

Pursuant to section 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. 19 CFR 351.222(g) provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances exist sufficient to warrant revocation. Furthermore, it is

the Department's practice to revoke an antidumping order so that the effective date of revocation covers entries that have not been subject to a completed administrative review. There has not been a completed administrative review for K&B since September 1, 1999, because the Department deferred for one year the initiation of the administrative review of K&B for the period September 1, 1999, through August 31, 2000. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews, 65 FR 64662, (October 30, 2000).[1]

The Department preliminarily determines that the producers accounting for substantially all of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by this order, dating back to September 1, 1999, and thus, sufficient changed circumstances exist to warrant revocation of the order. The Department also preliminarily determines that the effective date of revocation for this order is September 1, 1999, the date of the suspension of liquidation for the 1999–2000 administrative review for K&B. Therefore, the Department preliminarily determines that it shall revoke, effective September 1, 1999, the order on LNPPs from Germany in whole, pursuant to sections 751(b) and (d) and 782(h) of the Act, as well as 19 CFR 351.216 and 351.222(g).

Preliminary Rescission of Antidumping Administrative Reviews

As discussed above, on October 30, 2001, the Department published in the Federal Register (65 FR 64662) a notice stating that it would defer for one year the initiation of the administrative review for the period September 1, 1999 through August 31, 2000, for K&B. On October 26, 2001, the Department published in the Federal Register (66 FR 54195) a notice of initiation of an administrative review for the period September 1, 2000 through August 31, 2001 for K&B and MAN Roland. Because we are preliminarily revoking the order for the reasons stated above, effective September 1, 1999, we are preliminarily rescinding the ongoing administrative reviews of LNPPs from Germany pursuant to section 751(d)(3) of the Act.

Instructions to the Customs Service

If our final results do not differ from our preliminary results with respect to revocation, the Department, in accordance with 19 CFR 351.222, will instruct the Customs Service to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, all unliquidated entries of LNPPs from Germany, entered, or withdrawn from warehouse, for consumption on or after September 1, 1999, the date of the suspension of liquidation for the 1999–2000 administrative review for K&B. The Department will further instruct the Customs Service to refund with interest any estimated duties collected with respect to unliquidated entries of LNPPs from Germany entered, or withdrawn from warehouse, for consumption on or after September 1, 1999, in accordance with section 778 of the Act. These instructions will not be issued until either the conclusion of the ongoing litigation with respect to the final determination of the Department's less–than–fair–value investigation of LNPPs from Germany, pursuant to which entries have been enjoined from liquidation, or the injunction in that case is lifted or amended to allow liquidation of entries. (See Koenig & Bauer Albert v. United States, Fed. Cir. Court No. 00–1387 (CIT 96–10–02298).)

Public Comment

Interested parties are invited to comment on these preliminary results. Case briefs may be submitted by interested parties not later than 10 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than five days after the deadline for submission of case briefs. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Parties to the proceedings may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, which will include the results of its analysis of issues raised in any case or rebuttal briefs or at the hearing.

This notice of preliminary results of changed circumstances review and intent to revoke the antidumping duty order are in accordance with sections 751(b) and (d), and 777 of the Act and 19 CFR 351.216(d) and 351.222(g). The 1999–2000 and 2000–2001 antidumping duty administrative reviews of LNPPs from Germany are being preliminarily rescinded in accordance with section 751(d)(3) of the Act.

February 27, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5207 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] There has been a completed administrative review of the order for MAN Roland since the specified effective date of revocation (i.e., covering the period September 1, 1999 through August 31, 2000) (see Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Final Results of Antidumping Duty Administrative Review, 67 FR 2192 (January 16, 2002)); however, the margin resulting from the completed review for MAN Roland for the period September 1, 1999, through August 31, 2000, was zero, and thus, notwithstanding the Department's decision to revoke the order, the Department would otherwise instruct the Customs Service to liquidate the entries relevant to this review period in the same manner as it would with respect to revocation of the order effective September 1, 1999 (i.e., it would instruct the Customs Service to liquidate the entries at issue without regard to antidumping duties). The effective date would have no impact on MAN Roland.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid from the People's Republic of China: Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo at (202) 482–0629, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION: On August 20, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 66 FR 43570. The period of review is July 1, 2000 through June 30, 2001. The review covers three exporters of the subject merchandise to the United States.

Pursuant to section 751(a)(3)(A) of the Act, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend the 245–day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. Due to the difficulty in selecting surrogate values to value factors of production, and the requirement that we conduct verification in this proceeding, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Consequently, we have extended the deadline until July 31, 2002.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)(2001)).

February 22, 2002

Susan Kuhbach,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. 02–5205 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–822]

Notice of Extension of Time Limits of the Preliminary Results of AntidumpingDuty Administrative Review: Stainless Steel Plate in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Stephen Shin, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–0413.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to the current regulations as codified at 19 CFR Part 351 (2001).

Background

On May 31, 2001, Acciai Speciali Terni S.p.A. and its affiliated company, requested that the Department conduct an administrative review. On June 19, 2001, the Department published a notice of initiation of the administrative review of the antidumping duty order on Stainless Steel Plate in Coils from Italy, covering the period May 1, 2000 through April 30, 2001. See Initiation of Antidumping and Countervailing Duty Administrative Review and Requests for Revocation in Part, 66 FR 32934 (June 19, 2001). On December 3, 2001, the Department extended the preliminary results of the review by 60 days. See Notice of Extension of the Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Italy, 66 FR 60196 (December 3, 2001). The preliminary results of this review are currently due no later than April 1, 2002.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. On October 22, 2001, the Department initiated a sales-below-the-cost-of-production investigation with respect to home market sales made by AST. On November 23, 2001, AST submitted the company-specific cost data. In order to properly analyze and consider the cost data in the Department's preliminary results, the Department has determined that it is not practicable to complete the preliminary results of this review for Acciai Speciali Terni S.p.A. and its affiliates within the initial time limits provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Therefore, we are extending the due date for the preliminary results by 60 days, until no later than May 31, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

February 26, 2002

Joseph Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–5206 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

EFFECTIVE DATE: March 5, 2002.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen at 202–482–0409, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On July 2, 2001, the Department published a notice of opportunity to

request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 66 FR 34910 (July 2, 2001). On July 31, 2001, Acciai Speciali Terni S.p.A. (''AST''), an Italian producer of subject merchandise, its affiliate, Acciai Speciali Terni USA, Inc. (''AST USA''), a U.S. importer of subject merchandise, and the petitioners from the original investigation requested the Department conduct an administrative review. On August 20, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise, for the period July 1, 2000 through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 43570 (August 20, 2001). The preliminary results of this administrative review are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, constructed export price versus export price, selling expenses, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. Therefore, we are extending the due date for the preliminary results by 90 days, until no later than July 1, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

February 26, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–5208 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

[Docket No. 990813222–0035–03]

RIN 0625–AA55

Allocation of Duty-Exemptions for Calendar Year 2002 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates calendar year 2002 duty-exemptions for watch producers located in the Virgin Islands pursuant to Pub. L. 97–446, as amended by Pub. L. 103–465 (''the Act'').

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with §303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2002 is 1,866,000 units for the Virgin Islands (65 FR 8048, February 17, 2000).

The criteria for the calculation of the calendar year 2002 duty-exemption allocations among insular producers are set forth in §303.14 of the regulations (15 CFR 303.14).

The Departments have verified and adjusted the data submitted on application form ITA–334P by Virgin Islands producers and inspected their current operations in accordance with § 303.5 of the regulations (15 CFR 303.5).

In calendar year 2001 the Virgin Islands watch assembly firms shipped 508,506 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 2001 plus the creditable wages paid by the industry during calendar year 2001 to residents of the territory was $3,058,590.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 2002 Virgin Islands annual allocations, based on the data verified by the Departments, are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc	500,000
Hampden Watch Co., Inc	200,000
Unitime Industries, Inc	400,000
Tropex, Inc	300,000

The balance of the units allocated to the Virgin Islands is available for new entrants into the program or producers who request a supplement to their allocation.

Faryar Shirzad,

Assistant Secretary for Import Administration, Department of Commerce.

Nikolao Pula,

Acting Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. 02–5210 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program; Announcement of a Public Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend the Hampton University's Second Annual Technology Conference co-sponsored by the Advanced Technology Program (ATP) and Hampton University, Hampton, Virginia. ATP provides cost-shared funding to industry to accelerate the development of challenging, high-risk, innovative technologies that promise broad-based economic benefits for the nation.

DATES: The Technology Conference will be held on April 3, 2002, from 6:00 p.m. to 8:30 p.m. The Meeting will continue on April 4, 2002, from 8:00 a.m. to 8:00 p.m. and on April 5, 2002, from 8:00 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at the Hampton University Student Center, Hampton, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information or registration questions, contact Ms. Adrienna Davis at (757) 728–6927 or email at

HUTC2002@hamptonu.edu, subject heading HUTC2002. For information about the ATP contact Toni Nashwinter at (301) 975–3780 or email at *toni.nashwinter@nist.gov.*

SUPPLEMENTARY INFORMATION: The ATP statute originated in the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418, 15 U.S.C. 278n), and was amended by the American Technology Preeminence Act of 1991 (Public Law 102–245). This law has been codified at 15 U.S.C. 278n. The ATP implementing regulations are published at 15 CFR part 295, as amended. The ATP is a competitive cost-sharing program designed for the Federal government to work in partnership with industry, universities, and states to accelerate the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant commercial payoffs and widespread benefits for the nation.

The Technology Conference title, ''Are You Sure, It is Secure?'' and ''How to Secure Your Share of Federal Funding,'' will consist of three Tracks. The Advanced Technology Program will host a robust track on Advanced Technology Development and Commercialization Opportunities. This track will focus on information about the over $1 billion of funding opportunities available for advanced technology research from Federal government agencies. Sessions will emphasize and highlight minority businesses' and universities' participation in these programs. Hampton University will host two tracks, the first ''Cyber Crimes: An In-depth Understanding'', and the second, ''Information Security and Assurance.''

Information on the meeting agenda and the registration requirements can be found at the ATP website at *www.atp.nist.gov* with a link to the Hampton website or visit the Hampton Website at *www.hamptonu.edu* and click on 'Hot News' to learn about this Conference and to access the registration form. There is a registration fee of $250 if postmarked by March 15; $300 on-site registration fee, and $100 fee for students.

Dated: February 26, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–5236 Filed 3–4–02; 8:45 am]

BILLING CODE 3510–13–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted a public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, William H. Ward, at (202) 606–5000, extension 375. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between the hours of 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, within 30 days from the date of publication in this **Federal Register**.

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 Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Description: AmeriCorps Education Award Utilization Survey.

One of the goals of the AmeriCorps program is furthering the educational opportunities of its members. The AmeriCorps Education Award provides up to $4,725 to help a member pay for further education or to repay student loans. Part-time members get a pro-rated portion of that amount. (42 U.S.C. 12601 *et seq.*) The Corporation's National Service Trust data showed that about half of the AmeriCorps graduates who have earned Education Awards had begun to use them. Through the proposed study, the Corporation seeks to identify reasons for non-use of Education Awards. In addition, a thorough exploration of trends in non-use and reasons for non-use will identify ways in which the Corporation can meaningfully increase the use of Education Awards, thus furthering educational opportunity. The Corporation seeks to conduct a survey of former members of the AmeriCorps*State and National, AmeriCorps*VISTA and AmeriCorps*NCCC programs. This survey will entail telephone interviews of approximately 30 minutes in length with 1,000 former AmeriCorps members. It will identify trends in and reasons for non-use of the Educational Awards.

- *Type of Review:* New collection.
- *Agency:* Corporation for National and Community Service.
- *Title:* AmeriCorps Education Award Utilization Survey.
- *OMB Number:* None.
- *Agency Number:* None.
- *Affected Public:* Former AmeriCorps members.
- *Total Respondents:* 1,000.
- *Frequency:* One time.
- *Average Time Per Response:* 30 minutes.
- *Estimated Total Burden Hours:* 500 hours.
- *Total Burden Cost (capital/startup):* 0.
- *Total Burden Cost (operating/maintenance):* 0.

Dated: February 26, 2002.

David Reingold,

Director, Department of Research and Policy Development.

[FR Doc. 02–5131 Filed 3–4–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF ENERGY

Office of Science

High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal

Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, April 26, 2002; 9 a.m. to 6 p.m. and Saturday, April 27, 2002; 8:30 a.m. to 4 p.m.

ADDRESSES: Fermi National Accelerator Laboratory, Wilson Hall, First Floor 1 North and 1 West, Batavia, Illinois 60510.

FOR FURTHER INFORMATION CONTACT: Glen Crawford, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–9458.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Friday, April 26, 2002, and Saturday, April 27, 2002

- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Discussion of High Energy Physics University Programs.
- Reports on and Discussion of U.S. Large Hadron Collider Activities.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Glen Crawford, 301–903–9458 or *Glen.Crawford@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 28, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–5192 Filed 3–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet March 12–15, 2002, at the headquarters of the IEA in Paris, France in connection with the IEA's Disruption Simulation Exercise Program (ERE2).

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on March 12, 2002, beginning at approximately 2:15 p.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at an emergency response procedures training session hosted by the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the IEA on March 12, 2002. The Agenda for the meeting is under the control of the IEA. It is expected the IEA will adopt the following Agenda:

1. Welcome to the IEA.
2. Objectives of the Session.
3. Introduction to the IEA Emergency System—Background and Objectives, Emergency Response Measures, Organization and Roles.
4. Activation of IEA Measures—A Step by Step Process—Coordinated Emergency Response Measures (CERM) procedures and CERM situations, Application of International Energy Program (IEP)/Emergency Management Manual Procedures.
5. IEA Energy Statistics and Emergency Data System—Structure and Contents of Emergency Questionnaires, and Reporting Relationships.
6. IEA Information Technologies—Structure and Capabilities of IEA Information Technologies.
7. Questions & Answers.
8. Summary of the Training Session.

A meeting involving members of the IAB in connection with the IEA's Disruption Simulation Exercise Program (ERE2) will be held on March 13 and 14, 2002, at the headquarters of the IEA beginning at approximately 9 a.m., and including a preparatory encounter among company representatives from approximately 8:45 a.m. to 9 a.m. The purpose of this meeting is to train IEA delegates in the use of IEA emergency response procedures by reacting to a hypothetical oil supply disruption scenario. The Agenda for the meeting is under the control of the IEA. It is expected the IEA will adopt the following Agenda:

I. Disruption—Stage 1

A. Plenary Session

1. Introduction by SEQ Chairman and IEA Oil Markets and Emergency Preparedness (OME) Director.
2. Introduction of Simulation Facilitator, Market Group, Media Group, and Design Group.
3. Logistics are described by Head of Emergency Plans and Preparations Division (EPPD).
4. Rules are defined and simulation is initiated by Facilitator.
5. Before the announcement of the situation, the Market Group will describe and discuss the oil market context of the session.
6. The Stage 1 event is announced.
7. A brief analysis of the market impact by the Market Group.
8. The Media Group requests some on-the-spot answers.

B. Participants Break Out Into Assigned Teams

1. Respond to specific questions on market analysis and IEA decision-making.
2. Report on what action(s) if any the IEA should take at this point.
3. Submit a brief report to the Facilitator.

C. Plenary Session

1. Presentation of four team reports (more if sufficiently diverse).
2. Reactions and questions from the Media Group to each team report presentation.
3. Reaction from Market Group on fundamentals following all team reports.

4. Discussions on the recommendations.
5. Chairman's Summary of the Stage 1 Session.

II. Disruption—Stage 2

A. Plenary Session

1. Introduction by SEQ Chairman and OME Director.
2. Simulation is initiated by Facilitator.
3. Before the announcement of the situation, the Market Group will describe and discuss the oil market context of the session.
4. The Stage 2 event is announced.
5. The Market Group provides a brief analysis of the supply demand impact.
6. The Media Group requests some on-the-spot answers.

B. Participants Break Out Into Assigned Teams

1. Respond to specific questions on market analysis and IEA decision-making.
2. Report on what action(s) the IEA should take at this point.
3. Submit a brief report to the Facilitator.

C. Plenary Session

1. Presentation of four team reports (more if sufficiently diverse).
2. Reactions and questions from the Media Group to each team report presentation.
3. Reaction from Market Group on fundamentals following all team reports.
4. Discussions on the recommendations.
5. Review and critique of the first day of the exercise.
6. Chairman's summary.

III. Disruption—Stage 3

A. Plenary Session

1. Introduction by SEQ Chairman.
2. Simulation is initiated by Facilitator.
3. Before the announcement of the situation, the Market Group will describe and discuss the oil market context of the session.
4. The Stage 3 event is announced.
5. The Market Group provides a brief analysis of the supply demand impact.
6. The Media Group requests some on-the-spot answers.

B. Participants Break Out Into Assigned Teams

1. Respond to specific questions on market analysis and IEA decision-making.
2. Report on what action(s) if any the IEA should take at this point.
3. Submit a brief report to the Facilitator.

C. Plenary Session

1. Presentation of four team reports (more if sufficiently diverse).
2. Reactions and questions from the Media Group to each team report presentation.
3. Reaction from Market Group on fundamentals following all team reports.
4. Discussions on the recommendations.
5. Chairman's summary of the session.

IV. Plenary Discussion on Conclusions

A. Introduction Of The Session By The SEQ Chairman

B. Presentation By The Facilitator Of The Outcomes Of The Exercises

C. Summary By The Market Group Of Fundamentals

D. Discussion Of The Types And Magnitudes Of The Recommended Responses

E. Discussion Of The Decision-making Process

F. Chairman's Initial Summary Of The Exercise And Recommendations

A meeting of the IAB will be held on March 15, 2002, at the IEA beginning at approximately 9 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's SEQ, which is scheduled to be held on that date, including a preparatory encounter among company representatives from approximately 9 a.m. to 9:15 a.m. The Agenda for the meeting is under the control of the IEA. It is expected the IEA will adopt the following Agenda:

1. Adoption of the Agenda.
2. Approval of the Summary Record of the 103rd Meeting.
3. SEQ Program of Work for 2003–2004—2003–2004 Work Program of the SEQ—First Elements.
4. Update on Compliance with IEP Stockholding Commitments.
5. Policy and Legislative Developments in Member Countries—Update on Korea's Accession to the IEA.
6. Report on Developments in Non-Member Countries and International Organizations.
7. Emergency Response Training and Simulation Exercise—Initial Report on the Emergency Response Training and Simulation Exercise 2002 (ERE2), Phase 3 and Data Workshop Issues.
8. Current IAB Activities—Oral Report by the IAB Chairman.
9. Emergency Response Procedures—Transition from CERM to IEP Measures.
10. Questionnaire on IEA Oil Stock Drawdown Capacity.
11. Joint SEQ/Standing Group on Long-Term Cooperation (SLT) Seminar—Conclusions from Joint SEQ/SLT Inter-fuels Workshop, Results from the Fuel-Switchng Survey.
12. Emergency Response Reviews of IEA Countries—Tentative Schedule of Emergency Response Reviews for 2002–2003.
13. Emergency Data and Related Issues for Information.

Emergency Reserve and Net Import Situation of IEA Countries on January 1, 2001.

Emergency Reserve Situation of IEA Candidate Countries on January 1, 2001.

Monthly Oil Statistics December 2001.

Base Period Final Consumption 1Quarter(Q)2000/4Q2001.

Quarterly Oil Forecast—1Q2002.

Reissue of Emergency Mangement Manual.

Update of Emergency Contacts List.

14. Other Business—Dates of Next Meetings—June 25–27, 2002 and November 12–15 (or 19–22), 2002.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), these meetings are open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, February 28, 2002.

Eric Fygi,

Deputy General Counsel.

[FR Doc. 02–5201 Filed 3–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

Date and Time: Thursday, March 21, 2002, 8:30 am–5:00 pm, Friday, March 22, 2002, 8:30 am–11:30 a.m.

Place: U.S. Department of Energy, Room 8E–089, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 287–1709. Alternately, Mr. Weinig may be contacted by email at *william.weinig@eia.doe.gov* or by FAX at (202) 287–1705.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy-related statistical matters.

Tentative Agenda

Thursday, March 21, 2002

A. Opening Remarks by the ASA Committee Chair, the EIA Acting Administrator and the Director, Statistics and Methods Group, EIA. Room 8E–089

B. Major Topics (Room 8E–089 Unless Otherwise Noted)

1. Weekly Natural Gas Storage Survey.
2. Human Capital Management.
3. Natural Gas Data Quality.
4. Managing Risk in Energy Markets (Room 5E–069).
5. Public Questions and Comments.
6. Redesign of the Commercial Buildings Energy Consumption Survey (CBECS).
7. Extension of the National Energy Modeling System (NEMS) to 2025 (Room 5E–069).
8. System for the Analysis of Global Energy Markets (SAGE).
9. Implementation of New Electric Power Data System.
10. Public Questions and Comments.

Friday, March 22, 2002, Room 8E–089

C. Major Topics

1. Energy Situation Analysis Report (ESAR).
2. Information Quality Guidelines.
3. Improve the Quality of the Annual Nonutility Data.
4. Public Questions and Comments.

D. Closing Remarks by the Chair

Public Participation: The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

Minutes: A Meeting Summary and Transcript will subsequently be available through Mr. Weinig who may be contacted at (202) 287–1709 or by email at *william.weinig@eia.doe.gov.*

Issued at Washington, DC on February 28, 2002.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 02–5191 Filed 3–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. GT01–25–003 and RP99–301–038]

ANR Pipeline Company; Notice of Compliance Filing

February 27, 2002.

Take notice that on December 21, 2001, ANR Pipeline Company (ANR) made a filing in compliance with three orders issued by the Commission on November 21, 2001, in the above referenced dockets. *ANR Pipeline Company,* 97 FERC ¶ 61,222 (2001); *ANR Pipeline Company,* 97 FERC ¶ 61,223; *ANR Pipeline Company,* 97 FERC ¶ 61,224 (2001). As part of this filing, ANR has tendered (1) revised agreements with two shippers in compliance with these orders; and (2) Eighth Revised Sheet No. 190 of ANR's Second Revised Volume No. 1, with a proposed effective date of December 21, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 6, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5171 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–63–000]

Constellation Power Source, Inc., Complainant, v. California Power Exchange Corporation, Respondent; Notice of Complaint

February 27, 2002.

Take notice that on February 25, 2002, Constellation Power Source, Inc. tendered a filing with the Federal Energy Regulatory Commission (Commission), a Complaint in which it requests that the Commission find that the California Power Exchange Corporation (CalPX) should release three letters of credit that Constellation had provided as a condition for participating in the CalPX's now-defunct markets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 18, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers 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. 02–5170 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–051]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

February 27, 2002.

Take notice that on February 22, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing contracts between Gulf South and the following companies for disclosure of recently negotiated rate transactions. As shown on the contracts, Gulf South requests an effective date of April 1, 2002.

Special Negotiated Rate Between Gulf South Pipeline Company, LP and The City of Brewton, Contract No. 14492
Gulf South Pipeline Company, LP and The City of Foley, Contract No. 14502

Gulf South states that it has served copies of this filing upon all parties on the official service list created 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5174 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–503–001]

Natural Gas Pipeline Company of America; Notice of Technical Conference

February 27, 2002.

In the Commission's order issued on February 1, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, March 19, 2002, at 10:30 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5175 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–61–000]

PG&E National Energy Group, PG&E, Generating, US Gen New England, Inc., and PG&E Energy Trading-Power, L.P., Complainants, v. ISO New England Inc., Respondent; Notice of Complaint

February 27, 2002.

Take notice that on February 25, 2002, PG&E National Energy Group, PG&E Generating, US Gen New England, Inc., and PG&E Energy Trading-Power, L.P. (collectively referred to PG&E National Energy Group Companies) filed a Complaint Requesting Fast Track Processing against ISO New England Inc. (ISO–NE) requesting that the Federal Energy Regulatory Commission immediately strike the January 25, 2002 action by ISO–NE lowering the New England Power Pool (NEPOOL) Objective Capability. The Complaint also requests the Commission to direct NEPOOL to include the Hydro Quebec Interconnection in the NEPOOL Transmission Facilities, and roll the costs of supporting the Hydro Quebec Interconnection into the NEPOOL Open Access Transmission Tariff, or any future tariff for a Northeast Regional Transmission Organization.

Copies of the complaint were served via facsimile and courier to representatives of ISO–NE, electronically to NEPOOL Counsel for circulation to NEPOOL Participants, and by overnight delivery to the affected state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before March 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before March 18, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers 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. 02–5169 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–83–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

February 27, 2002.

Take notice that on February 22, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part

[1] Natural Gas Pipeline Company of America, 98 FERC ¶ 61,099 (2002).

of its FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 23F, with an effective date of January 1, 2002.

Tennessee states that the revised tariff sheet is being filed in compliance with the March 10, 1998 Stipulation and Agreement filed in Docket No. RP97–149, *et al.,* and approved by the Commission on April 29, 1998 (the GRI Settlement), *Gas Research Institute,* 83 FERC ¶61,093 (1998), *order on reh'g,* 83 FERC ¶61,331 (1998), and the Commission's Letter Order approving the Gas Research Institute's Year 2002 Research, Development and Demonstration Program and 2001–2005 Five-Year Plan issued on September 19, 2001 in Docket No. RP01–434. Tennessee further states that the revised tariff sheet reflects a decrease in the Gas Research Institute surcharges for 2002 for the FT–IL Rate Schedule.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5176 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–161–000]

Viking Gas Transmission Company; Notice of Tariff Filing

February 27, 2002.

Take notice that on February 21, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheet to become effective April 1, 2002:

2nd Rev Eleventh Revised Sheet No. 6B

Viking states that the purpose of this filing is to make Viking's annual adjustment to its Load Management Cost Reconciliation Adjustment in accordance with Section 154.403 of the Commission's Rules and Regulations, 18 CFR 154.403 and Section 27 of the General Terms and Conditions of Viking's FERC Gas Tariff.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, 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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5177 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 2631–007 Massachusetts

Woronoco Hydro, LLC, Notice of Availability of Environmental Assessment

February 27, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Woronoco Hydroelectric Project, located on the Westfield River in Hampden County, Massachusetts. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Any comments (an original and 8 copies) should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments 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. For further information, contact Allan E. Creamer at (202) 219–0365 or *allan.creamer@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5173 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Draft Environmental Assessment Accepted for Filing and Soliciting Motions To Intervene and Protests

February 27, 2002.

Take notice that the following hydroelectric application, including an applicant prepared draft environmental assessment, have been filed with the Commission and are available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 469–013.

c. *Date Filed:* October 30, 2001.

d. *Applicant:* ALLETE, Inc., d.b.a. Minnesota Power Inc.

e. *Name of Project:* Winton Hydroelectric Project.

f. *Location:* On the Kawishiwi River near the City of Ely, in Lake and St. Louis Counties, MN. The project occupies federal lands within the Superior National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Paulson, Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802, *jpaulson@mnpower.com*, 218–722–5642, ext. 3569.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us*, 202–219–2778.

j. *Deadline for filing motions to intervene and protests:* 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 Commissions, 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person that is on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The license application has been accepted for filing, but is not ready for environmental analysis. When the license application is ready for environmental analysis, a public notice will be issued soliciting comments, recommendations, terms and conditions, and prescriptions.

l. *Description of the Project:* The project consists of the following two developments:

The Winton Development consists of the following existing facilities: (1) The Winton Dam comprising: (a) A 227-foot-long earth dike; (b) a 29-foot-high, 176-foot-long spillway section; (c) an 84-foot-long Taintor gate and log sluice section; (d) an 80-foot-long stop-log gate section; (e) an 111-foot-long and a 120-foot-long non-over-flow section; (f) a 176-foot-long forebay; and (g) a 1,250-foot-long earth dike; (3) a 2,982-acre reservoir comprising the Garden, Farm, South Farm, and Friday Lakes at a normal water surface elevation of 1,385.67 feet USGS; (4) two 215-foot-long, 9-foot-diameter underground penstocks extending to; (5) a powerhouse containing two generating units with a total installed capacity of 4,000 kW; and (6) other appurtenances.

The Birch Lake Reservoir Development consists of: (1) A 7-foot high, 227-foot-long dam comprising; (a) a 72-foot-long Taintor gate section; and (b) an 85-foot-long sluice gate section; and (2) the 7,624-acre Birch Lake reservoir at normal water surface elevation of 1,420.5 feet USGS. This development provides water storage for the Winton Development.

m. 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). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received at the Commission on or before the specified deadline date.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing pertains; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5172 Filed 3–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Workshop; Better Stakeholder Involvement: How To Make It Work

February 27, 2002.

The Office of Energy Projects is initiating the second phase of its Better Stakeholder Involvement Series. These workshops will explore ways to help make the pre-filing stakeholder involvement work. They stem from the staff's report entitled: ''Ideas For Better Stakeholder Involvement In The Interstate Natural Gas Pipeline Planning Pre-Filing Process' which was a product of the seminars held last year and the latter part of 2000.[1] This first workshop will be held in Atlanta, Georgia on Thursday, April 4, 2002. We plan to conduct future workshops around the country throughout the upcoming year.

We are again inviting interstate natural gas companies; Federal, state and local agencies; landowners and other non-governmental organizations with a continuing interest in developing successful strategies for involving people in the pre-filing process. The purpose of these workshops is to discuss how stakeholders are implementing the ideas outlined in the staff report. We will not discuss the merits of any pending or planned pipeline projects.

Please join us as we continue to explore and develop ways to enhance the project design and streamline the regulatory process. In a series of panel discussions stakeholders will be sharing their experiences in interactive sessions. Presentations will be made by the staff of the Commission's Office of Energy Projects, various Federal and state agencies, natural gas company representatives, and private landowners.

The objective will be to better define the pre-filing actions. This will aid in identifying and resolving issues, improving the quality of applications, and achieving quicker approval by the Commission for projects required by the public convenience and necessity. Case studies which can be used as examples will be highlighted.

The workshop will be held at the Atlanta Capitol Plaza, 450 Capitol Avenue, SW, Atlanta, Georgia 30312, phone: 404–591–2000, fax: 404–591–1999 Atlanta, Georgia, from 9:15 a.m. to 12:30 p.m. A preliminary agenda and directions to the hotel are enclosed.

[1] The staff report can be downloaded from the FERC web-site at www.ferc.gov or requested by e-mail at: *gasoutreach@ferc.gov.*

If you plan to attend or have suggestions for the agenda, please respond by March 29, 2002 via facsimile to Roberta Coulter at 202/219–2722, or you may email our team at: gasoutreach@ferc.gov. Please include in the response the names, addresses, and telephone numbers of all attendees from your organization.

To help us enhance our panel discussions, please consider, and forward to us, issues and/or questions you would like to have addressed at the meetings. If you have any questions, you may contact any of the staff listed below:

Richard Hoffmann—202/208–0066

Lauren O'Donnell—202/208–0325

Jeff Shenot—202/219–2178

Howard Wheeler—202/208–2299

J. Mark Robinson,

Director, Office of Energy Projects.

Preliminary Workshop Agenda

Better Stakeholder Involvement: How To Make It Work

April Workshop

9 a.m. Introduction, workshop objectives

9:15 a.m. Panel One—The Challenge at Headquarters, A Broad Overview

- How can you develop company-wide commitment to stakeholder outreach?
- How do you implement the ''corporate commitment?''

10 a.m. Panel Two—Agency Panel

- Agency experiences with early involvement in a project.
- What went well and what might be improved?

10:30 a.m. Break

10:45 a.m. Panel Three—Citizen

- How can it work for us?
- Why should a landowner be involved?

11:15 a.m. Panel Four—Company Case Study

- Experience with specific projects:

1. What went well?
2. Where there were problems with implementation?
3. How to get around the barriers.

- Examples of resolving issues.

12 p.m. Comments/Discussion/Next Steps

- Implementation Strategies.

1 p.m. Adjourn

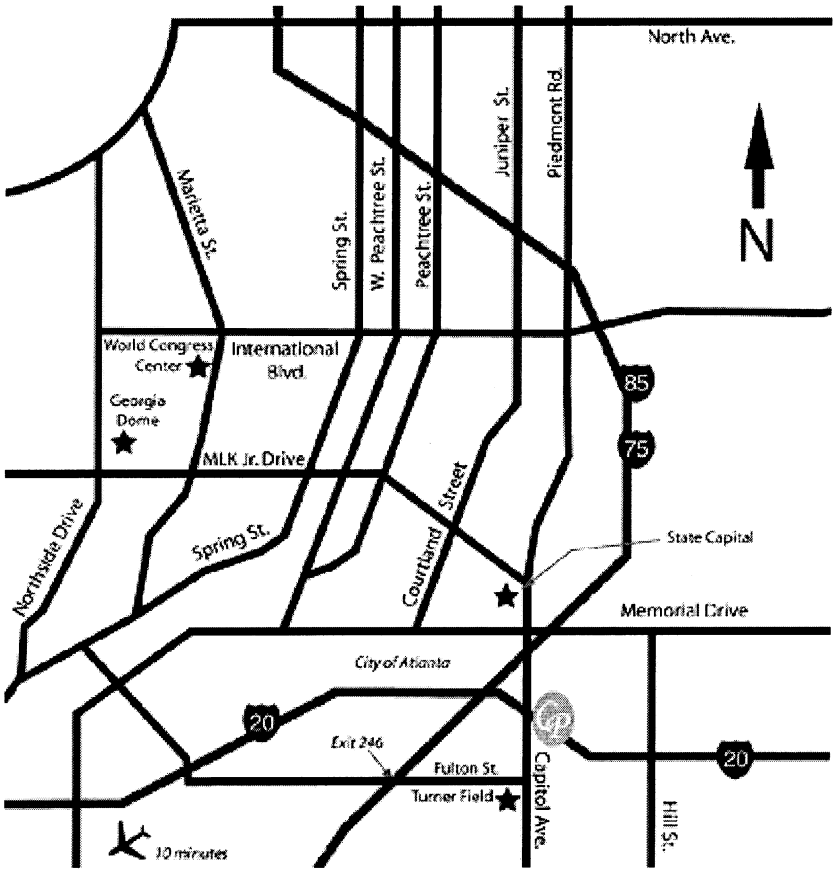
BILLING CODE 6717–01–P

Atlanta Capitol Plaza
450 Capitol Avenue, SW, Atlanta, Georgia 30312
phone: 404-591-2000
fax:404-591-1999

Directions

From Atlanta's Hartsfield International Airport - Take I-75/85 north to Exit 246, turn right onto Fulton Street. At the second light, turn left onto Capitol Avenue. Hotel is immediately on the right.

I-85 South - Exit 246, toward Fulton Street. Turn left onto Fulton Street. At the second light, turn left onto Capitol Avenue. Hotel is immediately on the right.



[FR Doc. 02–5168 Filed 3–4–02; 8:45 am]
BILLING CODE 6717–01–C

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–9]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's

regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *Auby.susan@epamail.epa.gov*, or download off the internet at *http://www.epa.gov.icr* and refer to EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1367.06; Regulation of Fuels and Fuel Additives: Gasoline Volatility: Reporting Requirements in 40 CFR part 80.27; was approved 12/17/2001; OMB No. 2060–0178; expires 12/31/2004.

EPA ICR No. 1831.02, NESHAP for Ferroalloys Production in 40 CFR part 63 subpart XXX; was approved 12/17/2001; OMB No. 2060–0391; expires 12/31/2004.

EPA ICR No. 1800.02; Information Requirements for Locomotives and Locomotive Engines in 40 CFR part 92; was approved 12/14/2001; OMB No. 2060–0392; expires 12/31/2004.

EPA ICR No. 1805.03; National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills; in 40 CFR part 63, subpart MM; was approved 12/14/2001; OMB No. 2060–0377; expires 12/31/2004.

EPA ICR No. 1573.07; Part B Permit Application, Permit Modifications, and Special Permits (Corrective Action Management Proposed Rule); in 40 CFR parts 264 and 270; was approved 12/12/2001; OMB No. 2050–0009; expires 03/31/2003.

EPA ICR No. 1935.01; Standardized Permit for RCRA Hazardous Waste; in 40 CFR parts 267 and 270, 264; was approved 12/12/2001; OMB No. 2050–0182; expires 12/31/2004.

EPA ICR No. 1669.03; Lead-based Pre-Renovation Information Dissemination—TSCA Sec. 406(b); in 40 CFR part 745, subpart E; was approved 12/13/2001; OMB No. 2070–0158; expires 12/31/2004.

EPA ICR No. 0938; General Administrative Requirement for Assistant Programs (Lobbying and Litigation Certification Amendment); was approved 12/13/2001; OMB No. 2030–0020; expires 12/31/2002.

EPA ICR No. 0309.10; Registration of Fuels and Fuel Additives: Requirements for Manufacturers in 40 CFR part 79; was approved 12/05/2001; OMB No. 2060–0150; expires 01/31/2004.

EPA ICR No. 1692.04; NESHAP for Petroleum Refineries in 40 CFR Part 63, subpart CC; was approved 12/05/2001; OMB No. 2060–0340; expires 12/05/2004.

EPA ICR No. 1591.13; Reformulated Gasoline and Conventional Gasoline; Requirements for Parties in the Gasoline Distribution Network; in 40 CFR part 80, subpart D,E,F; was approved 12/05/2001; OMB No. 2060–0277; expires 04/30/2004.

EPA ICR No. 0328.08; Spill Prevention, Control and Countermeasures (SPCC) Plans; in 40 CFR part 112; was approved 12/19/2001; OMB No. 2050–0021; expires 06/30/2002.

EPA ICR No. 1503.04; Data Acquisition for Registration; was approved 12/21/2001; OMB No. 2070–0122; expires 12/31/2004.

Short Term Extensions

EPA ICR No. 1432.20; Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances; OMB No. 2060–0170; on 12/14/2001 OMB extended the expiration date through 01/30/2002.

EPA ICR No. 0783.40; Motor Vehicle Emission Standards and Emission Credits Provisions; in 40 CFR part 86; OMB No. 2060–0104; on 12/18/2001 OMB extended the expiration date through 02/28/2002.

Withdrawn/Continued

EPA ICR No. 1665.05; Final Rule for Elimination or Special Treatment for Category of Confidential Business Information; in 40 CFR part 2, subpart B; OMB No. 2020–0003; this ICR was withdrawn from OMB review.

Comment Filed

EPA ICR No. 1963.01; NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards; on 12/05/2001 OMB filed comment.

Dated: February 25, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–5183 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7153–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP for Marine Vessel Loading Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Marine Vessel Loading Operations (Subpart Y); EPA ICR# 1679.04; OMB Control Number 2060–0289, expiration date February 28, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 4, 2002.

ADDRESSES: Send comments, referencing EPA ICR No.1679.04 and OMB Control No. 2060–00289, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *Auby.susan@epamail.epa.gov,* or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No.1679.04. For technical questions about the ICR contact Virginia Lathrop by phone at (202) 564–7057, by E-mail at *lathrop.virginia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Marine Vessel Loading Operations (Subpart Y); ICR No.1679.04; OMB Control Number 2060–0289, expiration date February 28, 2002. This is a request for extension of a currently approved collection.

Abstract: This collection is for record keeping and periodic reporting information to EPA Regional Offices and delegated states. The information concerns compliance information for the emissions relating to loading of

marine tank vessels with petroleum and gasoline. Delegated states and EPA Regional Offices use the data to determine compliance with the NESHAP rule. The purpose is to assure compliance with emission requirements in 40 CFR part 63, subpart Y. In general, records will be stored on site and shown to inspectors when requested. These will be hard copy records for the most part. Other information for periodic reports are sent to the state or to the Regional Office. It will cost 105 facilities, a total of 28,131 hours each year at a total cost of $1,535,817.

Under sections 40 CFR part 63, subpart Y, information collection is mandatory, not voluntary. All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on August 17, 2001 (66 FR 43253); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 32 hours to prepare excess emissions. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Marine Tank Vessel Loading Operations.

Estimated Number of Respondents: 105.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 28,131 hours per year.

Estimated Total Annualized Capital, O&M Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No.1679.04 and OMB Control No. 2060–0289 in any correspondence.

Dated: February 25, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–5184 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–2]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in American Foundrymen's Society, et al. v. EPA, No. 00–1208 (D.C. Circuit). This case concerns the National Emission Standard for Hazardous Air Pollutants for Secondary Aluminum Production, 40 CFR part 63, subpart RRR, published at 65 FR 15710 on March 23, 2000. The proposed settlement agreement was lodged with the United States Court of Appeals for the District of Columbia Circuit on January 11, 2002.

DATES: Written comments on the proposed settlement agreement must be received by April 4, 2002.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed settlement agreement was also lodged in the case with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on January 11, 2002.

SUPPLEMENTARY INFORMATION: EPA promulgated the National Emission Standard for Hazardous Air Pollutants for Secondary Aluminum Production, 40 CFR part 63, subpart RRR, on March 23, 2000. 65 FR 15170. Because aluminum die casters and aluminum foundries may conduct some of the same operations as other secondary aluminum producers, Subpart RRR was intended to apply to those die casters and foundries which conduct such operations.

During the original rulemaking, representatives of the aluminum die casters and foundries argued that they are not really secondary aluminum producers and should therefore be wholly exempt from the rule. In response, EPA agreed that not all die casters and foundries engage in secondary aluminum operations, and that those who do not should not be subject to the rule. EPA also agreed during the rulemaking to permit die casters and foundries to melt contaminated internal scrap without thereby becoming subject to the standard. However, industry representatives insisted that too many facilities would remain subject to the standard. Immediately prior to promulgation, EPA agreed that it would withdraw Subpart RRR as applied to aluminum die casters and foundries and develop a separate MACT standard for these facilities.

After promulgation of the rule, the Petitioners the American Foundrymen's Society, the North American Die Casting Association, and the Non-Ferrous Founders' Society (''Petitioners'') petitioned for judicial review. The parties then negotiated an initial settlement agreement establishing a process to effectuate the commitment by EPA to develop a new MACT standard for these facilities, which was lodged with the D.C. Circuit on July 31, 2000. In that first settlement, EPA agreed that it would stay the current standard for these facilities, collect comprehensive data to support an alternate standard, and then promulgate an alternate standard. However, while collecting information to support the new standard, the parties began exploring the possibility of a new settlement agreement which would be based instead on amendments of the current standard.

In the new settlement, EPA has agreed to propose changes in the present standard which would permit customer returns to be treated as internal scrap, and would permit facilities operated by the same company at different locations to be aggregated for purposes of determining what is internal scrap. Some other technical changes intended to eliminate potential anomalies in applicability determinations will also be proposed. The settlement requires the EPA Administrator to sign a proposed rule incorporating these changes by May

10, 2002, and to take final administrative action concerning that proposal by December 13, 2002.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: February 22, 2002.

Alan W. Eckert,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–5189 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–3]

Environmental Laboratory Advisory Board (ELAB) Meeting Dates, and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of teleconference meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will have a teleconference meeting on March 20, 2002, at 11 A.M. EST to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed include: (1) Update on recommendations to restructure the National Environmental Laboratory Accreditation Conference (NELAC) to allow it to better serve the future needs of EPA, the States, and the private sector; (2) approaches to facilitate NELAP accreditation of smaller environmental laboratories; (3) review of ELAB recommendations to EPA; and (4) the reports from ELAB work groups. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, PO Box 93478, Las Vegas NV 89193, faxed to (702) 798–2261, or emailed to *kantor.edward@epa.gov.* Members of the public are invited to listen to the teleconference calls, and time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Edward Kantor at 702–798–2690 to obtain teleconference information. The number of lines are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual.

Gareth Pearson,

Acting Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–5186 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7152–7]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Carroll & Dubies Site, Town of Deer Park, Orange County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Carroll & Dubies Site (''Site'') located in the Town of Deer Park, Orange County, New York. The settlement requires the settling parties, Kolmar Laboratories, Inc. and Wichhen Products, Inc. to pay $75,000 in reimbursement of EPA's past response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before April 4, 2002.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Carroll & Dubies Site located in the Town of Deer Park, Orange County, New York, Index No. CERCLA–02–2002–2009. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Sharon E. Kivowitz, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3183.

Dated: February 14, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

[FR Doc. 02–5188 Filed 3–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Meeting Notice Correction

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on February 15, 2002 announcing a meeting of the Network Reliability and Interoperability Council to be held on Monday, March 22. The document incorrectly specified that March 22 was a Monday.

FOR FURTHER INFORMATION CONTACT: Robert Kimball at 202–418–2339 or TTY 202–418–2989.

Correction

In the **Federal Register** of February 15, 2002 in FR Doc. 02–3696, on page 7178, correct the **DATES** caption to read:

DATES: Friday, March 22, 2002 at 10 a.m. to 1 p.m.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–5255 Filed 3–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Application Form for Single Lot or Structural Amendments to National Flood Insurance Program Maps.

Type of Information Collection: Revision of a Currently Approved Collection.

OMB Number: 3067–0257.

Abstract: FEMA Form 81–92 is designed to assist requesters in gathering information that FEMA needs to determine whether a certain single-lot property or structure is likely to be flooded during a flood event that has a one-percent annual change of being equaled or exceeded in any given year (base flood). FEMA Form 81–92A is a Spanish version of FEMA Form 81–92 and, as such, only one of the two formas would be required for any one application.

Affected Public: Individual or Households, Business or Other For-Profit, and State, Local or Tribal Government.

Number of Respondents: 9,000.

Estimated Time per Respondent: FEMA Form 81–92, 2.4 hours and FEMA Form 81–92A, 2.4 hours.

Estimated Total Annual Burden Hours: 21,600 hours.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *muriel.anderson@fema.gov.*

Dated: February 27, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 02–5159 Filed 3–4–02; 8:45 am]

BILLING CODE 6718–01–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 April 1, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. The Baraboo Bancorporation, Inc., Baraboo, Wisconsin; to acquire 100 percent of the voting shares of The Bancorp, Inc., Cedarburg, Wisconsin, and thereby indirectly acquire Northwoods State Bank, Elcho, Wisconsin.

Board of Governors of the Federal Reserve System, February 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–5197 Filed 3–4–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of new system of records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records. The proposed system is titled ''Claims Payment System For Medicare's ''Healthy Aging'' Demonstration Project (CPS–HA), HHS/CMS/CBC, System No. 09–70–0539.'' CMS proposes to establish a new system of records containing enrollment and claims payment information plus research-related survey data, in support of a short-term demonstration project testing new potential benefits in the Medicare program.

The primary purpose of the system of records is to manage and maintain information needed to pay Medicare claims under the research demonstration program known as the Healthy Aging project (HA) including its component known as the Medicare Stop Smoking Program (MSSP). The system of records will enable CMS to: enroll and communicate with eligible Medicare beneficiaries who volunteer to participate in HA initiatives, communicate with clinicians and other providers and suppliers who submit claims payable under HA demonstrations, review submitted claims and pay those conforming to applicable payment criteria and federal law, and develop, maintain, and analyze research information showing the

potential impact of HA interventions on the quality and cost of health care services in Medicare. Information retrieved from this system of records will also be disclosed to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; assist another Federal or State agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; facilitate research on the quality and effectiveness of care provided; and, combat fraud and abuse in certain health benefits programs. We have provided background information about the proposed system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on February 25, 2002. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: James Coan, Division of Health Promotion and Disease Prevention, Center for Beneficiary Choices, CMS, Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–9168.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

Statutory and Regulatory Basis For System of Records

The authority to conduct the demonstration project for which the system of records is needed is section 402(a) of Public Law 90–248, as amended by section 222(b)(2) of Public Law 92–603, 42 U.S.C. 1395b–1(a)

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The CPS–HA includes the Medicare Health Insurance Claim (HIC) Number, sex, race, age, zip code, state and county. It also includes claims information related to HA claims, answers to enrollment questionnaires and other information needed to confirm a beneficiary's eligibility for enrollment and ongoing participation in the demonstration, and other survey and research information needed to pay claims, administer the HA program, and develop research reports on the study's findings.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release CPS–HA information that can be associated with an individual patient as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with CPS–HA information and identifiers. Non-identifiable data includes individual records with CPS–HA information and masked identifiers or CPS–HA information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the purpose of the CPS–HA system. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; *e.g.,* developing and refining payment systems and monitoring the quality of care provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CPS–HA without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving HA quality of care. PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to State agencies.

The PROs may use these data to support quality improvement activities and other PRO responsibilities as detailed in Title XI, sections 1151–1164.

3. To another Federal or State agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, or

c. To improve the state survey process for investigation of complaints related to health and safety or quality of care and to implement a more outcome oriented survey and certification program.

Other Federal or State agencies in their administration of a Federal health program may require CPS–HA information in order to support evaluations and monitoring of quality of care for special populations or special care areas, including proper payment for services provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

4. To an individual or organization for research on the utilization of inpatient rehabilitation services as well as evaluation or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or for understanding and improving payment projects.

The CPS–HA data will provide an opportunity for comprehensive research, evaluation and epidemiological projects regarding HA patients. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to HA patients and the policy that governs the care.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require CPS–HA information for the purpose of combating fraud and abuse in such Federally funded programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purposes of collecting the information.

9. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMO) or a competitive medical plan (CMP)) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a third party administrator; utilize the information solely for the purpose of processing the individual's insurance claims; and

b. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, CMP, HMO, and HCPP may require CPS–HA information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper payment for services provided.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

IV. Safeguards

The HHS CPS–HA system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects (e.g., tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Index Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites will implement the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system:

Access to all servers is to be controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server is to require a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-on—Authentication is to be performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are to be determined and implemented at the agency level.
- Inactivity Lockout—Access to the NT workstation is to be automatically locked after a specified period of inactivity.
- Warnings—Legal notices and security warnings are to be displayed on all servers and workstations.
- Remote Access Security—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is to be controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; Information Resource Management (IRM) Circular #10; HHS Automated Information Systems Security Program; the CMS Information Systems Security Policy, Standards, and Guidelines Handbook; and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of CPS–HA data. CPS–HA

information on patients is submitted to CMS through standard systems. Accuracy of the data is important since incorrect information could result in the wrong payment for services and a less effective process for assuring quality of services. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of CPS–HA data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Dated: February 20, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0539

SYSTEM NAME:

Claims Payment System For Medicare's ''Healthy Aging'' Demonstration Project (CPS–HA).

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will contain claims and demographic information on Medicare beneficiaries who have volunteered to participate in Medicare's Healthy Aging program including specific demonstration projects such as the MSSP, as well as claims-related information for submissions from providers and suppliers providing services that are covered under Medicare exclusively within the HA program and its demonstration projects. The system will also retain research information such as enrollment questionnaires and survey data from participants in the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records will contain demographic and claims-related information on Medicare beneficiaries who have elected to participate, as well as eligibility and enrollment data collected through voluntary surveys, payment information for providers and vendors submitting claims, and other information designed to support the enrollment, claims payment, and research reporting functions of the CPS–HA program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority to conduct the demonstration project for which the system of records is needed is section 402(a)(1)(G) and (a)(2) of Public Law 90–248, as amended by section 222(b)(2) of Public Law 92–603, 42 U.S.C. 1395b–1(a)(1)(G) and (a)(2).

PURPOSE(S):

The primary purpose of the system of records is to manage and maintain information needed to pay Medicare claims under the research demonstration program known as the Healthy Aging project (HA) including its component known as the Medicare Stop Smoking Program (MSSP). The system of records will enable CMS to: Enroll and communicate with eligible Medicare beneficiaries who volunteer to participate in CPS–HA initiatives, communicate with clinicians and other providers and suppliers who submit claims payable under CPS–HA demonstrations, review submitted claims and pay those conforming to applicable payment criteria and federal law, and develop, maintain, and analyze research information showing the potential impact of CPS–HA interventions on the quality and cost of health care services in Medicare. Information retrieved from this system of records will also be disclosed to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; assist another Federal or State agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; support constituent requests made to a Congressional representative; support litigation involving the agency; facilitate research on the quality and effectiveness of care provided; and, combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CPS–HA without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care. PROs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to State agencies.

3. To another Federal or State agency:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program

funded in whole or in part with Federal funds, or

c. To improve the state survey process for investigation of complaints related to health and safety or quality of care and to implement a more outcome oriented survey and certification program.

4. To an individual or organization for research on the utilization of inpatient rehabilitation services as well as evaluation or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health epidemiological, or for understanding and improving payment projects.

5. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof; or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

9. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMO) or a competitive medical plan (CMP)) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a third party administrator;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media. Input data arrives as paper claims in the case of provider or supplier claims, and eligibility and enrollment information such as the enrollment survey and follow-up monitoring surveys are recorded in hard copy before transcription to magnetic media.

RETRIEVABILITY:

The Medicare records are retrieved by health insurance claim (HIC) number of the beneficiary. Provider IDs and supplier registration numbers are used to facilitate inquiries into specific claims as needed.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Information Systems Security, Standards Guidelines Handbook and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

CMS will retain identifiable CPS–HA data for a total period of 25 years. Data residing with the designated claims payment contractor shall be returned to CMS at the end of the third project year, with all data then being the responsibility of CMS for adequate storage and security.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Beneficiary Choices, CMS, Mailstop C5–19–16, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), address, age, and sex, and social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

1. Enrollment data on Medicare beneficiaries volunteering to participate in CPS–HA projects will come from beneficiaries who report the information to CMS officials or contractors, pursuant to information collection activities approved at the Office of Management and Budget and through an Institutional Review Board as required by law. Follow-up surveys and questionnaires for participants will also come directly from beneficiaries' voluntary reporting.

2. Claims data will come through voluntary submissions of providers, suppliers, and others seeking reimbursement for covered services provided to a Medicare beneficiary, in accordance with the provisions of the demonstration and the conditions of participation in the Medicare program.

3. Research analysis and reporting will come from the enrollment data, surveys and questionnaires provided by beneficiaries, as well as the analysis and compilations of this information developed by CMS officials, contractors, research collaborators, and others supporting the CPS–HA project and fulfilling the conditions of confidentiality, privacy and security outlined in this Notice.

4. Eligibility information as well as financial or quality reporting related to program integrity or other matters may also interact with existing CMS registries such as those relating to Medicare claims, provider registries, beneficiary enrollment databases, national claims histories.

5. Provider information to document the eligibility of a provider, supplier, or other person or entity to submit Medicare claims under the CPS–HA program, receive continuing medical education within the scope of the CPS–HA program, or for other uses will come from existing Medicare records of eligible providers and suppliers (as may be modified according to the needs of the CPS–HA program).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–5140 Filed 3–4–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee Meetings; Correction

In FR Doc. 01–28108 appearing on pages 56689–56690 in the issue for Friday, November 9, 2001, the dates and location of some Health Professions and Nurse Education Special Emphasis Panel meetings have changed. The meeting scheduled on April 22–25, 2002, has changed to March 18–21, 2002; the meeting on April 29–May 2, 2002, has changed to April 2–5, 2002; the meeting on May 6–9, 2002, has changed to April 15–18, 2002; and the location of these meetings has changed to the Hilton Silver Spring. The correct information is as follows:

Name: Health Careers Opportunity Program Peer Review Group.
Date and Time: March 18–21, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: March 18, 2002, 8 a.m. to 10 a.m.
Closed on: March 18, 2002, 10 a.m. to adjournment (approximately 6 p.m.), March 19–21, 2002, 8 a.m. to adjournment (approximately 6 p.m.).

Name: Basic Nurse Education and Practice Grants Program Peer Review Group I.
Date and Time: April 2–5, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: April 2, 2002, 8 a.m. to 10 a.m.
Closed on: April 2, 2002, 10 a.m. to adjournment (approximately 6 p.m.), April 3–5, 2002, 8 a.m. to adjournment (approx. 6 p.m.).

Name: Basic Nurse Education and Practice Grants Program Peer Review Group II.
Date and Time: April 15–18, 2002.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.
Open on: April 15, 2002, 8 a.m. to 10 a.m.
Closed on: April 15, 2002, 10 a.m. to adjournment (approximately 6 p.m.), April 16–18, 2002, 8 a.m. to adjournment (approximately 6 p.m.).

Dated: February 26, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–5132 Filed 3–4–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory Council on Nurse Education and Practice scheduled to meet during the month of April 2002.

Name: National Advisory Council on Nurse Education and Practice
Date and Time: April 11, 2002, 8:30 a.m.–5 p.m., April 12, 2002, 8:30 a.m.–3 p.m.
Place: Hotel Washington, Pennsylvania Avenue, NW., at 15th St., Washington, DC 20004

The meeting is open to the public.

Agenda: Department, Agency, Bureau, and Division administrative updates; introduction of new members; discussion of Council administrative procedures; and presentations of national and regional nursing workforce issues with special emphasis on nursing faculty shortage to be followed with workgroup sessions on nursing workforce and education for practice improvement to address strategies for intervention and recommendations impacting Title VIII legislation.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1405.

Dated: February 27, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–5161 Filed 3–4–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Sciences (NIEHS)

The NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) 1. Announces a Future Evaluation of Ethylene Glycol (CASRN: 107–21–1) and Propylene Glycol (CASRN: 57–55–6), 2. Requests Public Input on These Chemicals, and 3. Solicits the Nomination of Individuals Qualified to Serve on an Expert Panel.

Evaluation of Ethylene Glycol and Propylene Glycol

The CERHR plans to hold an expert panel evaluation of ethylene glycol (CASRN: 107–21–1) and propylene glycol (CASRN: 57–55–6). The exact date for this expert panel meeting is not yet set, but is tentatively planned for the fall of 2002. Additional details about the meeting, including the date and location, will be published in a future **Federal Register** notice.

The CERHR will convene an expert panel to evaluate the reproductive and developmental toxicity of ethylene glycol and propylene glycol. The expert panel will consist of approximately 12 scientists, selected for their scientific

expertise in various aspects of reproductive and developmental toxicology and other relevant areas of science. The expert panel meeting will be open to the public with time scheduled for oral public comment.

Ethylene glycol is a high production volume chemical used chiefly in antifreeze for heating and cooling systems. There is widespread exposure to ethylene glycol due to its use as an automotive antifreeze and as a de-icer for aircraft. The toxicology database on ethylene glycol includes recent mechanistic data and occupational exposure information. Propylene gylcol, similar in structure to ethylene glycol, is used as an antifreeze, de-icing solution, and in various paints and coatings. Unlike ethylene glycol, propylene glycol is approved for use in various food additives, drugs, and cosmetics.

Request for Public Input

The CERHR invites input from the public and other interested parties on ethylene glycol and propylene glycol including toxicology information from completed and ongoing studies, information on planned studies, as well as information about current production levels, human exposure, use patterns, and environmental occurrence. Information and comments should be forwarded to the CERHR at P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 541–3455 (phone), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (email). Information and comments received by May 6, 2002 will be made available to the CERHR staff and the expert panel for consideration in the evaluation.

The CERHR also invites nominations of qualified scientists to serve on the expert panel for the ethylene glycol/propylene glycol evaluation. Panelists are primarily drawn from the CERHR Expert Registry and/or the nomination of other scientists who meet the criteria for listing in that registry. Criteria for listing in the CERHR Expert Registry include: formal academic training and experience in a relevant scientific field, publications in peer-reviewed journals, membership in relevant professional societies, certification by an appropriate scientific Board or other entities, and participation in similar committee activities. All panel members serve as individual experts in their specific areas of expertise, not as representatives of their employer or other organization. Scientists on the expert panel will represent a wide range of expertise including developmental toxicology, reproductive toxicology, epidemiology, general toxicology, pharmacokinetics, exposure assessment, and biostatistics. Nominations received by May 6, 2002 will be considered for the Ethylene Glycol/Propylene Glycol Expert Panel and inclusion in the CERHR Expert Registry. Nominations should be forwarded to the CERHR at the address given above.

Additional Information about CERHR

The NTP and the NIEHS established the CERHR in June 1998 [FR (Vol. 63, No. 239, p. 68782, December 1998)]. The purpose of the CERHR is to provide scientifically-based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans may be exposed. The CERHR also serves as a resource for information on various environmental exposures and their potential to affect pregnancy and child development. Its Web site (*http://cerhr.niehs.nih.gov*) has information about common concerns related to fertility, pregnancy and the health of unborn children, and links to other resources for information about public health.

The CERHR follows a formal, open process for the selection and review of chemicals nominated for evaluation of potential reproductive and/or developmental hazards. This process includes an evaluation of the chemical(s) by an external scientific panel that follows specific guidelines in conducting its assessment and provides multiple opportunities for public input. As a final step in the process, the CERHR publishes a NTP–CERHR report on each chemical that includes the expert panel report, public comments, and a NTP brief. A summary of the review process was recently published in the **Federal Register** (Vol. 66, No. 136, pp. 37047–37048, July 16, 2001). The process and guidelines are posted on the CERHR Web site and are available in hard copy by contacting the CERHR (address provided above). The CERHR welcomes the nomination of chemicals to be considered for future evaluation or qualified scientists for its expert registry. These nominations can be made through the CERHR Web site or by contacting the CERHR directly (see address above).

Dated: February 8, 2002.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–5138 Filed 3–4–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following websites: *http://workplace.samhsa.gov; http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS

Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115, (Formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.)

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Drive,

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR, June 9, 1994, pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Spokane, WA 99204, 509–755–8991/800–541–7891x8991
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
Universal Toxicology Laboratories (Florida), LLC, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–717–0300, 800–419–7187x419, (Formerly: Integrated Regional Laboratories, Cedars Medical Center, Department of Pathology)
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851
US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–5164 Filed 3–4–02; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

2002 Industry Awards Program and Luncheon

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of 2002 Industry Awards Program and Luncheon.

SUMMARY: This notice announces the 2002 Industry Awards Program and Luncheon. This is the 20th year that MMS will honor outstanding companies for their exemplary safety and pollution prevention records, and is the fourth year for our MMS-wide industry awards program.

DATES: The awards program and luncheon will be held on Thursday, April 11, 2002.

ADDRESSES: The program and luncheon will be held at the Hotel Inter-Continental Houston, 2222 West Loop South, Houston, Texas 77027. The hotel's phone number is (713) 961–7272. To obtain registration information, please log onto the MMS temporary Web site at: *http://www.temporarygomr.com/hq/industry_awards.html*

FOR FURTHER INFORMATION CONTACT: Offshore Minerals Management, Debbie O'Brien at 703–787–1579; Marcia Oliver at (703) 787–1043; Minerals Revenue Management, David Izon at 202–208–3731; Jan Therkildsen at (303) 231–3604; or Mary Louise Miller at (303) 231–3386.

SUPPLEMENTARY INFORMATION: This is the 20th year that MMS will honor outstanding companies for their exemplary safety and pollution prevention records, and is the fourth year for our MMS-wide industry awards program.

The following awards will be presented:

- Corporate Leadership Award (CORLA) recognizing Corporation employees for performing an act or service that enhances MMS's ability to meet Offshore or Minerals Revenue Management mission objectives.
- Corporate Citizen Award (CORCIT) recognizing lessees that have provided the most outstanding performance across MMS—in both offshore operational safety and mineral revenues financial compliance.
- Secretary of the Interior's Mineral Revenues Stewardship Award recognizing exceptional performance by companies that report production and pay royalties for Federal and Indian minerals leases. A company's outstanding performance is reflected by low error rates, timely payment, and responsiveness to compliance and enforcement requests and orders.
- Safety Award for Excellence (SAFE) recognizing OCS oil and gas facility operators and contractors for outstanding safety and pollution prevention performance. It also highlights companies that conduct offshore oil and gas activities safely and in a pollution-free manner, although such activities are complex and carry a significant element of risk. The SAFE Award Categories are as follows:
  - High Activity
  - Moderate Activity
  - Contractor—Drilling
  - Contractor—Production

Dated: February 15, 2002.

Lucy Querques Denett,

Acting Director, Minerals Management Service.

[FR Doc. 02–5139 Filed 3–4–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Northeast Region; Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Meetings

In accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–109 Section 102(c)), the National Park Service is preparing an

Environmental Impact Statement (EIS) for the resource study of the Washington-Rochambeau Revolutionary Route, as authorized by Pub. L. 106–473. The historic route stretched from Newport, Rhode Island to Yorktown, Virginia, passing through Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and what is now Washington D.C. A segment of the return route extended from Providence, Rhode Island to Boston, Massachusetts. The purpose of the EIS/study is to determine if the route is eligible to become a National Historic Trail. If the National Park Service determines that the route is nationally and historically significant, retains integrity and has potential for public recreation, Congress could designate the route a National Historic Trail. The study will identify alternative management options to preserve and interpret the route. The alternatives will describe the: Proposed route; current land ownership and use; areas adjacent to the trails to be used for developmental purposes; estimated cost of acquisition of lands or interest in lands, if any; cost of developing and maintaining the trail; the proposed Federal administering agency; participation of State and local governments and private and public organizations; anticipated levels of public use; economic and social benefits of public use; and the potential impacts of recreational use to trail resources.

The NPS will hold three public scoping meetings beginning in March 2002, that will provide opportunities for all interested parties to express concerns, make suggestions and raise issues concerning the future direction and development of the Washington-Rochambeau Revolutionary Route study. The first public meeting will be held in Hartford, Connecticut on Thursday March 14, from 1:30–3:30 p.m. in the Stanley Room of the South Congregational Church, 277 South Main Street. The second meeting will be held in Yorktown, Virginia on Saturday, March 16, from 1:30–3:30 p.m. in Theater 2 of the Yorktown Visitor Center, Colonial National Historical Park, located at the intersection of Route 238 and Colonial Parkway. A third meeting is being scheduled in Trenton, New Jersey. Additional information about the meetings and the EIS/study will be available on the National Park Service website, *www.nps.gov/revwar/*.

Those persons who wish to comment orally or in writing, or who require further information, are invited to contact Brian_Aviles, Project Manager, at the National Park Service Boston Support Office, 15 State Street, Boston, Massachusetts 02109–3572, (617) 223–5319, –5164 fax, or via email at *Brian_Aviles@nps.gov.*

The Draft EIS/study report is expected to be completed and available for public review in mid 2004. After public and interagency review of the draft document, comments will be considered and a final EIS/study report, followed by a Record of Decision, will be prepared.

Dated: January 29, 2002.

Lawrence Gall,

Acting Superintendent, Boston Support Office.

[FR Doc. 02–5234 Filed 3–4–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Commission for the Review of FBI Security Programs

ACTION: Notice of closed meeting.

Date: March 25, 2002.

Place: Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

Status: This meeting will be closed to the public.

Matters to be Considered: The purpose of the Commission for the Review of FBI Security Programs is to provide advice and recommendations on policy and procedural issues as they relate to the security programs of the Federal Bureau of Investigation. The Attorney General of the United States Department of Justice (DOJ) has determined that the meetings of the Commission will be closed to the public in accordance with the United States Code, Title 5, Section 552b, due to the likelihood that sensitive national security information regarding intelligence and counter-intelligence investigative techniques and procedures will be reviewed and discussed in an open forum. The potential release of this information could seriously jeopardize the integrity of our internal security programs; ongoing intelligence and counter-intelligence investigations, and could also endanger the lives and safety of FBI Special Agents, other intelligence community personnel, and individuals supporting our intelligence personnel.

FOR FURTHER INFORMATION CONTACT: George Ellard, Deputy Chief Investigative Counsel, (202) 616–1327.

Richard M. Rogers,

Deputy Chief Investigative Counsel, Commission for the Review of FBI Security Programs, Department of Justice.

[FR Doc. 02–5237 Filed 3–4–02; 8:45 am]

BILLING CODE 0A92–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsoft Corporation; Notice of Availability of Public Comments

Notice is hereby given that the United States will publish the Tunney Act public comments that it received relating to the Revised Proposed Final Judgment in United States v. Microsoft Corporation, Civil Action No. 98–1232, pending in the United States District Court for the District of Columbia, by following the procedures described in this notice.

On February 15, 2002, the United States made electronic copies of 47 detailed comments, which were provided to the Court on February 14, 2002, available on the Department of Justice's website at *www.usdoj.gov/atr/cases/ms-major.htm.* The United States will make available electronic copies of all comments on the Department of Justice's website at *www.usdoj.gov/atr/cases/ms-comments.htm,* and the Department's website will also provide a means for interested persons to download a compressed version, *i.e.,* a ''Zip'' file, of the full text of all comments. The comments should be available on the website beginning March 4, 2002. Also beginning March 4, 2002, interested persons may request a copy of the one or more CD–ROMs containing the full text of the comments, at no cost (one copy to each individual and five copies to each library or other institution that submits a request), by contacting the Department of Justice in Washington, DC at Antitrust Documents Group, 325 7th Street NW., Ste. 215 North, Washington, DC 20530, Telephone: (202) 514–2481, Fax: (202) 514–3763. The United States will file the comments on CD–ROM with the Clerk of the United States District Court for the District of Columbia. Furthermore, the United States will, as soon as possible, publish in the **Federal Register** a complete list of the names of all individuals or entities submitting comments, the number of pages of each comment, a unique tracking number assigned to each comment so that each comment may be located on the Department's website, an index to the comments organized by six categories based primarily on the level of detail of the comment, and the United States' response to the comments. Separately, the United States will submit to the

Federal Register the full text of the public comments for publication.

Constance K. Robinson,
Director of Operations.

[FR Doc. 02–5147 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

CHM Wholesale Co.; Denial of Application

On or about April 11, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to CHM Wholesale Company (CHM), located in Chicago, Illinois, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated June 8, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoeophedrine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified CHM that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was returned, marked ''Return to Sender—Moved, Left No Address.'' The OTSC subsequently was sent by certified mail to the residential address of CHM's owner, Hyun Jin Kim (Kim), where it was received, June 4, 2001, as indicated by the signed postal return receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that CHM is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that on or about June 8, 2000, an application was received by the DEA Chemical Operations Registration section on behalf of CHM for DEA registration as a distributor of the two above-mentioned List I chemicals. The DEA pre-registration inspection on September 7, 2000, revealed that Kim and CHM had no prior experience in distributing List I chemical products. Kim further stated that he had lived in Chicago only three months. He stated he previously had lived in Houston, Texas, where he had operated a number of different retail businesses.

CHM provided a supplier list in response to DEA's request. The DEA investigation revealed both of CHM's proposed suppliers were the recipients of 15 Warning Letters between them. These letters notified the recipients that List I chemicals distributed by them were being diverted and were being discovered in various illicit settings consistent with the clandestine manufacture of methamphetamine. CHM was unable to provide a list of proposed customers.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

The Administrator finds factors one, four, and five relevant to this application.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security arrangements, in that there was no separate secure enclosure at the proposed business location wherein the List I chemical products would be stored. The inspection also revealed inadequate recordkeeping arrangements, in that CHM failed to provide information regarding planned controls to prevent diversion.

Also relevant to this factor, Kim stated to DEA investigators that he planned to relocate CHM's business premises. No further information has been received by DEA regarding the relocation, however, and therefore DEA has been unable to inspect the new proposed business location.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Kim could provide no verifiable evidence of previous experience related to handling or distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that both of CHM's proposed suppliers were the recipients of 15 Warning Letters between them; one of the proposed suppliers was the subject of a current DEA investigation regarding the diversion of listed chemicals. CHM could not provide a customer list, so DEA investigators could not verify a legitimate customer base for the distribution of List I chemical products. The investigation further showed CHM had inadequate security and no apparent recordkeeping arrangements for listed chemical products. The Administrator concludes that CHM is not prepared to be entrusted with the responsibilities of a DEA registration.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of CHM.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by CHM Wholesale Company be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,
Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Robert Walker, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid registered return receipt to Mr. Hyun Jin Kim, CHM Wholesale

Company, 2428 W. Jarvis, Chicago, Illinois 60645.

Karen C. Grant.

[FR Doc. 02–5224 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Denver Wholesale; Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Denver Wholesale, located in Denver, Colorado, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Denver Wholesale's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Denver Wholesale and its owner, Hassan, Zaghmot (Zaghmot) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 003378DHY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Denver Wholesale that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On August 9, 2000, a copy of the OTSC was served upon Zaghmot's attorney. No request for a hearing or any other response was received by DEA from Denver Wholesale or Zaghmot; nor anyone purporting to represent it in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Denver Wholesale is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is inter alia a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that at the time Denver Wholesale became registered with the DEA in July of 1998 as a distributor of List I chemicals, Zaghmot was personally served with the DEA notices informing him that ephedrine and pseudoephedrine are diverted for use in clandestine methamphetamine laboratories, as well as the notice informing him that possession or distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance is a violation of the Controlled Substances Act.

The DEA investigation shows Denver Wholesale has received millions of dosage units of pseudoephedrine from distributors nationwide since being registered with DEA. In calendar year 1999, Denver Wholesale received 18 million dosage units of 60 mg. pseudoephedrine from one of its six List I chemical suppliers alone.

During September, 1999, and on June 20, 2000, Denver Wholesale provided DEA with customer lists. The lists showed no customers in California, yet Federal Express records document numerous large shipments of pseudoephedrine from Denver Wholesale to California, several of which were tracked directly to methamphetamine laboratories. Zaghmot used fictitious and non-existent business names and addresses in shopping pseudoephedrine to California.

In March of 2000, in Denver, Colorado, Zaghmot and other individuals loaded approximately 55 boxes containing over 15,000 bottles of pseudoephedrine 60 mg. tablets from a storage locker into a rented van, that was then packed with furniture obtained from thrift shops throughout the Denver area. The boxes were transported to a self-storage facility in California, from whence it was transported to several different locations at which laboratory equipment and chemicals consistent with the clandestine manufacture of methamphetamine were located. The individuals having access to the storage lockers were arrested and charged with conspiracy to manufacture methamphetamine. The rented van was stopped in Nevada, and a search revealed $233,960 in United States currency. The passenger, who had been observed by investigators assisting Zaghmot loading pseudoephedrine into the van, stated that he had driven the van from Denver to Sacramento, California, with a load of pseudoephedrine, and was returning to Denver for another load of the chemical.

On July 20, 2000, an undercover DEA agent purchased 120 bottles of Denver Wholesale-labeled pseudoephedrine product for $1000 in cash from a convenience store in Denver, Colorado. On July 25, 2000, the undercover agent returned for another purchase. In response to questioning from the convenience store owner, the undercover agent stated that he had used the previous purchase to manufacture methamphetamine. The convenience store owner sold the agent another 144 bottles of the same product, and informed the agent that he could provide as much as 100 cases (14,400 bottles) of pseudoephedrine. Larger quantities, however, would cost $1,500 a case. The undercover agent left, and the convenience store owner was observed to drive to Denver Wholesale, where he met with Zaghmot. The next day, the undercover agent contacted the convenience store owner, who stated that since the supplier did not know the agent, the supplier would only provide two cases at a time until a relationship was built.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Denver Wholesale's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Denver Wholesale's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as

determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Denver Wholesale and Zaghmot actively participated in the illegal diversion of pseudoephedrine knowing it would be used to manufacture methamphetamine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals that on July 27, 2000, a Federal Grand Jury in the District indicated Zaghmot and other individuals with violations of 21 U.S.C. 841(d)(2) (possession or distribution of a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance) and 846 (attempt or conspiracy to violate the Controlled Substances Act); as well as various money-laundering offenses. Zaghmot was arrested the next day. Search warrants were executed upon Denver Wholesale, a storage facility used by Zaghmot, and Zaghmot's residence. Totals of approximately 2,500 pounds of pseudoephedrine and $668,000 in United States currency were seized from Denver Wholesale, Zaghmot, and his co-conspirators.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Denver Wholesale or Zaghmot has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Zaghmot actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine. Denver Wholesale's customer list did not contain any customers from California. Yet DEA investigators observed Zaghmot and others loading pseudoephedrine into a rental van in Denver, Colorado, concealing the chemicals with thrift store furniture, and driving the van to a California self-storage facility. A search of the rental van as it was headed back to Colorado revealed $233,960 in United States currency.

In addition, the investigative file contains information obtained from Federal Express showing Denver Wholesale shipping large quantities of pseudoephedrine to California. Zaghmot used fictitious business names and addresses in making these shipments. A number of these shipments were traced directly to clandestine methamphetamine laboratories.

Thus the Administrator finds Denver Wholesale and Zaghmot violated 21 U.S.C. 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); and 830(b)(1)(a) (failure to report any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)). Therefore, the Administrator finds Denver Wholesale and Zaghmot significantly violated applicable federal law.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that Denver Wholesale significantly violated applicable law by illegally trafficking thousands of pounds of pseudoephedrine knowing it was being diverted to the manufacture of methamphetamine and further by failing to keep and maintain required records and failure to report suspicious listed chemical transactions. Zaghmot was indicated and arrested for various violations pertaining to controlled substances and listed chemicals.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 003378DHY, previously issued to Denver Wholesale, be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Charles Trant, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Hassan Zaghmot, Denver Wholesale, 8200 East Pacific Place, Suite 103, Denver, Colorado 80231.

Karen C. Grant.

[FR Doc. 02–5221 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Daniel E. Epps, Jr., Denial of Application

On or about March 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Daniel E. Epps, Jr. (Epps), located in Matthews, North Carolina, notifying him of an opportunity to show cause as to why the DEA should not deny his applications, dated May 2, 2000, and July 26, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Mr. Epps that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received March 12, 2001, as indicated by the signed postal return receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Mr. Epps is deemed to have waived his right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about May 2, 2000, an application was submitted by and on behalf of Daniel E. Epps, Jr., for DEA registration as a distributor of the List I chemical ephedrine. On July 26, 2000, Mr. Epps requested that his application be amended to include the List I chemicals pseudoephedrine and phenylpropanolamine.

During the July 29, 2000, pre-registration inspection, Mr. Epps informed a DEA investigator that he proposed to sell various products from his home, including List I chemical products. While Mr. Epps alleged he had 29 years of experience in the grocery/retail business, he admitted he had no experience in the handling of listed chemical products. Mr. Epps stated he planned to sell List I chemical products to convenience stores and gas stations. He also stated that he wished to distribute certain List I chemical products in 60 count bottles.

The DEA investigation showed that Mr. Epps' residence, where he proposes to conduct business, is not zoned for business purposes in Mecklenburg County, North Carolina. Additionally, as of the date of the July 26, 2000, inspection, Mr. Epps had not applied with the North Carolina State authorities for a Change of Use Permit for the operation of a business from his residence.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administ6rator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g., Energy Outlet,* 64 FR 14,269 (1999). *see also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security at the proposed business location. Mr. Epps proposes to store List I chemical products in an unlocked room in the basement of his residence. The residence does not have any sort of alarm system, and the DEA investigation shows that the residence goes unoccupied for long periods of time. Moreover, Mr. Epps admittedly has no experience in handling List I chemicals.

Regarding factor two, the applicant's compliance with applicable law, the Administrator notes that the DEA investigation showed North Carolina State or local law requires zoning approval and a Change of Use Permit cooperate a business from this residence. Mr. Epps did not possess such a permit, and challenged DEA investigators when this lack was noted. There is no evidence in the investigative file that Mr. Epps ever applied for or received the required Change of Use Permit.

Regarding factor three, there is no evidence that Mr. Epps has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that Mr. Epps has no previous experience in handling listed chemicals or distributing listed chemical products.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that due to the applicant's lack of experience in handling listed chemicals, a lack of adequate security at the proposed business location, and his failure to obtain the required zoning approval to operate a business from his residence, the Administrator concludes it would be inconsistent with the public interest to grant this application.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Mr. Daniel E. Epps, Jr. be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Robert Walker, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Daniel E. Epps, Jr., 539 Walnut Point Drive, Matthews, North Carolina 28105.

Karen C. Grant.

[FR Doc. 02–5223 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled

substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 31, 2001, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 4, 2002.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administrator.

[FR Doc. 02–5218 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

North American Group Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to North American Group, located in Kissimmee, Florida, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended North American Group's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determine is reached in these proceedings. The OTSC informed North American Group of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004407NAY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified North American Group that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On July 31, 2000, a copy of the OTSC was affixed to the front door of the business premises, since no one appeared to be present at the business. On this same date, a second copy of the OTSC was sent certified mail, return receipt requested, to North American Group. The mailed OTSC was returned marked ''attempted—unclaimed.'' No request for a hearing or any other response was received by DEA from North American Group nor anyone purporting to represent it in this matter. Therefore, the Administrator of the DEA, finding that (1) Thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes North American Group is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is inter alia a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that Hesham Nabut (Nabut) is the owner and president of North American Group (NAG). On July 2, 1999, DEA conducted a preregistration inspection of NAG, and at that time provided Nabut with the DEA notices informing him that pseudoephedrine products are used in the illicit manufacture of methamphetamine; and that possession or distribution of a List I chemical knowing or having reasonable cause to believe it will be used to manufacture a controlled substance is a violation of the Controlled Substances Act.

DEA approved NAG's application for registration to distribute List I chemicals July 6, 1999. Between July 23, 1999, and September 30, 1999, NAg ordered approximately 2,592,000 pseudoephedrine tablets from one manufacturer. In October of 1999, NAG attempted to obtain an additional 3–4 million pseudoephedrine tablets from two other manufacturers.

On September 14 and 15, 1999, law enforcement personnel seized approximately 11,300 bottles of pseudoephedrine tablets from clandestine methamphetamine laboratories in California. Using the lot numbers on the seized bottles, DEA traced the product back to NAG. On October 15, 1999, DEA seized 4000 bottles of pseudoephedrine tablets form a clandestine methamphetamine laboratory in Los Angeles, California. Using the lot numbers on the seized bottles, DEA traced the product back to NAG.

In December of 1999, a DEA Confidential Source revealed that Hesham (last name unknown) and three other individuals shipped 16 boxes, with an aggregate weight of 1000 pounds, to Portland, Oregon. On

December 17, 1999, DEA seized the boxes, and found them to contain approximately 668,160 pseudoephedrine tablets.

On January 7, 2000, a DEA Confidential Source revealed that Hesham Nabut was significantly involved in supplying pseudoephedrine to individuals for the illicit manufacture of methamphetamine. The Confidential Source further revealed that Nabut falsified documents, purportedly showing that he supplied pseudoephedrine to gift shops, but that in reality, the pseudoepherine is shipped to California and Oregon for the illicit manufacture of methamphetamine. A DEA Confidential Source also revealed that one of Nabut's shipments to Portland, Oregon was seized in late 1999 or early 2000.

On January 13, 2000, DEA investigators observed an associate of Nabut loading large cardboard boxes from NAG's warehouse into a van. Eleven of these boxes were subsequently seized in California, and were found to contain 45 cases of 60 mg. pseudoephedrine tablets. The shipping labels bore fictitious names for both the shipper and the receiver, and a fictitious address for the shipper.

On May 18, 2000, DEA investigators observed the owner of Denver Wholesale, a pseudoephedrine distributor also under investigation by DEA, arrive at the Orlando Airport where he was met by Nabut. On May 18 and 19, 2000, DEA investigators observed Nabut and this individual meet with several other individuals currently under investigation by DEA for the illicit diversion of pseudoephedrine.

On May 19, 2000, DEA investigators observed the delivery of 20 large boxes of pseudoephedrine to NAG. On June 7, 2000, DEA investigators observed the delivery of an additional 25 large boxes to NAG. These boxes appeared similar to those previously received by NAG that DEA had confirmed contained pseudoephedrine.

On June 8, 2000, DEA Diversion Investigators conducted an administrative inspection of NAG. The Diversion Investigators observed 45 boxes of pseudoephedrine tablets. Each box contained 27,648 dosage units, for a total of 1,244,160 dosage units of pseudoephedrine.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of NAG's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to § 824(d), these grounds also provide the basis for the revocation of NAG's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experiences in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety. Like the public interest for practitioners pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16.422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the DEA investigation reveals Nabut contacted DEA from Jordan on July 24, 2000, regarding the alleged theft of 45 boxes of pseudoephedrine by an individual currently under investigation by DEA in a related case. Nabut alleged that 45 boxes of pseudoephedrine were removed from NAG by his brother and transferred to a public storage unit facility. Nabut admitted that the storage unit was rented by the same individual that he claims stole the chemicals, and further, he admitted the individual is not a business associate. DEA obtained a copy of the rental agreement, which stated that only the individual renting the unit had access. Nabut had left the United States and as in Jordan during the time these events allegedly took place. The DEA investigation showed, however, that only three boxed were originally place in the storage unit, and that these boxes were removed by an unknown individual sometime before July 7, 2000. The location of the 45 boxes of pseudoephedrine that DEA investigators had observed at NAG during the June 8, 2000 administrative inspection is unknown. All 45 boxes were missing at the time a criminal search warrant was executed upon NAG July 29, 2000.

The Administrator finds the circumstances of this alleged theft very suspicious, and finds that regardless of the truth of the matter, NAG and Nabut failed to adequately protect this substantial amount of pseudoephedrine (totaling 1,244,160 dosage units) from diversion. Neither Nabut nor his brother was able to give investigators an adequate explanation regarding why the chemicals were removed from the NAG premises. The chemicals, or at least three boxes appearing to contain chemicals, were moved into a storage unit rented and controlled by a third party. Finally, Nabut apparently orchestrated the entire scenario from Jordan. The Administrator concludes that this finding alone provides ample basis for revocation of NAG's DEA registration.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter contains information from a reliable DEA Confidential Source relating to Nabut's involvement in diverting pseudoephedrine to the manufacture of methamphetamine. The information is as follows: Nabut is significantly involved in a criminal organization devoted to the illegal supplying of pseudoephedrine to clandestine methamphetamine laboratories. The organization operates in Chicago, Los Angeles, New York, Florida, and Oregon. Nabut purchases the chemical for approximately $220 per case, and he sells it for approximately $800–900 per case, and sometimes as high as $3600 per case. Nabut collects pseudoephedrine from various sources and distributes the chemical using UPS and other parcel service facilities, and also occasionally rental vans. The pseudoephedrine allegedly is distributed to retailers such as gift shops, and also to individuals not authorized to receive the chemical. The chemicals do not ever actually reach their purported destination, however, but are diverted through the organization to the illicit manufacture of methamphetamine. Nabut created false shipping and receiving records for the chemicals allegedly shipped to the retailers. These records were created for the specific purpose of deceiving DEA and other law enforcement agencies. Nabut has exported a 4-door Mercedes Benz automobile and approximately $1.5 million dollars to Jordan in

anticipation of fleeing the United States to avoid arrest.

The Administrator finds the Confidential Source information provides substantial evidence that NAG and Nabut are in violation of 21 U.S.C. 841(d)(1) (possession of a listed chemical with intent to manufacture a controlled substance); 841(d)(2) (possession/distribution of a listed chemical knowing or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance); 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); 842(a)(5) and (10) (failure to keep required records). (**Note:** subparagraphs (d) and (g) have been redesignated as (c) and (f)). Therefore, the Administrator finds NAG and Nabut significantly violated applicable federal law.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is not evidence that NAG or Nabut has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds NAG and Nabut significantly violated applicable law, as set forth in factor two above, and further, failed to adequately protect against the diversion of a substantial quantity of a List I chemical, as set forth in factor one, above.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that NAG and Nabut significantly violated applicable law by actively participating in the diversion of pseudoephedrine to the manufacture of methamphetamine, and the falsification of records to conceal such activity. Furthermore, Nabut has fled the United States in anticipation of possible prosecution for his crimes.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 004407NAY, previously issued to North American Group, be, and it hereby is, revoked; and any pending applications for renewal or modification of such registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Linden Barber, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Hesham Nabut, North American Group, 2792 Michigan Avenue, Suite 406, Kissimmee, Florida 34744.

Karen C. Grant.

[FR Doc. 02–5219 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Paragon Associates; Denial of Application

On or about May 4, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Paragon Associates (Paragon), located in City of Industry, California, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated April 23, 1999, for a DEA Certificate of Registration as an exporter of the List I chemical phenylpropanolamine (PPA), pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Paragon that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received May 16, 2001, as indicated by the signed postal receipt. On June 7, 2001, DEA received a letter from Paragon, purportedly responding to the issues set forth in the OTSC. This letter did not address whether Paragon would request or waive its right to the hearing. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Paragon is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. The Administrator has considered Paragon's letter received June 7, 2001, pursuant to 21 CFR 1309.53(b).

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). PPA is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant and its abuse is a growing problem in the United States.

The Administrator finds that on April 23, 1999, an application was received by the DEA Chemical Operations Registration section on behalf of Paragon for DEA registration as an exporter of the List I chemical phenylpropanolamine (PPA).

On June 17, 1999, DEA investigators conducted a pre-registration investigation of Paragon's proposed business premises, and interviewed the president, Mr. George Fan. Mr. Fan stated that Paragon had been an exporter of vitamins and food supplements since 1997, and now intended to export the List I chemicl PPA to a firm in Taipei, Taiwan.

DEA investigators were unable to verify the existence of Paragon's intended customer because of misleading information provided by Mr. Fan. The DEA investigation revealed Paragon had submitted an application for a permit to handle listed chemicals to the State of California, Bureau of Narcotic Enforcement (BNE). BNE records revealed that Paragon intended to export listed chemicals to China, not Taiwan. The DEA investigation further revealed BNE did not issue a permit to Paragon to allow listed chemicals to enter California.

The DEA investigation also revealed that neither Paragon nor its intended customer have been authorized by the Government of Taiwan to import any listed chemicals. DEA subsequently learned that Paragon had submitted an order to a U.S. supplier of PPA in June of 1999 and offered a copy of its application for DEA registration as proof of registration, despite Paragon's never having been registered to handle listed chemicals. Finally, the DEA investigation revealed that in 1997 and 1998, Paragon acquired domestic supplies of PPA without being authorized to do so, and shipped the chemicals without filing the required

export declaration with DEA, in violation of applicable law.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g., Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the Administrator finds that the DEA investigation revealed significant violations with regard to the applicant's security and recordkeeping arrangements. On July 9, 1998, Paragon purchased 485,000 PPA 75 mg. capsules from a supplier located in New York; and on March 5, 1999, Paragon purchased an additional 488,000 capsules of the same product from the same supplier. Mr. Fan admitted these chemicals were exported to Taiwan. Paragon failed to keep records of these regulated transactions, in violation of 21 U.S.C. 830(a) and 21 CFR 1310.03(a); 1310.04; and 1310.06. Paragon was a regulated person as defined by 21 U.S.C. 802(38) as a distributor and exporter of listed chemicals, and thus was required to keep records of regulated transactions. 21 U.S.C. 802(39)(A).

Regarding factor two, the applicant's compliance with applicable law, the Administrator finds that the evidence shows that Pentagon significantly violated applicable law by distributing List I chemicals on at least two separate occasions as set forth in the preceding factor, when not registered to do so, in violation of 21 U.S.C. 822 and 843(a)(9) and 21 CFR § 1309.21(a). In addition, Paragon exported List I chemicals without a DEA registration in violation of 21 U.S.C. 957(a)(2), and further failed to declare these exportations on the DEA Form 486, as required by 21 CFR 1313.21.

Regarding factor three, there is no evidence that Paragon nor Mr. George Fan has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the Administrator finds that the DEA investigation revealed that the applicant significantly violated applicable law, as set forth in factors one and two. In addition, Paragon exported List I chemicals without a DEA registration in violation of 21 U.S.C. 957(a)(2), and further failed to declare these exportations on the DEA Form 486, as required by 21 CFR 1313.21. The DEA investigation further revealed that pursuant to the State of California Health and Safety Code, Section 111001.1, businesses are required to report to BNE imports and exports of products containing PPA 21 days prior to the transaction date. Paragon never notified BNE of its PPA imports into California, set forth in factor one.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that Paragon significantly violated applicable law by distributing and exporting List I chemicals without being registered to do so, and by failing to keep and maintain required records of regulated List I chemicals transactions.

The DEA investigation further revealed Mr. Fan was not forthcoming with information concerning his customers. In response to questions, Mr. Fan provided misleading and incomplete information. Mr. Fan's proposed distribution network led through a number of parties whose relationships were not clear, and concerning whose relationships Mr. Fan failed to provide information. When specifically asked, Mr. Fan was unable to adequately describe Paragon's proposed distribution network. The investigation also revealed that Paragon's proposed Taiwan customer did not have the required Import License, and therefore was not authorized to import PPA from the U.S. or any other country.

In addition, review of Paragon's BNE application indicated that Paragon intended to export PPA to China, not Taiwan. Mr. Fan further alleged he initiated the registration process in 1997; in fact, the DEA registration process was not initiated until June of 1999.

The DEA investigation further revealed that, prior to initiating the DEA registration process, on April 23, 1999, Paragon had placed an order for 500,000 to 1,000,000 PPA capsules with a U.S.-based pharmaceutical manufacturer. When confronted with this order by DEA investigators on June 17, 1999, and notified that he was unauthorized to handle any listed chemicals until registered with DEA, Mr. Fan stated that, while he had completed the order in April of 1999, his secretary had only mailed it that week. Then Mr. Fan stated he placed the order in advance so that when he received his DEA registration, the order would be ready for shipment, because his customer in Taiwan was expecting this order.

Finally, the investigation revealed that Mr. Fan stated to DEA investigators that List I chemicals would comprise approximately ten percent of his business; however, on his application with BNE, Mr. Fan indicated that PPA would be his primary business.

The Administrator finds this lack of candor, taken together with Paragon's and Mr. Fan's demonstrated cavalier disregard of the statutory law and regulations concerning the registration, distribution, exporting, and recordkeeping requirements of List I chemicals, makes questionable Paragon's and Mr. Fan's commitment to the DEA regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. *Aseel Incorporated, Wholesale Division,* 66 FR 35,459 (2001); *Terrence E. Murphy,* 61 FR 2,841 (1996). The Administrator further finds that Paragon's letter received June 7, 2001, in response to the OTSC contained only unsupported allegations, and pursuant to 21 U.S.C. 1309.53(b), the Administrator concludes that this evidence is entitled to little, if any, weight. The Administrator notes that the letter does not substantively dispute the facts underlying the occurrence of the violations of law and regulations set forth above.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Paragon Associates. The evidence indicates that the applicant has significantly violated applicable law by distributing and exporting List I

chemicals while not registered with DEA, and by failing to keep and maintain required records concerning regulated transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Paragon Associates be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Wayne Patrick, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. George Fan, Paragon Associates, 1300 John Reed Court, #13, City of Industry, California 91745.

Karen C. Grant.

[FR Doc. 02–5227 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Performance Construction, Inc.; Denial of Application

On or about December 6, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Performance Construction, Inc. (Performance), located in Lakeland, Florida, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated June 30, 2000, for a DEA Certificate of Registration as a manufacturer of List I chemicals and deny any request to modify its application to distribute List I chemicals, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Performance that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received December 11, 2000, as indicated by the signed postal receipt. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Performance is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that during a pre-registration inspection of Performance's premises on October 5, 2000, DEA investigators spoke with the president/owner of Performance, who stated that Performance was a general contractor, not engaged in the business of manufacturing, handling, or distribution of listed chemicals, nor did it have any knowledge or experience in this field. He further stated that Performance did not wish to manufacture listed chemicals, but proposed to be registered in order to make a one-time distribution of the List I chemical GBL to an individual also not engaged in the business of handling listed chemicals, purportedly for the purpose of stripping paint from a boat.

The Administrator notes that GBL (gamma-butrolactone) has use as an industrial solvent. GBL is also a known precursor chemical, however, and is readily synthesized into the Schedule I controlled substance GHB. Schedule I controlled substances have no known medical uses, and are highly subject to abuse. 21 U.S.C. 812(b).

DEA investigators contacted numerous marine manufacturers and boat refinishers in south Florida; however none were aware of the use of GBL in the marine industry or for the proposed use in vessel paint stripping. In fact, none of those contacted by DEA had even heard of GBL.

The Administrator further notes that a long-standing DEA policy prohibits the granting of registrations that are essentially ''shelf registrations,'' that is, registrations for which there is no intent to use. The granting of a registration for a one-time distribution of a chemical that is otherwise widely available from DEA registrants throughout the United States would be inconsistent with this long-standing DEA policy.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the pubic interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws related to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet*, 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

The Administrator finds that factors one and four are relevant to this case. The president/owner of Performance freely admitted his firm is a general contractor, and has no experience in handling listed chemicals. He further states he did not wish to manufacture the chemical, but only to make a one-time distribution pursuant to the request of a customer. There is no evidence concerning what measures, if any, Performance would take to prevent the diversion of the List I chemical. The DEA investigation showed Performance's proposed use of the chemical is not consistent with industry practice. The Administrator finds the public interest is not served by granting a DEA registration for a one-time distribution of a List I chemical to an entity with no experience in handling listed chemicals; having no intent to enter into the business of handling listed chemicals; for an alleged purpose inconsistent with industry practice; and where there is no evidence of controls to prevent the diversion of the chemical to the illicit manufacture of a Schedule I controlled substance.

Furthermore, granting this application would violate the long-standing DEA policy against ''shelf registrations.''

Therefore, for the above-stated reasons, the Administrator concludes that it woudl be inconsistent with the public interest to grant the application of Performance.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him

by 21 U.S.C. 823 adn 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Performance Construction, Inc., as a manufacturer and/or distributor, be denied. This order is effective April 14, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Wayne Patrick, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Daniel V. Heleski, Performance Construction, Inc., 308 West Highland Drive, Lakeland, Florida 33813.

Karen C. Grant.

[FR Doc. 02–5226 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

State Petroleum Inc.; Denial of Application

On or about January 23, 2001, the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to State Petroleum, Inc. (State Petroleum), located in Dearborn, Michigan, notifying it of an opportunity to show cause as to why the DEA should not deny in application, dated June 17, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrin, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified State Petroleum that, should no request for hearing be filed within 30 days, the right to a hearing would be waved.

The OTSC was received, as indicated by tbe signed postal return receipt, received by DEA February 12, 2001. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that State Petroleum is deemed to have waived its right to a hearing. After considering relevant material from the investigate file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act 21 u.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about June 17, 2001, an application was received by the DEA Chemical Operations Registration section on behalf of State Petroleum for DEA registration as a distributor of the two above-mentioned List I chemicals. The DEA pre-registration inspection on July 7, 2001, revealed that State Petroleum had no prior experience in distributing List I chemical products. A corporate representative stated to DEA investigators that State Petroleum was in the business of wholesaling automotive chemical and petroleum products. The DEA inspection revealed State Petroleum appeared unprepared to accept the responsibilities of a DEA registant. The inspection noted deficiencies in State Petroleum's proposed recordkeeping system that clearly show the firm's ability to comply with DEA's recordkeeping requirements. The DEA investigation also revealed a number of State Petroleum's proposed supplier was out of business and a random sampling of proposed customers either were not interested in distributing List I chemical products, or were already receiving List I chemical products from other suppliers.

Pursuant to 21 U.S.C. § 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet* 64 FR 14,269 (1999), *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

The Administrator finds factors one, four, and five relevant to this case.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate recordkeeping arrangements, in that State Petroleum intended to sell List I chemicals solely on a ''cash and carry'' basis, and there would be no computerized database with which to track sales to determine whether thresholds and recordkeeping requirements were being met. State Petroleum admitted that its proposed ''cash and carry'' plan for distribution of List I chemical products would be inadequate to meet DEA recordkeeping requirements.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that State Petroleum has no previous experience related to handling or distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that State Petroleum is unprepared to successfully meet the requirements of a DEA List I chemical registrant. State Petroleum admitted its proposed recordkeeping system would be inadequate to comply with DEA requirements. State Petroleum further could not explain any planned controls against diversion.

In addition, State Petroleum's proposed supplier was out of business, and a random sampling of its proposed customers either had no interest in List I chemical products, or were already receiving their List I chemical products from other suppliers. Thus State Petroleum failed to provide DEA with information demonstrating it had a legitimate source for List I chemical

products; and further failed to provide DEA with information demonstrating it had a legitimate customer base for List I chemical products.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of State Petroleum.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by State Petroleum, Inc. be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Wayne Patrick, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Mohammed Saghir, State Petroleum, Inc., 6200 Miller Road, Dearborn, Michigan 48126.

Karen C. Grant.

[FR Doc. 02–5225 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Transtar Distributors, Inc.; Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Transtar Distributors, Inc. (Transtar), located in Orlando, Florida, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Transtar's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Transtar and its owner/president, Nabil Maswadeh (Maswadeh) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004662TIY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Transtar that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On August 16, 2000, the OTSC was returned to DEA, marked ''Return To Sender—Unclaimed.'' No request for a hearing or any other response was received by DEA from Transtar or Maswadeh nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Transtar is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is inter alia a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that at the time of Transtar's pre-registration investigation on December 17, 1999, Maswadeh was personally served with the DEA notices informing him that ephedrine and pseudoephedrine are diverted for use in clandestine methamphetamine laboratories, as well as the notice of informing him that possession or distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance is a violation of the Controlled Substances Act.

The DEA investigation shows that by March, 2000, Transtar was amassing a large quantity of pseudoephedrine. On March 20, 2000, DEA investigators observed 19 large boxes containing approximately 100 cases of pseudoephedrine being delivered to Transtar. The shipment was received by a business associate of Maswadeh, who used a fictitious name when signing for the shipment. Maswadeh was present when this shipment was received.

Between March 20 and March 24, 2000, DEA investigators observed Maswadeh and his associate remove numerous large cardboard boxes from Transtar and place them into a storage unit. On March 24, 2000, DEA investigators observed Maswadeh ship three large boxes to California. A subsequent search of the boxes revealed approximately 3,036 bottles of pseudoephedrine, each bottle containing 120 tablets, for a total of 364,320 dosage units. The manufacturer's lot numbers and expiration dates had been scraped off of the bottles. The shipping label bore fictitious names for both the shipper and receiver, and also bore a fictitious address for the shipper.

During this same time period, DEA investigators on several occasions observed Maswadeh and his associate place items in a dumpster located near Transtar. A search of the dumpster revealed 24 large cardboard boxes bearing inscriptions indicating that the boxes had contained pseudoephedrine. A subsequent search of the dumpster revealed numerous labels containing lot numbers that had been scraped off pseudoephedrine bottles. Additional items recovered from the dumpster included: receipts and shipping documents indicating Transtar was receiving large amounts of pseudoephedrine from numerous suppliers; five sealed bottles of ephedrine with their lot numbers and expiration dates removed; and a Federal Express Airbill indicating that a 90 pound shipment was sent to California on March 3, 2000. The Airbill showed address information consistent with the California address to which Maswadeh had sent shipments of pseudoephedrine. The Airbill bore a fictitious name and address for the shipper.

On March 25 and 26, 2000, DEA investigators observed Maswadeh removing boxes of pseudoephedrine from the above-referenced storage unit. Also during this time, Maswadeh was observed placing items into a common

dumpster in his residential community. These items included the following: shipping documents and labels indicating Transtar received pseudoephedrine shipments from several manufacturers, and also hundreds of lot numbers that had been scraped off of pseudoephedrine bottles.

On April 19, 2000, DEA received information that Transtar was attempting to place an order with a pharmaceutical manufacturer in New York for 300,000 bottles of pseudoephedrine per month.

On June 1, 2000, DEA Confidential Source information revealed Maswadeh was willing to sell 240 cases of pseudoephedrine for the purpose of illegally manufacturing methamphetamine.

On June 7, 2000, a search warrant was served upon the above-referenced storage unit. DEA investigators seized approximately 240 cases of pseudoephedrine tablets. Some of the pseudoephedrine was still in bottles, and some was loose in plastic bags.

On June 10, 2000, Maswadeh met with an undercover DEA agent and agreed to transport the 240 cases of pseudoephedrine in a rented van.

Confidential Source information acquired by DEA indicates Maswadeh and his associates were selling pseudoephedrine to individuals on the West Coast knowing that the chemical was to be used in the illicit manufacture of methamphetamine.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Transtar's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to § 824(d), these grounds also provide the basis for the revocation of Transtar's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied *See, e.g. Energy Outlet*, 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., MD.*, 54 FR 16,422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Transtar and Maswadeh actively participated in the illegal diversion of pseudoephedrine knowing it would be used to manufacture methamphetamine.

Regarding the second floor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals substantial evidence indicating that Transtar and Maswadeh significantly violated applicable law. In shipping substantial quantities of pseudoephedrine using fictitious names and addresses and in removing or otherwise destroying labels and lot numbers, Maswadeh clearly was attempting to conceal his activities from law enforcement. In addition, Confidential Source information showed that Maswadeh was willing to sell 240 cases of pseudoephedrine for the stated purpose of illicit manufacture of methamphetamine, and even stated to a DEA undercover agent that he was willing to deliver the 240 cases of chemicals in a rented van he would provide. The Administrator finds these facts support the following violations of applicable law: Transtar and Maswadeh violated 21 U.S.C. 841(d)(1) (possession of a listed chemical with intent to manufacture a controlled substance); 841(d)(2) (possession/distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance); 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); 842(a)(5) and (10) (failure to keep required records); and 830(b)(1)(a) (failure to report any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)).

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Transtar or Maswadeh has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Maswadeh actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, as set forth in factor two, above.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that Transtar and Maswadeh significantly violated applicable law by illegally trafficking substantial quantities of pseudoephedrine knowing it was being diverted to the manufacture of methamphetamine and further by failing to keep and maintain required records and failure to report suspicious listed chemical transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 004662TTY, previously issued to Transtar Distributors, Inc., be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Linden Barber, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage

prepaid, registered return receipt to Mr. Nabil Maswadeh, Transtar Distributors, Inc., 6130 Edgewater Drive, Unit D, Orlando, Florida 32810.

Karen C. Grant.

[FR Doc. 02–5220 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Yemen Wholesale Tobacco and Candy Supply, Inc.; Revocation of Registration

On January 9, 2001, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Yemen Wholesale Tobacco and Candy Supply, Inc. (Yemen), located in Yonkers, New York, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible fro the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR §§ 0.100 and 0.104, the OTSC suspended Yemen's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Yemen of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 003952YAY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Yemen that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On January 9, 2001, a copy of the OTSC was served upon Hasham Alkaifi, Vice President of Yemen. No request for a hearing or any other response was received by DEA from Yemen or Alkaifi nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Yemen is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is a person who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is *inter alia* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

Yemen became registered with the DEA January 25, 1999, as a distributor if List I chemicals. During the pre-registration inspection of Yemen's premises, Yemen was asked to provide a list of proposed suppliers of List I chemical products, and a list of proposed customers for its List I chemical products. DEA investigators subsequently attempted to contact each of the proposed suppliers and customers. Investigation showed that Yemen had made no arrangements with any of the suppliers or customers.

On or about August 18, 1999, 802 bottles of 60 count, 60 mg. pseudoephedrine tablets were sized en route to an individual in Oakland, California. The address was not a DEA registered location authorized to handle List I chemicals. The investigation showed the bottles originated from Yemen, and were sent to Oakland from a business called ''One Hour Photo'' in New York, also not authorized by DEA to buy or sell List I chemicals.

On August 30, 1999, DEA investigators seized 1,056 bottles of 120 count, 60 mg. pseudoephedrine tablets from a public storage facility in San Pablo, California. The storage facility was not a DEA registered location authorized to handle List I chemicals. An individual was arrested at the time of this seizure, and an additional 3,408 bottles of the same product were seized from his vehicle. The DEA investigation revealed all 4,464 bottles originated from Yemen.

On October 5, 1999, DEA investigators interviewed the arrested individual referenced in the preceding paragraph. That individual stated that Mr. Alkafa, President of Yemen, was one of a number of persons who diverted pseudoephedrine from the East Coast to the West Coast. He further stated that those who wanted to purchase pseudoephedrine for the illicit manufacture of methamphetamine would purchase a money order at his market, made payable to Alkafa. The money order would be sent to Alkafa, who would deliver the pseudoephedrine to California.

On or before December 8, 1999, Yemen received a Warning Letter from DEA. This letter informed Yemen that its List I chemical product, labeled ''Action Release'' pseudoephedrine, had been discovered in various illicit settings consistent with the illicit manufacture of the controlled substance methamphetamine. The letter specified two locations; one at San Pablo, California in August, 1999, the other at Oakland, California, in August, 1999.

The DEA investigation also revealed Yemen purchased in excess of 3,594,000 dosage units of 60 mg. pseudoephedrine tablets subsequent to the receipt of this Warning Letter, between February 4, 2000, and July 25, 2000.

On August 7, 2000, a criminal search warrant was served upon Yemen. The search revealed Yemen kept no records of its purchases or sales of pseudoephedrine. The DEA investigation showed, however, that Yemen purchased approximately 26 million dosage units of pseudoephedrine from various suppliers between November 22, 1999, until July 25, 2000.

Also during the August 7, 2000, execution of the search warrant, DEA investigators discovered Yemen had stored approximately 1.6 million dosage units of 60 mg. pseudoephedrine in an off-site storage unit at an unregistered address. This pseudoephedrine was seized, and Hasham Alkaifi, Vice President of Yemen and nephew of Alkafa, was interviewed. He stated to investigators that Alkafa was in Yemen (the country), but was continuing to order pseudoephedrine on behalf of Yemen Wholesale. Alkaifi had rented the storage unit and stored the pseudoephedrine there at Alkafa's director. Alkaifi was not aware of any customers for the 1.6 million dosage units at the storage facility.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Yemen's DEA Certificate of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to § 824(d), these grounds also provide the

basis for the revocation of Yemen's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under this section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet,* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Yemen and Alkafa actively participated in the illegal diversion of pseudoephedrine knowing it would be used to manufacture methamphetamine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file that Yemen and Alkafa, and Alkaifi significantly violated applicable law in the following primary instances: first, by trafficking List I chemicals knowing that they would be diverted to the illicit manufacture of methamphetamine; second, by failing to keep and maintain required records; and third, by failing to report suspicious transactions. The confession of the individual arrested in California implicated Yemen and Alkafa in the active diversion of pseudoephedrine to the illicit manufacture of methamphetamine; the DEA search of August 7, 2000, revealed Yemen failed to keep or maintain any records of its pseudoephedrine sales and purchases whatsoever; and the DEA investigation showed Yemen failed to report various suspicious transactions (money orders from California for List I chemical products; sales to individuals not registered with DEA as authorized to handle List I chemicals; failure to report transactions involving extraordinary quantities of a listed chemical).

The Administrator thus finds substantial evidence showing Yemen and Alkafa violated 21 U.S.C. 841(d)(1) (possession of a listed chemical with intent to manufacture a controlled substance); 841(d)(2) (possession/distribution of a listed chemical knowing or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance); 841(g)(1) (knowing distribution of a listed chemical in violation of the Controlled Substances Act); 841(g)(2) (possession of a listed chemical with knowledge that recordkeeping or reporting requirements not adhered to); 842(a)(5) and (10) (failure to keep required records); and 830(b)(1)(a) (failure to report any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)).

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Yemen, Alkafa, or Alkaifi have any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Yemen and Alkafa actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, and completely ignored the responsibilities of a DEA registrant. Yemen was shipping pseudoephedrine individuals in California not registered with DEA. Yemen purchased almost 26 million dosage units of pseudoephedrine during an eight month period, yet failed to keep required records concerning these purchases and sales. At the time of the service of the criminal search warrant, Yemen continued to stockpile 1.6 million dosage units of pseudoephedrine in an unregistered off-site storage unit facility, for no stated legitimate purpose. The Administrator concludes that there is substantial evidence in the investigative file that this pseudoephedrine was also intended to be diverted to the illicit manufacture of methamphetamine.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds substantial evidence that Yemen significantly violated applicable law by illegally trafficking millions of dosage units of pseudoephedrine knowing it was being diverted to the manufacture of methamphetamine and further by failing to keep and maintain required records and failure to report suspicious listed chemical transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration 003952YAY, previously issued to Yemen Wholesale Tobacco and Candy Supply, Inc., be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration be, and hereby are, denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Brian Bayly, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Nagi Alkafa, Yemen Wholesale Tobacco & Candy Supplies, Inc., 350 South Broadway, Yonkers, New York 10705

Karen C. Grant.

[FR Doc. 02–5222 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under review: new collection; Violent Criminal Apprehension Program (VICAP) Sexual Assault Crime Analysis Report.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following formation collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on October 5, 2001, in Volume 66, Number 194, page 51071.

The purpose of this notice is to allow for an additional 30 day for public comment until April 14, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office Of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Officer, Washington, DC 20503. Comments may also be submitted to Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20004.

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:* Violent Criminal Apprehension Program (VICAP) Sexual Assault Crime Analysis Report.)

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: to be assigned. Department of Justice, Federal Bureau of Investigation, Violent Criminal Apprehension Program Unit.

(4) *Affected public who will be asked or required to respond, as as well as a brief abstract:* Primary: State, Local, or Tribal Government. Brief Abstract: Collects data at crime scenes (e.g., unsolved sexual assaults) for analysis by VICAP staff of the FBI. Law enforcement agencies reporting similar pattern crimes will be provided information to initiate a coordinated multi-agency investigation to expedite identification and apprehension of violent criminal offenders (e.g., serial rapists).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 respondents at an average of one hour per response.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 10,000 total burden 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, 601 D Street, NW, Suite 1600, Washington, DC 20004. Public comment on this proposed information collection is strongly encouraged.

Dated: February 26, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–5150 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request.

ACTION: 60-Day notice of information collection under review; Application for waiver of passport and/or visa; Form I–193.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 6, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of Passport and/or Visa.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–193. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form will be used by an alien who wishes to waive the documentary requirements for passports and/or visas due to an unforeseen emergency. The INS will use the information to determine whether applicants are eligible for entry into the United States under 8 CFR parts 212.1(b)(3) and 212.1(g).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 10 minutes (.166) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,150 annual burden hours.

If you have additional comments, suggestions, or need a copy of the

proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: February 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–5196 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Employment authorization document; Form I–765.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 11, 2001 at 66 FR 51970, allowing for a 60-day public comment period. No public comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 4, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Employment Authorization Document.

Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–765, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form is used by the INS to determine eligibility for the issuance of the employment document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,873,296 responses at 205 minutes (3.42 hours) per response.*

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,406,672 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Solan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office. United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: February 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–5195 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: 60-Day notice information collection under review: New collection: needs assessment for service providers of trafficking victims telephone survey.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by March 13, 2003. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to

Marvene O'Rourke, 202–514–9802, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, 8107th Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. 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) *The title of the form/collection:* Needs Assessment for Service Providers of Trafficking Victims Telephone Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number. National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public Agencies and/or organizations who work with victims of trafficking in persons or advocate on their behalf. This collection will gather information related to assessing the needs of service providers who provide assistance to victims of trafficking in persons. The data will then be used to advise the Office of Justice Policy for the development of pilot data-driven programs to serve trafficking victims and ensure that these pilot programs are both responsive and effective in meeting the needs of trafficking victims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50 respondents will each complete a 1 hour telephone survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total hour burden to conduct this survey is 50 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW, Wasington, DC 20530.

Dated: February 27, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–5149 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)–1348]

Meeting of the Global Justice Information Network Federal Advisory Committee

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of a meeting of the Global Justice Information Network Federal Advisory Committee to discuss the Global Initiative, as described in Initiative A07 ''Access America: Re-Engineering Through Information Technology.''

DATES: The meeting will take place on Thursday, April 11, 2002, from 9 a.m. to 5 p.m. ET.

ADDRESSES: The meeting will take place at the Department of Justice, Office of Justice Programs, 3rd floor Ballroom, 810 7th Street, NW., Washington, DC, 20531; Phone: (202) 616–6500. All attendees will be required to sign in at the security desk, so please allow extra time.

FOR FURTHER INFORMATION CONTACT: To register to attend the meeting, please contact Karen Sublett, Global Designated Federal Employee, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street NW., Fourth Floor, Washington, DC 20531; Phone: (202) 616–3463. [This is not a toll-free number]. Anyone requiring special accommodations should contact Ms. Sublett at least seven (7) days in advance of the meeting. Due to security measures in the building, members of the public who wish to attend the meeting must register with Ms. Sublett at least (7) days in advance of the meeting. Access to the meeting will not be allowed without registration.

SUPPLEMENTARY INFORMATION:

Authority

The Global Justice Information Network Federal Advisory Committee was established pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended.

Purpose

The Global Justice Information Network Federal Advisory Committee (GAC) will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP, the Attorney General, the President (through the Attorney General), and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches and advocate for strategies for accomplishing a Global information sharing capability.

The Committee will meet to address the Global Initiative, as described in Initiative A07 ''Access America: Re-Engineering Through Information Technology''. This meeting will be open to the public, and registrations will then be accepted on a *space available* basis. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the Designated Federal Employee (DFE). Further information about this meeting can be obtained from Karen Sublett, DFE, at (202) 616–3463.

Dated: February 27, 2002.

Karen Sublett,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 02–5153 Filed 3–4–02; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 19, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–01–4, 32 items, 32 temporary items). Records relating to inventory control of medical supplies and equipment. Records include an electronic information system, source documents used for input into the system, records of transactions, and outputs, including financial reports, equipment management reports, and other reports. Also included are electronic copies of records created using electronic mail and word processing. Most of the series covered by this schedule were previously approved for disposal.

2. Department of Commerce, Office of Administrative Services (N1–40–01–5, 26 items, 25 temporary items). Records accumulated in the immediate Office of the Director and Management Support staff and in the Offices of Real Estate Policy and Programs, Administrative Operations, and Space and Building Management. Included are such records as program subject files, checkbook and parking permit databases, building delegations and lease files, personal property case files, electronic floor plans, building maintenance documents, and asbestos abatement and employee asbestos training files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are historical photographs of the construction of the Herbert Clark Hoover Building in 1929 and early views of the building.

3. Department of Commerce, Technology Administration (N1–40–01–1, 23 items, 13 temporary items). Program subject correspondence of the Deputy Under Secretary, chronological files, fellowship program files, unsuccessful nominations for the National Medal of Technology, records relating to the Partnership for a New Generation of Vehicles program, copies of briefing books and publications, and working papers. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as the program correspondence of the Under Secretary for Technology, trip and speech files, minutes of meetings, program files of the Office of Technology Policy, the Air and Space Commercialization Office, and the Interagency Global Positioning Satellite Evaluation Board, and grant files of the Experimental Program to Stimulate Competitive Technology.

4. Department of Defense, Joint Staff and Combatant Commands (N1–218–00–5, 41 items, 25 temporary items). Records relating to information and legal matters, including correspondence, case files, background papers, drafts, transcripts, press releases, and minutes of meetings. Records pertain to such subjects as interaction with the White House and Congress, public relations, general legal matters, military justice, financial disclosures, and patent matters. Also included are electronic copies of documents created using

electronic mail and word processing as well as electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of such files as substantive White House and Congressional correspondence, policy and procedures pertaining to public relations, speeches, public affairs releases, and precedent-setting legal opinions are proposed for permanent retention.

5. Department of Defense, Joint Staff and Combatant Commands (N1–218–00–8, 58 items, 43 temporary items). Records relating to communications and electronics matters, including correspondence, case files, background papers, drafts, transcripts, publications, and minutes of meetings. Records pertain to such matters as communications and electronic testing and equipment, frequency and spectrum management, networks and circuits, interoperability standards, cryptology, communication and message center operations, and satellite communications. Also included are electronic copies of documents created using electronic mail and word processing as well as electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of files pertaining to such subjects as the policies and procedures governing communications, electronics, frequency/spectrum management, cryptology, and satellite communications are proposed for permanent retention as are related publications.

6. Department of Defense, Defense Commissary Agency, (N1–506–02–1, 19 items, 19 temporary items). Records relating to the acquisition of supplies, equipment, and services through contracting and procurement activities. Included are such records as directives, contracting officer designations, advance planning files, program reviews, contract clause deviations, and status and inspection reports. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Defense, Defense Information Systems Agency (N1–371–02–2, 6 items, 6 temporary items). Year 2000 (Y2K) program records, including such records as reports, briefings, project plans, risk assessments, system identification criteria, and conversion strategies as well as files relating to administering the program. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Energy, Agency-wide (N1–434–01–8, 10 items, 8 temporary items). Copies of internal publications, such as newsletters and bulletins, and records of national and international conferences and conventions that do not have historical significance and/or are accumulated by offices other than the sponsoring office. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of internal publications and files relating to significant conferences and conventions sponsored by the agency or its contractors.

9. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–02–1, 25 items, 18 temporary items). Records accumulated by the Office of External Relations. Included are such files as mailing lists, Web site content records, and Web site management records. Proposed for permanent retention are recordkeeping copies of such files as annual reports to Congress, agency news releases, House Price Index publications, captioned photographs portraying significant agency events and personalities, public affairs videotapes, and speeches of the agency Director. Also included are electronic copies of documents created using electronic mail and word processing.

10. Department of Justice, Drug Enforcement Administration (N1–170–01–3, 12 items, 12 temporary items). Physical security files relating to measures taken for the protection of facilities. Included are such records as facilities survey and inspection files, pre-construction surveys, mid-construction surveys, and final acceptance files. Also included are correspondence, instructions, studies, messages, interpretations, and coordinating actions relating to the administration and operation of the physical security program as well as electronic copies of documents created using electronic mail and word processing.

11. Department of Labor, Occupational Safety and Health Administration (N1–100–02–1, 6 items, 4 temporary items). Electronic copies of records created using electronic mail and word processing relating to plans and policy decisions for the implementation of agency programs at the state level. Also included are extra copies of these records. Recordkeeping copies of these files are proposed for permanent retention.

12. Department of State, Bureau of Human Resources, N1–59–00–18, 32 items, 32 temporary items). Records relating to support services provided to Foreign Service Officers and civil service employees and their families. Included are such records as policy and procedures files, subject files, evacuation files, publications, and files that document the provision of information concerning available support services. Also included are electronic copies of documents created using electronic mail and word processing.

13. Department of State, Bureau of Human Resources (N1–59–00–9, 7 items, 7 temporary items). Records relating to hiring civil service employees, including position descriptions, applicant tracking systems, pre-appointment files, and files relating to the priority consideration of applicants. Also included are electronic copies of documents created using electronic mail and word processing.

14. Department of State, Bureau of Human Resources (N1–59–00–17, 9 items, 9 temporary items). Records relating to human resources planning, including class action lawsuit files, correspondence files, staffing statistical reports, and personnel planning studies. Also included are electronic copies of documents created using electronic mail and word processing.

15. Department of State, Bureau of Political and Military Affairs (N1–59–01–20, 16 items, 11 temporary items). Records relating to developing and implementing programs for the removal of mines for humanitarian purposes. Records include budget submissions, financial records, and funding allocation memorandums. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of chronological files, project files, policy and procedures files, interagency working group files, and a master set of publications.

16. Department of State, Bureau of Political and Military Affairs (N1–59–01–23, 10 items, 9 temporary items). Records relating to public and congressional affairs issues. Included are such records as chronological files, congressional inquiries, copies of legislative referral memorandums, and press guidance documents. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of briefing books prepared for senior officials are proposed for permanent retention.

17. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (N1–436–01–2, 7 items, 7 temporary items). Year 2000 (Y2K) conversion records. Included are such records as plans, lists of systems, risk assessments, contracts, and correspondence with vendors, Congress, the Office of Management and Budget, and the General Accounting Office. Also included are electronic copies of documents created using electronic mail and word processing.

18. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–01–10, 3 items, 3 temporary items). Log books, registers, and other tracking records used to control and account for the receipt status, maintenance, or use of records that contain Toxic Control Substances Act confidential business information. Also included are electronic copies of documents created using electronic mail and word processing. Copies of these records that are placed in case files will be retained with the related case records in accordance with the previously approved disposition instruction for case files.

19. Federal Emergency Management Agency, Office of Financial Management (N1–311–01–3, 3 items, 1 temporary item). Electronic copies of records created using word processing and electronic mail that pertain to budget policy and budget estimates and justifications. Recordkeeping copies of these files are proposed for permanent retention.

20. National Archives and Records Administration, Office of General Counsel (N1–64–02–5, 5 items, 5 temporary items). Records relating to the agency's alternative dispute resolution program, including policy documents, case files, and administrative files. Also included are electronic copies of records created using electronic mail and word processing.

21. United States Commission for the Preservation of America's Heritage Abroad, Agency-wide (N1–220–02–8, 14 items, 8 temporary items). Commission members' files, constituent mail, staff files, reports and projects working papers, extra copies of publications, procurement records, and records related to the Commission's Web site. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of Commission correspondence, meeting minutes and testimony, country files and agreements, Congressional and budget reports, and historical site reports. Also proposed for permanent retention is a Web site snapshot.

Dated: February 25, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–5136 Filed 3–4–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within 30 days of the publication of this notice. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

DESCRIPTION OF PERMIT MODIFICATION REQUESTED: The Foundation issued a permit (ACA #2001–025) to Dr. Daniel P. Costa on March 12, 2001. The issued permit allows the applicant to capture up to 25 Crabeater seals (Lobodon carcinophagus), and up to 10 each of Leopard (Thydrrurga leoptony), Weddell (Leptonyshotes weddellii), and Ross seals (Ommatophoca rossil) per season over the next 3 years for the purpose of collecting blood, tissue and stomach samples, take measurements, and attach satellite relay data loggers (SRDL) and VHF radio tags. The samples will be studied to determine and better understand the foraging strategies utilized by marine predators in the face of meso- and fine-scale ecological variability.

The applicant requests a modification to his permit to allow access to the Antarctic Specially Protected Areas of the Dion Islands (ASPA #107), Lagotellerie Island (ASPA #115), Avian Island (ASPA #117), and Rothera Point, Adelaide Island (ASPA #129) located in the Antarctic Peninsula. The applicant had difficulty locating seals in the Marguerite pack ice in the spring last season and requests to enter the specially protected areas locate seals hauled out on the shore. This would greatly improve chances of meeting sample goals and allowing vessel usage to be more optimized for the oceanographic studies underway. Access to sites will be by zodiac or small boat.

Location: Dion Islands (ASPA #107), Lagotellerie Island (ASPA #115), Avian Island (ASPA #117), and Rothera Point, Adelaide Island (ASPA #129).

Dates: April 1, 2001 to August 31, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 02–5238 Filed 3–4–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: 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:* NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters''.

2. *Current OMB approval number:* 3150–0013.

3. *How often the collection is required:* NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State, areas of exclusive Federal jurisdiction, or offshore waters. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form from a licensee engaging in activities under the general license.

4. *Who is required or asked to report:* Any licensees who hold a specific license from an Agreement State and want to conduct the same activity in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters under the general license in 10 CFR 150.20.

5. *The number of annual respondents:* 184 respondents from Agreement State licensees.

6. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,104 hours.

7. *Abstract:* Under the reciprocity provisions of 10 CFR part 150, any Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in Section 150.20, is required to file four copies of NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters,'' and four copies of its Agreement State license at least 3 days before engaging in such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

Submit, by May 6, 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 World Wide 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 27th day of February 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5179 Filed 3–4–02; 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: 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, new, revision, or extension:* Extension.

2. *The title of the information collection:*

—DOE/NRC Forms 741 & 741A—Nuclear Material Transaction Report;

—DOE/NRC Form 740M—Concise Note;

—NUREG/BR–0006 Revision 4—''Instructions for Completing Nuclear Material Transfer Reports DOE/NRC Forms 741, 741A, and 740M.''

3. *The form number if applicable:*

—NRC/DOE Forms 741/741A: 3150–0003; and

—NRC/DOE Form 740M: 3150–0057.

4. *How often the collection is required:*

—DOE/NRC Forms 741/741A: As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria. Licensees range from not submitting any forms to submitting over 5,000 forms in a year.

—DOE/NRC Form 740M: As necessary to inform the US or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement. On average, 15 licensees submit about 10 forms each per year—150 forms annually.

5. *Who will be required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the US eligible list who have been notified in writing by the Commission that they are subject to Part 75.

6. *An estimate of the number of responses:*

—DOE/NRC Forms 741/741A: 36,500;

—DOE/NRC Form 740M: 150.

7. *An estimate of the number of annual respondents:*

—DOE/NRC Forms 741/741A: 1,200;

—DOE/NRC Form 740M: 15.

8. *The number of hours needed annually to complete the requirement or request:*

—DOE/NRC Forms 741/741A: 27,375 hours for NRC and Agreement State licensees (.75 hour per response with an average of approximately 22.8 hours per respondent for 1,200 respondents);

—DOE/NRC Form 740M: 113 hours (.75 hour per response with an average of approximately 7.5 hours per respondent for 15 respondents).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* NA.

10. *Abstract:* NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Forms 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts of special nuclear material, or for transfer or receipt of 1 kilogram or

more of source material. Licensees affected by Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the US or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S./IAEA Safeguards Agreement. The use of Forms 740M, 741, and 741A, together with NUREG/BR–0006 Revision 4, the instructions for completing the forms, enables NRC to collect, retrieve, analyze as necessary, and submit the data to IAEA to fulfill its reporting responsibilities.

A copy of the final 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 World Wide 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 April 4, 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 (3150–0003 & –0057), NEOB–10202, Office of Management, 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 27th day of February 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5178 Filed 3–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of March 4, 11, 18, 25, April 1, 8, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 4, 2002

Monday, March 4, 2002

2 p.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 11, 2002—Tentative

There are no meetings scheduled for the Week of March 11, 2002.

Week of March 18, 2002—Tentative

Tuesday, March 19, 2002

9:30 a.m.
Briefing on Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: James Johnson, 301–415–6802)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, March 20, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of March 25, 2002—Tentative

There are no meetings scheduled for the Week of March 25, 2002.

Week of April 1, 2002—Tentative

There are no meetings scheduled for the Week of April 1, 2002.

Week of April 8, 2002—Tentative

Friday, April 12, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (if needed)

* This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 28, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–5272 Filed 3–1–02; 10:10 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 8, 2002 through February 21, 2002. The last biweekly notice was published on February 19, 2002 (67 FR 7410).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 4, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public

Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: September 10, 2001.

Description of amendment request: The proposed amendment would revise the requirements in Technical Specifications (TSs), Sections 3.4.A.7.c and 3.4.A.8.c, to determine operability of core spray pumps and system components by verification rather than testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are not associated with accident initiators. The proposed changes are, however, associated with emergency core cooling requirements for loss of coolant mitigation. This event is a loss of coolant from the reactor vessel when the plant is shutdown and was evaluated in the NRC [Nuclear Regulatory Commission] Safety Evaluation Report supporting License Amendment No. 12, dated January 21, 1976. The proposed changes contained in this request do not affect the assumptions or conclusions of that evaluation and do not impact the physical characteristics of the core spray and fire protection systems. Therefore, the proposed changes do not degrade the ability of the core spray and fire protection systems to perform their intended accident mitigation function. The proposed changes to core spray pump/component and fire protection system operability verification versus demonstration in TS 3.4.A.7.c and core spray pump/component operability verification versus demonstration in TS 3.4.A.8.c provide an alternate means of determining equipment operability without reliance on frequent testing. The clarification of the extent of core spray system operability verification in TS 3.4.A.7.c does not change any existing requirements. Therefore, the proposed changes to TS 3.4.A.7.c and 3.4.A.8.c do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are not associated with accident initiators. They are changes that provide an alternate means of determining equipment operability while eliminating frequent testing.

The proposed changes to TS 3.4.A.7.c and 3.4.A.8.c do not involve the addition of any new plant structure, system or component (SSC). Similarly, the proposed TS changes do not involve physical changes to an existing SSC nor do they modify any current operating parameters. Providing an alternate means of determining equipment operability does not alter the functional capability of any accident mitigation system. The clarification of the extent of core spray system operability verification in TS 3.4.A.7.c does not change any existing requirements. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes to TS 3.4.A.7.c and 3.4.A.8.c are not associated with accident initiators and do not introduce new SSCs or physically impact existing SSCs. They are changes that provide an alternate means (i.e., verification) of determining core spray and fire protection system component operability. The capability of the necessary core spray and fire protection components to provide the required core cooling flow is demonstrated during surveillance testing. While the proposed changes revise the method of determining the operability of the core spray and fire protection system in the reduced availability mode, they do not degrade the ability of the systems to perform their intended function. The clarification of the extent of core spray system operability verification in TS 3.4.A.7.c does not change any existing requirements. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Joel Munday, Acting.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: September 11, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications, Section 3.9, ''Refueling,'' to incorporate compensatory provisions which permit fuel-handling operations without the refueling interlocks operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis and has performed its own, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The proposed amendment involves refueling interlock operability requirements during refueling operations. The only design-basis accident described in the Oyster Creek Updated Final Safety Analysis Report (UFSAR) for cold shutdown or refueling conditions is a postulated fuel handling (dropped bundle) accident. The refueling interlocks are not postulated to cause, and are not involved in the mitigation of such an accident. Thus, the proposed amendment does not affect the safety function of the refueling interlocks. The proposed alternative actions provide an equivalent level of protection against inadvertent criticality during fuel handling operations. Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not affect accident initiators or precursors because it does not alter any design parameter, condition, equipment configuration, or manner in which the unit is operated. Further, it does not alter or prevent the ability of structures, systems, or components to perform their intended safety or accident mitigating functions. Accordingly, the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

No. The proposed amendment does not change any design parameter, analysis methodology, safety limits or acceptance criteria. The revised requirement (i.e., proposed alternative) will continue to ensure against inadvertent criticality during fuel handling operations. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the

NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Joel Munday, Acting.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: August 14, 2001.

Description of amendment request: The proposed amendment revises Section 6, ''Administrative Controls,'' of the Technical Specifications (TSs) to delete Section 6.5.4, ''Independent Onsite Safety Review Group,'' and all associated subsections. The licensee will revise its Operational Quality Assurance Plan to incorporate conforming changes to provide its proposed alternative independent nuclear safety oversight provisions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change involves deletion of the TS requirements for the Independent Onsite Safety Review Group [IOSRG]. To satisfy the NUREG–0737 [''Clarification of TMI Action Plan Requirements,'' November 1980] guidance concerning organizational independence, the proposed IOSRG alternative provides for technical expertise by onsite engineering and licensing organizations. These site engineering and licensing organizations report through the Site Vice-President and are independent of the production reporting chain through the plant manager. Additionally, high-level management positions are located in the corporate and regional offices for these engineering and licensing organizations which set policy and have responsibility for governance and oversight of these functional areas. These corporate and regional high-level positions are not in the management chain for power production.

Organizational and procedural changes at TMI Unit 1 [Three Mile Island Nuclear Station, Unit 1] following the issuance of NUREG–0737 have resulted in improvements to the review processes that meet the intent of the requirements [of] NUREG–0737 for an IOSRG. Therefore, inclusion of the IOSRG in the plant or plant support organization is unneccessary. In light of the considerable improvement in the processes listed above, the contribution of three full time engineers assigned as a separate group to address nuclear safety oversight is not significant in comparison to the contribution of the overall organization. This change does not affect assumptions contained in the plant safety analyses, the physical design and/or operation of the plant, nor does it affect Technical Specifications that preserve safety analysis assumptions. No Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected by this change. The proposed change does not alter design, function, operation, or reliability of any plant component. This change does not involve a physical modification to the plant, a mode of operation, or a change to the UFSAR [Updated Final Safety Analysis Report] transient analyses. Normal and accident dose to plant personnel or to the public are unaffected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change to remove the IOSRG from the TS[s] is administrative in nature and does not affect the assumptions contained in the plant safety analyses, the physical design and/or modes of plant operation defined in the plant operating license that preserve safety analysis assumptions.

This proposed change does not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. The proposed change does not alter the design, function, or operation of any plant system or component.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

This change only involves Technical Specification Section 6, ''Administrative Controls,'' which does not include any margins of safety. None of the proposed changes involve a physical modification to the plant, a new mode of operation, an instrument setpoint, or a change to the UFSAR transient analyses. No Limiting Safety System Setting, Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Joel T. Munday (Acting).

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: September 10, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.9.7 and corresponding Bases to address use of a single-failure-proof handling system, as defined by NUREG–0612 (''Control of Heavy Loads at Nuclear Power Plants'') and NUREG–0554 (''Single-Failure-Proof Cranes For Nuclear Power Plants''). The modifications will allow handling loads in excess of 1,800 pounds near or over the Spent Fuel Pool. The anticipated types of heavy loads include the combination of a spent fuel storage canister and transfer cask.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Concerning the application of a single-failure-proof handling system for handling heavy loads near or over the Spent Fuel Pool, NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants'' asserts that the probability of an accidental load drop while handling loads over the spent fuel is insignificant.

Under the proposed amendment, the evaluation criteria of NUREG–0612, Section 5.1 are satisfied by the combination of (a) the continued implementation of procedures and the practices for both the Fuel Handling Cranes and the Yard Crane that provide conformance with the guidelines of Section 5.1.1 of NUREG–0612, and (b) the application of a single-failure-proof handling system that satisfies the criteria of NUREG–0612, Sections 5.1.2(1) and 5.1.6 for the movement of any load with a weight greater than 1800 pounds either (i) over any spent fuel assembly in the Spent Fuel Pool or (ii) near or over any area of the Spent Fuel Pool, including the Spent Fuel Cask Laydown Area.

The proposed amendment retains existing restrictions on crane travel for the Fuel Handling Cranes, which are not qualified to the single-failure-proof criteria of NUREG–0612. These retained restrictions continue to support the existing safety analysis of Section 15.2.2, ''Fuel Handling Accident'' of the

UFSAR [Updated Final Safety Analysis Report], Reference (9) [Haddam Neck Plant UFSAR Change 34 dated August 2, 2000].

Additionally, the proposed amendment corresponds to the application of a single-failure-proof handling system to fulfill the NUREG–0612 Phase II condition that is required prior to the handling of a spent fuel cask near or over any area of the Spent Fuel Pool.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will allow the handling by a single-failure-proof handling system of loads in excess of 1800 pounds over fuel assemblies in any region of the Spent Fuel Pool, including the Spent Fuel Cask Laydown Area.

Additionally, the proposed changes correspond to the application of a single-failure-proof handling system for the fulfillment of the required condition for the handling of spent fuel casks near or over any area of the Spent Fuel Pool. This required condition is identified in the documentation for the NRC Issuance of License Amendment 125, Ref. (7) [Letter from US NRC to CYAPCO, dated April 26, 1990] and it is acknowledged in the CYAPCO submittal for the proposed license amendment that was issued as License Amendment 188, Ref. (5) [Letter from J. F. Opeka (CYAPCO) to US NRC, ''Haddam Neck Plant Proposed Revision to Technical Specifications Spent Fuel Pool Capacity Expansion,'' Letter Number B15136, dated March 31, 1995.] and the NRC Issuance of License Amendment 195, Ref. (6) [Letter from T. L. Fredrichs (NRC) to R. A. Mellor (CYAPCO), ''Haddam Neck Plant-Issuance of Amendment RE: Relocation of Requirements to Licensee—Controlled Documents (TAC No. MA5756),'' dated October 19, 1999].

NUREG–0612, Section 5.1.2 identifies that the capability of a single-failure-proof handling system to handle heavy loads has been identified as equivalent in risk to the capabilities of a non-single-failure-proof heavy load handling system that complies with the criteria of one of the other three alternative sets from NUREG–0612 (including alternative criteria that include analyses concerning postulated heavy load drops).

A structural evaluation of the heavy load interfaces within the Spent Fuel Cask Laydown Area and the Cask Transfer Bay was performed per the requirements of EDR–1 [(Reference 2) Generic Licensing Topical Report EDR–I (P)–A, ''EDERER's Nuclear Safety Related eXtra Safety And Monitoring (X–SAM) CRANES,'' Revision 3, Amendment 3, dated October 8, 1982] Appendix B and C (Attachments 2 and 3 [attachments to this application]). The results of the evaluation confirmed the design bases for the Spent Fuel Pool and the Spent Fuel Building are maintained.

As such, use of a single-failure-proof handling system precludes the possibility of a heavy load drop which could cause an accident outside of the existing design bases.

Additionally, the proposed changes retain existing restrictions on the travel of non-single-failure-proof cranes over fuel assemblies in the Spent Fuel Pool. These retained restrictions continue to support the existing safety analysis of Section 15.2.2, ''Fuel Handling Accident'' of the UFSAR, Reference (9).

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Section 5.1.2 of NUREG–0612 identifies that each of the four alternative sets of criteria for the handling of heavy loads near or over the Spent Fuel Pool, including over fuel assemblies, provides a level of safety that is essentially equivalent to the level of safety provided by any of the other three alternative sets of criteria.

The proposed change corresponds to the application of the first of the four alternative sets of criteria, which is described in NUREG–0612 Section 5.1.2(1), implementation of a single-failure-proof handling system.

Additionally, the proposed change includes the retention of existing crane travel restrictions for the Fuel Handling Cranes, therefore, maintaining the existing margin of safety concerning the operation of those other cranes.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Robert K. Gad, III, Ropes & Gray, One International Plaza, Boston, Massachusetts 02110–2624.

NRC Section Chief: Stephen Dembek.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The amendments would revise the Technical Specifications (TS) to eliminate the use of the term ''unreviewed safety question.'' The change is proposed by the licensee to reflect changes in the NRC's regulations in 10 CFR 50.59 as noticed in the **Federal Register** on October 4, 1999. The proposed changes in the license amendment request are consistent with an NRC approved Technical Specifications Task Force Standard TS Traveler (TSTF–364).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications [TS] made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the Catawba licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10CFR50.59 regulation. Implementation of the revised 10CFR50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The amendments would revise Technical Specification 5.6.5.b to eliminate the revision number and dates of the topical reports that contain the analytical methods used to determine the core operating limits. This proposed change is consistent with TSTF (Technical Specification Task Force)-363.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to TS 5.6.5.b, Core Operating Limits Report (COLR), affecting a list of documents that are separately reviewed and approved by the NRC. The changes proposed to TS 5.6.5.b have no substantive impact on the Catawba licensing bases. Only NRC-approved methodologies will be used to generate the core operating limits. Based on these considerations, it has been determined that the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The analytical methodologies used to generate the core operating limits are unchanged by this LAR. As such, this LAR has no affect on margins of safety. Future changes to these methodologies will remain subject to NRC review and approval. Therefore, this proposed amendment does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specification 5.6.5.b to eliminate the revision number and dates of the topical reports that contain the analytical methods used to determine the core operating limits. This proposed change is consistent with TSTF (Technical Specification Task Force)-363. This notice supersedes in its entirety the previous notice issued on February 5, 2002 (67 FR 5326) for the Oconee December 20, 2001, application, which contained the incorrect licensee analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to TS 5.6.5.b, Core Operating Limits Report (COLR), affecting a list of documents that are separately reviewed and approved by the NRC. The changes proposed to TS 5.6.5.b have no substantive impact on the Oconee licensing bases. Only NRC-approved methodologies will be used to generate the core operating limits. Based on these considerations, it has been determined that the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The analytical methodologies used to generate the core operating limits are unchanged by this LAR. As such, this LAR has no affect on margins of safety. Future changes to these methodologies will remain subject to NRC review and approval. Therefore, this proposed amendment does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 8, 2002.

Description of amendment request: The amendment would delete the Technical Specification (TS) requirements governing the reactor vessel material surveillance program; would change the TS Sections 4.2, ''Inservice Inspection and Testing,'' 5.2.C, ''Design Features—Containment,'' and 6.4, ''Administrative Controls—Training,'' to correct errors; and would change TS Section 6.1, ''Responsibility,'' and 6.2, ''Organization,'' to reflect the organizational changes resulting from the license transfer to Entergy Nuclear Operations, Inc. (ENO).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

The proposed change to TS Section 3.1.B involves deleting specific TS requirements that duplicate the requirements of 10 CFR [Code of Federal Regulations] 50.60, 10CFR50 Appendix G, and 10CFR50 Appendix H. The proposed change does not result in a change to the design or operation of any plant structure, system or component. Therefore any assumptions of the operability or performance of any structure, system or component in accident evaluations are unchanged.

The proposed change to TS 4.2.1 simply corrects an improper reference to the CFR. There are no physical changes to IP2 or to the operation of any system, structure, or component.

The proposed change to TS 5.2.C makes the design feature description consistent with TS Limiting Condition for Operation 3.3.B wherein the requirements for the method of post-accident iodine removal are specified. Making the Design Feature consistent with the appropriate LCO has no effect on the assumptions and the results of the accident analyses.

TS sections 6.1, 6.2, and 6.4 are administrative controls. Changing an administrative control has no affect on accident analyses.

Therefore, there will be no increase in the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to TS Section 3.1.B does not affect the effectiveness of ENO's implementation of the requirements of 10CFR50.60 that ensure the reactor vessel continues to be protected against non-ductile failure.

There is no change to any system, structure, or component as a result of any of the proposed changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed TS changes simplify the methods of controlling the schedule for the reactor vessel surveillance specimen withdrawal schedule in that a duplicative control is removed. The effectiveness of ENO compliance with 10CFR50.60 and 10CFR50 Appendices G and Appendix H is not adversely affected by this change. The level of regulatory control for the reactor vessel pressure/temperature limits is not changed.

The effectiveness of IP2's [Indian Point 2] inservice testing program is not affected by the correction of the improper CFR reference in TS 4.2.1. ENO is required to comply with 10CFR55 at IP2. The effectiveness of ENO's compliance with 10CFR55 is not affected by deleting the improper CFR citation from TS 6.4. Similarly, ENO's compliance with the IP2 license and the all applicable laws and regulations is not affected by the proposed changes to the TS sections for responsibility and organization.

The change to the Design Features to properly identify the method specified in TS 5.2.B for post-accident iodine removal does not affect the margin of safety.

This change does not affect any design function for or the operation of any plant structure, system, or component.

Therefore, the change [* * *] does not result in a change to any of the safety analyses or [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel Munday, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 8, 2002.

Description of amendment request: The amendment would incorporate the use of a more conservative equation to calculate the power range high neutron trip setpoint when one or more main steam safety valves are inoperable during four loop operation—Technical Specification (TS) 3.4, ''Steam and Power Conversion System.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed change to the setpoints will cause a reactor trip on high neutron flux for a decreased heat removal event at an earlier (more conservative) condition. The consequences of an accident with the proposed setpoints are less severe than those predicted with the use of the current setpoints.

The main steam line code safety valves, in conjunction with the high neutron flux reactor trip mitigate the consequences of decreased heat removal and uncontrolled rod cluster assembly bank withdrawal events. The systems acting together do not initiate or cause any accident. Therefore, the probability of analyzed accidents is unchanged by the proposed TS change.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no change to either the design or operation of the main steam line code safety valves. This proposed change only changes the high neutron flux trip setpoints in response to the inoperable main steam line code safety valves. This feature currently exists both in the plant and in the TS.

Therefore, the proposed change does not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The current TS setpoints have been determined to be non-conservative and insufficient to guarantee safety. The proposed change would impose limits that were anticipated in the original TS and are conservative with respect to the current TS. Therefore, the margin of safety as defined in the TS (protection of the secondary system from overpressurization so that it is available for decay heat removal) will be restored to that intended with the original TS.

The ability to keep the core cooled in spite of the inoperability of some main steam line code safety valves is enhanced by the proposed change. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel Munday, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 8, 2002.

Description of amendment request: The amendment would revise the Technical Specification (TS) Section 3.7.C, ''Gas Turbine Generators,'' and Section 4.6, ''Emergency Power System Periodic Tests,'' by changing the requirement to maintain a minimum amount of fuel oil stored on site from 54,200 gallons to 94,870 gallons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The Gas Turbine Generators only provide a Licensing Basis Event mitigating function. There is no previously evaluated accident or event that is initiated by the Gas Turbine Generators or their associated fuel storage system. The ability of the Gas Turbine Generators to provide power, as a backup to the Emergency Diesel Generators, is enhanced by the proposed change to increase the amount of fuel stored on site and dedicated to Gas Turbine Generator operation. The increase in minimum load has an insignificant affect because the Gas Turbine Generators are capable of loads far in excess of the proposed minimum load.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no physical change to the plant. The currently existing fuel oil storage facilities will be used. The only change is to increase the minimum amount of fuel oil that must be maintained at the plant.

Therefore, the proposed change does not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not

involve a significant reduction in [a] margin of safety.

The proposed limit for Gas Turbine Generator fuel oil storage ensures compliance with the current licensing basis that the Gas Turbine Generators be able to power all the loads required by 10 CFR [Code of Federal Regulations] 50 Appendix R to place the plant into a safe shutdown condition following a fire and maintain safe shutdown for three days. The increase in the minimum load rating ensures that each Gas Turbine Generator will support operation of additional components to enhance operational flexibility in response to an event.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel Munday, Acting.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 8, 2002.

Description of amendment request: The amendment would delete the Technical Specification (TS) requirements governing the Fuel Storage Building Air Filtration System. The proposed changes affect TS 3.8, ''Refueling, Fuel Storage and Operations with the Reactor Vessel Head Bolts Less Than Fully Tensioned,'' and TS 4.5.F, ''Fuel Storage Building Air Filtration System.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

The fuel storage building air filtration system is not involved in the initiation of any accident nor does it function to prevent any accident. The fuel storage building air filtration system was an accident mitigating system. Therefore there is no affect on the probability of occurrence of a fuel handling accident in the fuel storage building.

The fuel storage building air filtration system was designed to provide an accident mitigation function by filtering the radionuclides that might have been released from a damaged fuel assembly in the event of a fuel handling accident. The charcoal adsorber was the primary component that supported this filtration function. However, based on the recent IP2 [Indian Point 2] analyses to show compliance with 10CFR [Code of Federal Regulations] 50.67, it has been shown that the doses to the public and to control room operators due to a fuel handling accident remain well within regulatory limits even assuming no credit for either isolation or filtration. Therefore, the charcoal filtration function is not required in the event of a fuel handling accident.

There would be no change to the radiological consequences of the fuel handling accident in the fuel storage building analysis as a result of the proposed change. The proposed changes ensure that the assumptions of the fuel handling accident analysis for the release of radioactivity from a damaged fuel assembly in the fuel storage building are maintained.

Therefore, there will be no increase in the probability or in the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The fuel storage building air filtration system is not an accident initiator. It was designed as an accident mitigation system to filter the radionuclides that may be released from a damaged fuel assembly during a fuel handling accident. The fuel storage building air filtration system does not affect any accident initiator.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The margin of safety is defined by 10CFR50.67 and 10CFR50 Appendix A Criterion 19. The radiological consequences of a fuel handling accident in the fuel storage building have been shown to be well within the regulatory requirements even when assuming no credit for the fuel storage building air filtration system operation.

The proposed change ensures that the assumptions of the current fuel handling analysis for the release of radioactivity from a damaged fuel assembly are maintained.

Therefore, the change does not result in a change to any of the safety analyses or [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear. Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Joel Munday, Acting.

Exelon Generation Company, LLC, Docket No. 50–237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of amendment request: September 5, 2001.

Description of amendment request: The proposed amendments would revise the battery terminal voltage on float charge for the alternate battery.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is to a SR 3.8.4.1 acceptance criterion that will continue to ensure equipment operability. By continuing to ensure equipment operability, the probability or consequences of an accident previously evaluated are not increased. Float charge is the condition in which the charger is supplying the continuous charge required to overcome the internal losses of a battery and maintain the battery in a fully charged state. The voltage requirements are based on the nominal design voltage of the battery and are consistent with the initial voltages assumed in the battery sizing calculations. The 125 VDC alternate battery continues to provide reliable DC power for operation of the required equipment. The number of cells in the alternate battery was increased from sixty to sixty-three and the acceptable float voltage needed to be revised to reflect the additional cells. The addition of the three cells has been evaluated and documented in calculations. These calculations demonstrate that the batteries are appropriately sized to supply the required loads following a loss of offsite power. The ability of the battery to perform its intended function remains unchanged. In addition, the proposed change has no impact on any initial condition assumptions for accident scenarios. Onsite or offsite dose consequences resulting from an accident previously evaluated are not affected by this proposed amendment request.

Accordingly, there is no significant change in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed license amendment provides a change in a TS Surveillance Requirement that continues to ensure equipment operability. The increase in terminal voltage specifically supports the increase in the number of cells for the battery. The operation of the safety-related equipment and components remains unchanged. As such, the relationship between the 125 VDC power

system and plant transient response is maintained. The change in the acceptance criterion ensures that the equipment remains operable.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not involve a significant reduction in the margin of safety. The proposed change continues to ensure equipment operability. The increase in terminal voltage specifically supports the increase in the number of cells for the alternate battery. Since the change maintains the necessary level of system reliability, it does not involve a significant reduction in the margin of safety. The change in acceptance criterion is to reflect the increase in battery cells from sixty to sixty-three. This acceptance criterion ensures that the equipment remains operable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: January 10, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated January 10, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determined that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: December 10, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) to incorporate the Nuclear Regulatory Commission (NRC)-approved generic change TSTF–287, Revision 5, to the ''Standard Technical Specifications for General Electric Plants (BWR/4),'' NUREG–1433, Revision 1. Specifically, the proposed changes would: (a) insert a note in the Limiting Condition for Operation (LCO) in TS 3.7.3 to state that the control room habitability envelope boundary may be opened intermittently under administrative control; (b) insert a new LCO Action B in TS 3.7.3 to allow 24 hours to restore the control room habitability envelope boundary to

operable status if two control room emergency outside air supply (CREOAS) subsystems should become inoperable due to an inoperable control room habitability envelope boundary in Modes 1, 2 and 3; (c) re-label the existing LCO Actions b, c, d, and e to c, d, e, and f respectively; and (d) revise the existing LCO Action D to require immediate entry into LCO 3.0.3 when two CREOAS subsystems are inoperable for situations other than when the inoperability is due to an inoperable control room habitability envelope boundary. Minor formatting and editorial changes are also made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change relaxes the Required Actions of LCO 3.7.3 by allowing 24 hours to restore an inoperable control room habitability envelope pressure boundary to OPERABLE status. Required Actions and their associated Completion Times are not initiating events for any accidents previously evaluated. The accident analyses do not assume that required CREOAS equipment is out of service prior to the analyzed event. Consequently, this change in Required Actions does not significantly increase the probability of occurrence of any accident previously evaluated. The Required Actions in the proposed change have been developed to provide assurance that appropriate remedial actions are taken in response to the degraded condition, considering the operability status of the CREOAS system and the capability of minimizing the risk associated with continued operation. As a result, the consequences of any accident previously evaluated are not significantly increased. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical modification or alteration of plant equipment (no new or different type of equipment will be installed) or a change in the methods of governing normal plant operation. The Required Actions and associated Completion Times in the proposed change have been evaluated to ensure that no new accident initiators are introduced. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The relaxed Required Actions do not involve a significant reduction in the margin of safety. The proposed change has been evaluated to minimize the risk of continued operation with the control room habitability envelope pressure boundary inoperable. The operability status of the CREOAS system, a reasonable time for repairs or replacement of required features, and the low probability of a design basis accident occurring during the repair period have been considered in the evaluation. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Joel T. Munday, Acting.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: December 14, 2001.

Description of amendment request: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 14, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the

rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard J. Laufer, Acting.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 31, 2002.

Brief description of amendment request: The proposed amendment would revise the technical specifications by replacing the peak linear heat rate safety limit with a peak fuel centerline temperature safety limit.

*Date of publication of individual notice in **Federal Register:*** February 11, 2002 (67 FR 6279).

Expiration date of individual notice: The comment period expires on February 25, 2002, and the hearing period expires on March 13, 2002.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 31, 2002.

Brief description of amendment request: The proposed amendment would replace the Technical Specification (TS) Safety Limit 2.1.1.2, ''Peak Linear Heat Rate,'' (PLHR) with a Peak Fuel Centerline Temperature Safety Limit and update the Index accordingly. The associated TS Bases changes are also made to appropriately reflect the proposed new Safety Limit.

*Date of publication of individual notice in **Federal Register:*** February 11, 2002 (67 FR 6281).

Expiration date of individual notice: The comment period expires on February 25, 2002, and the hearing period expires on March 13, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 21, 2001, as supplemented January 11, 2002.

Brief description of amendment: The amendment revises the actions taken for an inoperable battery charger, revises the battery charger testing criteria, and relocates certain safety-related battery surveillance requirements from the Technical Specifications to a licensee-controlled program.

Date of issuance: February 15, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 142.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** November 14, 2001 (66 FR 57118). The letter of January 11, 2002, provided clarification and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: December 19, 2000, as supplemented on September 24, 2001.

Brief description of amendment: The amendment revises the Oyster Creek Technical Specifications, Section 3.17, to remove reference to the current licensing basis control room calculated dose consequences and substitute the associated regulatory dose limits that apply for control room habitability in

accordance with General Design Criterion (GDC) 19 of 10 CFR part 50 and Standard Review Plan Section 6.4. Concurrent with this requested change, AmerGen Energy Company (AmerGen) recalculated control room relative concentration (X/Q) values using the ARCON96 methodology to demonstrate its capability to meet GDC–19 dose requirements. The NRC staff finds acceptable the use of the diffuse source X/Q values calculated by AmerGen because they appear to be more limiting than assuming a point source release through a building penetration.

Date of Issuance: February 7, 2002.

Effective date: February 7, 2002 and shall be implemented within 30 days of issuance.

Amendment No.: 225.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44163). The September 24, 2001, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 7, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: September 20, 2000, as supplemented August 2 and September 28, 2001.

Brief description of amendment: The Technical Specification (TS) changes deleted the specification for hydrogen monitoring instrumentation from TS Sections 3.5.5.2, 3.6, and Tables 3.5–3 and 4.1–4, corrected a typographical error in Item 8 of Table 4.1–4, deleted the specifications for hydrogen recombiners in TS Section 4.4.4, and changed the Bases for TS Section 4.12.2 to delete its reference to hydrogen purge and hydrogen recombiners.

Date of issuance: February 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days including the designation of hydrogen monitoring instrumentation as Category 3 variables as defined in Regulatory Guide 1.97.

Amendment No.: 240.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57118). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: November 19, 2001.

Brief description of amendment: The amendment increases the allowed outage time of one train of the control room emergency ventilation system from 10 to 14 days (for the loss of the emergency power supply only). This is a one-time change to support corrective maintenance and inspections of the 1A Diesel Generator during the Unit 1 refueling outage.

Date of issuance: February 13, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 223.

Renewed License No. DPR–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 926). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 29, 2000, as supplemented on October 16, 2000, and January 25, April 4, and September 21, 2001.

Brief description of amendment: The amendment modifies Technical Specification (TS) Sections 3.3.2, ''Instrumentation—Engineered Safety Features Actuation System Instrumentation;'' 3.7.7, ''Plant Systems—Control Room Emergency Ventilation System;'' 3.7.8, ''Plant Systems—Control Room Envelope Pressurization System;'' 3.7.9, ''Plant Systems—Auxiliary Building Filter System;'' 3.9.1.1, ''Refueling Operations—Boron Concentration;'' 3.9.1.2, ''Refueling Operations—Boron Concentration;'' 3.9.2, ''Refueling Operations—Instrumentation;'' 3.9.4, ''Refueling Operations—Containment Building Penetrations;'' 3.9.9, ''Refueling Operations—Containment Purge and Exhaust Isolation System;'' 3.9.10, ''Refueling Operations—Water Level—Reactor Vessel;'' and 3.9.12, ''Refueling Operations—Fuel Building Exhaust Filter System.'' The changes are associated with the revised fuel handling accident analyses, and integrity of the Control Room and the Fuel Building boundaries. Several administrative changes were also made to reflect Millstone Unit 3 terminology, remove unnecessary information, and eliminate confusion by providing consistency between LCO's (limiting conditions for operations), Action Requirements, and Surveillance Requirements. The TS changes are associated with the revised containment fuel handling accident analysis which results in an increase in the consequences of a containment fuel handling accident since the current analysis of a containment fuel handling accident does not assume the release of any radioactive material from containment. The revised analysis assumes a release of radioactive material because it assumes both personnel access hatch doors are open and at least one hatch door is closed within 10 minutes of a fuel handling accident inside containment.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 203.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 29, 2000 (65 FR 71136). The letters dated October 16, 2000, January 25 April 4, and September 21, 2001, provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination or expand the scope of the application as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 22, 2001, as supplemented by letter dated October 11, 2001.

Brief description of amendments: The amendments revised the Technical Specifications (TS) surveillance requirement (SR) for the methodology and frequency for the chemical analyses of the ice condenser ice bed. Also, these amendments add a new TS SR to address sampling requirements for ice

additions to the ice bed. In addition, the amendments revise the current TS surveillance requirement acceptance criteria and surveillance frequency for the inspection of ice condenser ice basket flow channel areas.

Date of issuance: February 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 195 and 188.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 11, 2001 (66 FR 36339). The supplement dated October 11, 2001, provided clarifying information that did not expand the scope of the original **Federal Register** notice or the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 13, 2001.

Brief description of amendment: The amendment deleted Technical Specification (TS) Tables 3.6–1, ''Non-Automatic Containment Isolation Valves Open Continuously or Intermittently for Plant Operation,'' and 4.4–1, ''Containment Isolation Valves.'' The amendment also revised other TS sections that reference these tables. The removal of the tables is in accordance with the guidance in NRC Generic Letter 91–08, ''Removal of Component Lists from Technical Specifications.''

Date of issuance: February 12, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 223.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44166). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 16, 2001, as supplemented January 11, 2002.

Brief description of amendment: The amendment updates the pressure-temperature limit curves for Indian Point Nuclear Generating Unit No. 2.

Date of issuance: February 15, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 224.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 8, 2001 (66 FR 41613). The January 11, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 23, 2001, as supplemented by letters dated September 21, and November 8, 2001.

Brief description of amendment: This submittal requests a change to administrative Technical Specification (TS) 6.15. The change postpones the next Type A test performed after May 12, 1991, to no later than May 11, 2006, resulting in an extended interval of 15 years for the performance of Integrated Leak Rate Test.

Date of issuance: February 14, 2002.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 178.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44169). The September 21, and November 8, 2001, supplemental letters contained clarifying information that did not change the scope of the July 23, 2001, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 23, 2001, as supplemented December 11, 2001.

Brief description of amendment: As a follow-up response to a commitment identified in the Nuclear Regulatory Commission (NRC) staff letter dated December 22, 2000, ''Completion of Licensing Action for Generic Letter (GL) 96–06, Assurance of Equipment Operability and Containment Integrity During Design-Basis Accident Conditions,'' Entergy Operations Inc., (Entergy, the licensee) has proposed to revise their Waterford Steam Electric Station, Unit 3 (Waterford 3) Final Safety Analysis Report (FSAR) to resolve the ten containment penetrations susceptible to thermally induced overpressurization through an evaluation, detailed analysis, or installation of physical modifications prior to startup from the spring 2002 refueling outage. Entergy determined a change to Waterford 3's license basis, through procedural controls, risk analysis, and engineering analysis, for seven penetrations, as discussed in this license basis change request was necessary. Permanent resolution to the GL 96–06 issues for the remaining three penetrations will be satisfied through the installation of physical modifications.

Date of issuance: February 19, 2002.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented prior to startup from Refuel 11 scheduled for March 2002. Implementation of the amendment is the incorporation into the FSAR of the changes to the description of the facility as described in the licensee's application dated July 23, 2001, as supplemented by letter dated December 11, 2001.

Amendment No.: 179.

Facility Operating License No. NPF–38: The amendment revised the FSAR.

Date of initial notice in ***Federal Register:*** September 19, 2001 (66 FR 48285). The December 11, 2001, supplement contained clarifying information that did not change the scope of the July 23, 2001, application nor the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: July 6, 2001, as supplemented by letters dated October 25, 2001, and December 17, 2001.

Brief description of amendments: The amendments revise technical specifications (TS) Section 3.3.1.1, ''Reactor Protection System Instrumentation,'' to modify the description for Reactor Protection System (RPS) Function 7.a, ''Scram Discharge Volume Water Level—High.'' This change supports a planned upgrade to the scram discharge volume level instrumentation from Fluid Components International thermal switches to Magnetrol float switches. These float switches are more reliable than the existing thermal switches, which are highly sensitive to a steam environment, since they respond to actual water level increases within the scram discharge volume. These types of Magnetrol float switches are used successfully in various applications at Quad Cities.

Date of issuance: February 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 203 and 199.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** January 11, 2002 (67 FR 1520). The October 25, 2001, and December 17, 2001, supplements provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 13, 2001, as supplemented by letters December 17 and December 26, 2001, and January 10, 2002.

Brief description of amendments: The amendments revise the Technical Specifications to support the licensee's planned upgrade of the reactor water level instrumentation, including changes to surveillance requirements frequencies, functional testing, and allowable values.

Date of issuance: February 12, 2002.

Effective date: As of the date of issuance and shall be implemented for Unit 1 prior to reaching Startup (i.e., Mode 2) following refueling outage 17, scheduled for completion in November 2002, and for Unit 2 prior to reaching Startup (i.e., Mode 2) following refueling outage 16, scheduled for completion in February 2002.

Amendment Nos.: 204 and 200.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 17, 2001 (66 FR 52800). The December 17 and December 26, 2001, and January 10, 2002, supplements provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Beaver County, Pennsylvania

Date of application for amendment: June 29, 2001, as supplemented by letters dated October 4, and December 1, 2001.

Brief description of amendment: The amendment revised the pressure-temperature curves and the cold overpressure protection limits. The changes are supported by a new fluence determination based on evaluation of a surveillance capsule, and the use of the American Society of Mechanical Engineers Code Case N–640.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No: 249.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 17, 2001 (66 FR 52801). The supplemental letters provided additional information but did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of application for amendment: March 28, 2001, as supplemented by letter dated September 25, 2001.

Brief description of amendment: The amendment revised the technical specifications associated with crediting soluble boron for reactivity control in the spent fuel pool.

Date of issuance: February 11, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No: 128.

Facility Operating License No. NPF–73: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 8, 2001 (66 FR 41620). The September 25, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of application for amendment: June 28, 2001, as supplemented September 13, 2001, December 19, 2001, and January 21, 2002.

Brief description of amendment: The amendment revised the technical specification (TS), 3.1.1.4, upper limit for the moderator temperature coefficient (MTC), from 0×10^{-4} change in reactivity per degree Fahrenheit ($\Delta k/k/°F$) to $+0.2 \times 10^{-4}$ $\Delta k/k/°F$ for power levels up to 70 percent of rated thermal power (RTP), and ramping linearly to 0×10^{-4} $\Delta k/k/°F$ from 70 percent to 100 percent RTP. The change is needed to address future core designs with higher energy requirements, associated with plant operation at higher capacity factors.

Date of issuance: February 21, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No: 129.

Facility Operating License No. NPF–73. Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 31, 2001 (66 FR 55019). The September 13, 2001,

December 19, 2001, and January 21, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: April 1, 2001.

Brief description of amendment: FirstEnergy Nuclear Operating Company submitted License Amendment Request (LAR) 00–0003 for Davis-Besse Nuclear Power Station, Unit 1, for review and approval. This amendment request proposes to revise references in the Technical Specification (TS) to the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (ASME Code), Section XI, as the source of requirements for the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. The TS will reference the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code).

Date of issuance: January 31, 2002.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 250.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29375). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 22, 2001, as supplemented by letters dated November 15, 2001, February 12, 2002, and electronic transmission dated February 19, 2002.

Brief description of amendment: This amendment revised Davis-Besse Nuclear Power Station (DBNPS) Technical Specifications in accordance with Framatone Technologies Incorporated Topical Report BAW–2303P, Revision 4, ''OTSG Repair Roll Qualification Report.'' The changes revise the existing DBNPS Once-Through Steam Generators (OTSGs) repair roll requirements to (1) use updated limiting tensile tube loads, (2) define new exclusion zones within the steam generator in which application of the repair roll is prohibited, (3) allow the repair roll to be used in the lower tubesheet area, (4) remove the limitation of only one repair roll per OTSG tube, and (5) replace the requirement that the repair roll be one inch in length with a requirement that the repair roll be installed in accordance with Topical Report BAW–2303P, Revision 4.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 252.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 8, 2001 (66 FR 41621). The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 15, 2001, as supplemented by letter dated February 8, 2002.

Brief description of amendment: This amendment revises Technical Specification (TS) 3/4.9.4, ''Refueling Operations—Containment Penetrations,'' TS 3/4.9.12, ''Refueling Operations—Storage Pool Ventilation,'' and associated Bases. The changes will allow the containment equipment hatch cover to be removed during core alterations and movement of irradiated fuel inside containment provided the Emergency Ventilation System is operable with the ability to filter any radioactive release.

Date of issuance: February 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 251.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 27, 2001 (66 FR 34284). The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 2002.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: December 5, 2001.

Brief description of amendment: This amendment revised Technical Specification 5.5.11, ''Technical Specifications (TSs) Bases Control Program,'' to reflect Technical Specification Task Force (TSTF) Standard Technical Specification Traveler, TSTF–364, Revision 0, ''Revision to Technical Specification Bases Control Program to Incorporate Changes to 10 CFR 50.59.''

Date of Issuance: February 21, 2002.

Effective Date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 121.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 927). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 21, 2002.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: March 29, 2001, as supplemented October 30, 2001.

Brief description of amendment: The amendment revised the Technical Specifications (TS) and TS Bases to eliminate the requirements for certain engineered features operability during core alterations and movement of irradiated fuel which had decayed for at least 2 days.

Date of issuance: February 11, 2002.

Effective date: As of the date of issuance, to be implemented prior to Refueling Outage 8.

Amendment No.: 101.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29358). The licensee's October 30, 2001, supplement withdrew portions of the

original application, leaving the balance unchanged.

The staff's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2002.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station (SSES), Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: July 17, 2001, as supplemented July 26, and October 15, 2001.

Brief description of amendments: The amendments update the reactor pressure vessel pressure-temperature limit curves for SSES–1 and 2.

Date of issuance: February 7, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 200, 174.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50471). The July 26, and October 15, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 7, 2002.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: November 8, 2001, as supplemented on December 14, 2001.

Brief description of amendments: The amendments add the following to the Technical Specifications: (1) The phrase, ''or if open, capable of being closed'' to Limiting Condition for Operation 3.9.4 for the equipment hatch, during core alterations or movement of irradiated fuel assemblies inside containment, and (2) the requirement to verify the capability to install the equipment hatch in a new Surveillance Requirement (SR) 3.9.4.2. The previous SR 3.9.4.2 was renumbered SR 3.9.4.3, but not changed.

Date of issuance: February 20, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance, including the incorporation of the changes to the Technical Specification Bases as described in the licensee's application dated November 8, 2001.

Amendment Nos.: 93 and 93.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64307). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 2002.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or

if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 4, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: February 8, 2002, as supplemented February 10, 2002.

Description of amendment request: The amendment adds a license condition allowing a one-time limited duration exception from the Technical Specification (TS) Surveillance Requirement (SR) to verify that the opening, closing, and frictional torque of the ice condenser inlet doors are within specified limits as required by TS SRs 4.6.5.3.1.b.3, 4.6.5.3.1.b.4, and 4.6.5.3.1.b.5, respectively.

Date of issuance: February 14, 2002.

Effective date: As of the date of issuance, to be implemented immediately.

Amendment No.: 265.

Facility Operating License No. (DPR–58): Amendment revises the Operating License.

Public comments requested as to proposed no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated February 14, 2002.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: William D. Reckley, Acting Section Chief.

Dated at Rockville, Maryland, this 25th day of February, 2002.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–5000 Filed 3–4–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25446; 812–12018]

The Vantagepoint Funds and Vantagepoint Investment Advisers, LLC; Notice of Application

February 26, 2002.

AGENCY: Security and Exchange Commission (''Commission'').

ACTION: Notice of an application under: (a) Section 6(c) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act; (b) sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) of the Act.

*Summary of Application:*Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer that is an affiliated person of an investment adviser to another portion, subject otherwise to the limits in rule 12d3–1 under the Act.

Applicants: The Vantagepoint Funds (the ''Fund'') and Vantagepoint Investment Advisers, LLC (''VIA'').

*Filing Dates.*The application was filed on March 7, 2000 and amended on February 26, 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 March 21, 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, 777 North Capitol Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 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 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company registered under the Act and currently consists of nineteen investment portfolios (''Portfolios''). VIA is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act'') and is a wholly-owned subsidiary of ICMA Retirement Corporation. VIA serves as investment adviser to the Portfolios, including Portfolios (''Multi-Managed Portfolios'') that are advised by VIA and investment subadvisers (''Subadvisers''). Each Subadviser is registered under the Advisers Act or is exempt from registration. Each Subadviser is responsible for making independent investment and brokerage allocation decisions for a discrete portion of a Multi-Managed Portfolio based on its own research and credit evaluations. Each Subadviser is compensated directly by the Fund based on a percentage of the average daily net assets of the discrete portion of the Multi-Managed Portfolio allocated to the Subadviser. VIA also may directly advise a discrete portion of a Multi-Managed Portfolio.

2. Applicants request relief to permit: (a) A broker-dealer that serves as a Subadviser or is an affiliated person of a Subadviser (the broker-dealer, an ''Affiliated Broker-Dealer;'' the Subadviser, an ''Affiliated Subadviser'') to engage in principal transactions with a portion of a Multi-Managed Portfolio that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Subadviser (the portion, an ''Unaffiliated Portion''; the other Subadviser, an ''Unaffiliated Subadviser''); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to use such brokerage services, without complying with rule 17e–1(b) or (d) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or a person of which an Affiliated Subadviser is an affiliated person (''Affiliated Underwriter''); (d) a portion advised by an Affiliated Subadviser (''Affiliated Portion'') to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f–3 under the Act, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions; and (e) an Unaffiliated Portion to purchase securities issued by an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser, that is involved in securities-related activities (''Securities Affiliate''), subject otherwise to the limits in rule 12d3–1 under the Act.[1]

3. Applicants request that the exemptive relief apply to any open-end management investment company registered under the Act or current or future portfolio of such company for which VIA or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with VIA currently or in the future acts as an investment adviser. The Fund is the only registered investment company that currently intends to rely on the order. VIA will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

[1] The terms ''Unaffiliated Subadviser'' and ''Subadviser'' include VIA and the term ''Unaffiliated Portion'' includes the discrete portion of a Multi-Managed Portfolio directly advised by VIA, provided that VIA manages its portion of the Multi-Managed Portfolio independently of the portions managed by other Subadvisers to the Multi-Managed Portfolio, and VIA does not control or influence any other Subadviser's investment decisions for its portion of the Multi-Managed Portfolio. VIA does not currently manage directly any portion of a Multi-Managed Portfolio

Applicants' Legal Analysis

A. Principal Transactions Between Unaffiliated Portions and Affiliated Broker-Dealers

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promoter of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter (''second-tier affiliate''). Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Multi-Managed Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus a second-tier affiliate of a Multi-Managed Portfolio, including the Unaffiliated Portions. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Multi-Managed Portfolio with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a)(1) and (2).

2. Applicants seek relief under section 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a)(1) and (2) where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Managed Portfolio.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser were to purchase securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the average daily net assets of the portion of the Multi-Managed Portfolio allocated to their management. The execution of a transaction to the disadvantage of an unaffiliated Portion would also disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further state that VIA's power to dismiss Subadvisers or to change the portion of a Multi-Managed Portfolio allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of its own portion of the Multi-Managed Portfolio.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Multi-Managed Portfolio. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants that VIA does not dictate brokerage allocation or investment decisions for any Multi-Managed Portfolio, or have the contractual right to do so, except for any portion of a Multi-Managed Portfolio advised directly by VIA. Applicants submit that, in managing a discrete portion of a Multi-Managed Portfolio, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Multi-Managed Portfolio, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and policies of the Multi-Managed Portfolio as described in its registration statement. Applicants assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Multi-Managed Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that the Act was designed to prevent.

B. Payment of Brokerage Compensation by Unaffiliated Portions to Affiliated Broker-Dealers

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as a broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the ''usual and customary broker's commission'' for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not interest persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another portion of a Multi-Managed Portfolio) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request relief under section 6(c) from section 17(e). Applicants request relief under section 6(c) from section 17(e) of the Act and rule 17e–1 under the Act to the extent necessary to permit the Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker Dealer acting as broker in the ordinary course of business without complying with the requirements of rule 17e–1(b) and (d). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Managed Portfolio.

3. Applicants believe that the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c) of the Act. Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker Dealers only if the fees charged are reasonable and fair, as required by rule 17e–1(a). Applicants note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) when a principal underwriter of the security, or an affiliated person of the principal writer, is an officer, director, member of an advisory board, investment adviser, or employee of the investment company. Section 10(f) also provides that the Commission may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser although under contract to manage only a discrete portion of a Multi-Managed Portfolio, is an investment adviser to the Multi-Managed Portfolio. Therefore, all purchases of securities by an Unaffiliated Portion from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, would be subject to section 10(f).

3. Applicants request relief under section 10(f) to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent that those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Multi-Managed Portfolio. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase is in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the ''dumping'' of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from the underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Managed Portfolios because a decision by an Unaffiliated Subadviser to a discrete portion of a Multi-Managed Portfolio to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for ''dumping.'' In addition, applicants state that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

D. Purchases of Securities Issued by Securities Affiliates

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under Act exempts certain transactions from the prohibitions of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in paragraph (c) of rule 12d3–1, provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment adviser, promoter, or principal underwriter.

2. Applicants state that because each Subadviser to a Multi-Managed Portfolio is considered to be an investment adviser to the entire Multi-Managed Portfolio, an Unaffiliated Portion may not purchase securities of a Securities Affiliate in reliance on rule 12d3–1. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Portion to acquire securities issued by a Securities Affiliate subject to the limits in rule 12d3–1, except for paragraph (c) to the extent that the paragraph applies solely because the Securities Affiliate is an Affiliated Subadviser, or an affiliated person of an affiliated Subadviser. The requested relief would not extend to securities by the Subadviser making the purchase, VIA, or an affiliated person of any of these entities.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Multi-Managed Portfolio. Further, applicants submit that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of shareholders by preventing the Unaffiliated Subadviser form achieving optimal investment results.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Managed Portfolio will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser, and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Affiliated Underwriter, or Securities Affiliate (except by virtue of serving as Subadviser to a discrete portion of a Multi-Managed Portfolio) will be an affiliated person or a second-tier affiliate of (a) VIA, (b) any Unaffiliated Subadviser, (c) any principal underwriter or promoter of the Multi-Managed Portfolio, or (d) any officer, director or employee of the Multi-Managed Portfolio.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions or concerning the purchase of the securities issued by Securities Affiliates. Subadvisers may consult with VIA in order to monitor regulatory compliance, including compliance with the limits of rule 12d3–1.

4. No Affiliated Subadviser will participate in any arrangement whereby

the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3–1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5146 Filed 3–4–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45479; File No. SR–CBOE–2001–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Minimum Trading Increments for Spread, Straddle, and Combination Orders in Options on the S&P 500 Index

February 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or the ''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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 6.42, *Minimum Increments for Bids and Offers,* to require that bids and offers on spread, straddle, or combination orders in options on the S&P 500 Index, except for box spreads, be expressed in decimal increments no smaller than $0.05. The text of the proposed rule change appears below. New text is in *italics.*

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Chapter VI—Doing Business on the Exchange Floor

Section C: Trading Practices and Procedures

* * * * *

Rule 6.42. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum trading increments for options traded on the Exchange. When the Board of Directors determines to change the trading increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission, provided, however, that no change may be made to the minimum trading increment as set forth in this Rule for options trading in decimals that is inconsistent with the Decimals Implementation Plan (''Plan'') submitted to the Commission on July 24, 2000, and that otherwise changes the minimum trading increment for options trading in decimals unless the change has been filed with the Commission pursuant to rule 19b–4(f)(6) under section 19(b) of the Exchange Act. Subject to the foregoing, the following minimum trading increments shall apply to options traded on the Exchange:

(1) Subject to paragraph (2) below, bids and offers shall be expressed in decimal increments no smaller than $0.10 for option classes trading in decimals or eighths of $1 (e.g., 3⅛) for option classes trading in fractions, unless a different increment is approved by the appropriate Floor Procedure Committee for an option contract of a particular series.

(2) Bids and offers for all option series quoted below $3 a contract shall be expressed in decimal increments no smaller than $0.05 for options trading in decimals or sixteenths of a dollar (e.g., 1/16) for options trading in fractions.

(3) Bids and offers on spread, straddle, or combination orders as defined in Rule 6.53 may be expressed in any decimal or fractional price regardless of the minimum increments otherwise appropriate to the individual legs of the order. *Notwithstanding the foregoing sentence, bids and offers on spread, straddle or combination orders in options on the S&P 500 Index, except for box spreads, shall be expressed in decimal increments no smaller than $0.05.* Spread, straddle or combination orders expressed in net price increments that are not multiples of the minimum increment are not entitled to the same priority under Rule 6.45 as such orders expressed in increments that are multiples of the minimum increment.

Interpretations and Policies

.01–.04 Unchanged.

.05 For purposes of this rule, ''box spread'' means an aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same aggregate current underlying value, and are structured as either: (A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

CBOE Rule 6.42 establishes the minimum trading increments for options traded on the Exchange. CBOE Rule 6.42(1) provides that, subject to Rule 6.42(2), bids and offers shall be expressed in decimal increments no smaller than $0.10 unless a different increment is approved by the appropriate Floor Procedure Committee for an option contract of a particular

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

series. CBOE Rule 6.42(2) provides that bids and offers for all option series quoted below $3.00 a contract shall be expressed in decimal increments no smaller than $0.05. CBOE Rule 6.42(3) provides that bids and offers on spread, straddle, or combination orders as defined in CBOE Rule 6.53 may be expressed in any decimal or fractional price regardless of the minimum increments otherwise appropriate to the individual legs of the order.[3]

The proposed rule change amends CBOE Rule 6.42(3) to require that bids and offers on spread,[4] straddle,[5] or combination[6] orders in options on the S&P 500 Index (''SPX''), excluding box spreads, be expressed in decimal increments no smaller than $0.05. Expressing spread, straddle and combination orders in decimal increments no smaller than $0.05 will increase the efficiency of SPX traders in executing these types of orders. In addition, the proposed rule change adds new interpretation .05 to CBOE to define the term ''box spreads.''[7]

Spread, straddle, and combination orders are complex and multi-part orders, which involve special pricing and handling. A member holding a spread, straddle or combination order typically bids and offers on the basis of a total debit or credit for the order.[8] After a spread, straddle, or combination order has been executed at the total debit or credit, the parties to the trade record on a trade ticket the contract quantities and prices for each component option of the order. This task is straightforward and uncomplicated when the total debit or credit for a spread, straddle, or combination trade is expressed in the minimum increment under CBOE Rule 6.42.[9]

When spread, straddle and combination orders are expressed in increments smaller than $0.05, it results in ''split'' prices for each of the component options in order to reach the quoted debit or credit price and thus ''split'' contract quantities. SPX traders, particularly floor brokers, have found that when such orders are expressed in decimal increments smaller than $0.05, it is difficult and time consuming for the parties to perform the mathematical calculations to break down the order into the required contract quantities and prices.[10] This difficulty is exacerbated when the quantity of such an order is an odd lot quantity (such as 106 contracts). The result is that on active trading days, SPX floor brokers executing these types of orders cannot be as efficient in representing other customer orders that they are holding.

CBOE believes that the proposed rule change will enable SPX traders to more efficiently execute these types of transactions by permitting the parties to execute the trades more expeditiously and with less component parts in the transaction. In addition, CBOE believes that the proposed rule change is appropriate given the complexity of these orders, the size of the underlying S&P 500 index, and the participants in the SPX market, which are primarily institutional.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act.[11] It is designed to promote just and equitable principles of trade, and protect investors and the public interest by increasing the efficiency of execution for spread, straddle and combination orders in SPX options.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) 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

[3] *See* Securities Exchange Release No. 34–34764 (September 30, 1994), 59 FR 51223 (October 7, 1994) (order approving amendments to CBOE Rule 6.42).

[4] A spread order is an order to buy a stated number of option contracts and to sell the same number of option contracts, or contracts representing the same number of shares at option, of the same class of options. CBOE Rule 6.53(d).

[5] A straddle order is an order to buy a number of call option contracts and the same number of put option contracts on the same underlying security which contracts have the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts on the same underlying security which contracts have the same exercise price and expiration date. For example, an order to buy two XYZ July 50 calls and to buy two July 50 XYZ puts is a straddle order. In the case of adjusted option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares at option. CBOE Rule 6.53(f).

[6] A combination order is an order involving a number of call option contracts and the same number of put option contracts in the same underlying security. In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares at option. CBOE Rule 6.53(e).

[7] Under the proposed rule change, the term ''box spread'' is defined to mean an aggregation of positions in a long call option and a short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same underlying component or index and time expiration, and are based on the same aggregate current underlying value, and are structured as either: (A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or (B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price. In other words, a box spread is a synthetic long position at one strike price and a synthetic short position at another strike price.

[8] For example, if option A is bought at 5 and option B sold at 6, the order is executed at a net credit of one, or if option A is sold at 5.10 and option B is bought at 6.10, the order is executed at a net debit of one.

[9] For example, assume the market for the December SPX 1150 calls is 18 bid, 19 asked, and the market for the December SPX 1175 calls is 6.50 bid and 7.50 asked. The fair value of a call spread comprised of these two options is 11.50 (the difference between the prices quoted for each option). If an order to buy 100 of the 1150 calls and to sell 100 of the 1175 calls is quoted and executed at a net debit of 11.50 (expressed in a multiple of the minimum increment), the parties to the trade can easily determine and record on a trade ticket a price for each component option that comprises the spread. Any combination of purchase and sale prices within the quoted ranges for the component options that yield a net debit or credit of 11.50 could be used (*e.g.,* 18.50 for the 1150 calls, and 7 for the 1175 calls).

[10] Using the example in footnote 9, if instead the call spread is quoted and executed at a net debit of 11.48 instead of 11.50, in order to determine prices for the component options that are expressed in a multiple of $0.05 the trader must perform a series of calculations. In this case, the trader might determine that the trade must be split up into a 40 contract spread that traded at a net debit of 11.45 and a 60 contract spread that traded at a net debit of 11.50, which together yield a net debit of 11.48 for the entire order.

[11] 15 U.S.C. 78f(b)(5).

Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2001–62 and should be submitted by March 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5143 Filed 3–4–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45478; File No. SR–CHX–2002–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Provide for Rebilling of Costs Related to Member Firm Connectivity With the MAX System

February 26, 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 February 1, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (''Schedule'') to provide for rebilling of certain costs relating to member firm connectivity with the Exchange's automatic execution system. The text of the proposed rule change is below. Proposed new language is in italics.

Membership Dues and Fees

* * * * *

H. Equipment, Information Services and Technology Charges

MAX Connection Charges If the Exchange incurs direct costs relating to a member firm's connection to the MAX System, including costs associated with installation of equipment, telecommunication lines, telecommunication services and maintenance charges, such costs will be rebilled to the member firm at cost, provided, however, that the Exchange will not seek reimbursement of those connection-related costs deemed reasonable and necessary by the Exchange if the member firm to which the costs are allocable has routed an average of not less than 100,000 trades per month to the Exchange via the MAX System, during the 6 months preceding the billing date.

* * * * *

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 CHX proposes to amend the Schedule to provide for rebilling of costs incurred by the Exchange relating to member firm connectivity with the MAX System.[4] The Exchange currently pays such costs with respect to several high-volume order sending firms although it has no stated policy regarding where it will absorb such costs.

To provide high-volume order sending firms with continued incentive to route orders to the Exchange, consistent with their best execution obligations, the proposed rule change includes a provision by which the Exchange would waive its right to reimbursement of MAX connectivity charges if an order sending firm had routed an average of 100,000 trades per month to the CHX during the six-month period preceding the billing date.

The CHX believes that the proposed rule change constitutes an equitable means of recovering its often-substantial technology costs, while recognizing that in certain instances, business considerations warrant the Exchange's absorption of such costs. The Exchange recognizes the Commission's interest in making available information regarding the magnitude of the MAX connectivity charges that the Exchange would waive for firms meeting the requisite volume criteria. Accordingly, while the Exchange cannot provide one fixed number due to varying utility rates and connectivity needs for each order-sending firm, the Exchange notes that the approximate average charge per month for MAX connectivity charges (*i.e.* telecommunications utility charges) will be approximately $4,000. Additionally, one-time initial hardware, software and setup charges range by order-sending firm, up to $50,000.[5]

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] The CHX Midwest Automated Execution system, commonly referred to as the ''MAX System,'' is the principal system by which orders are routed to the CHX and executed automatically.

[5] With regard to one-time initial hardware, software and setup charges, the decision not to seek reimbursement applies only to order-sending firms that are establishing new connectivity to the MAX System. For order-sending firms that were already connected with the MAX System at the time the CHX filed this proposed rule change, the initial hardware, software and setup charges are moot under this proposed rule change. For order-sending firms that establish new connectivity to the MAX System, the CHX will look back six months from the CHX billing date to determine whether an order-sending firm has routed an average of 100,000 trades per month to the CHX. If so, the CHX will not seek reimbursement for initial hardware, software and setup. Were an order-sending firm establishing new connectivity to the MAX System to fall below the 100,000-trade-routing threshhold within the six-month look-back period from the CHX billing date, the order-sending firm would be charged the costs of initial hardware, software and setup, as well as any monthly connectivity charges. Once six months have passed since the initial hardware, software and setup charges have been incurred, the only connectivity charges eligible for a waiver of reimbursement are the monthly connectivity charges. February 26, 2002 telephone conversation between Kathleen M. Boege, Associate

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] 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 inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–2002–04, and should be submitted by March 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5144 Filed 3–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45480; File No. SR–Phlx–2002–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing Fees for Equity Trading Permit Holders

February 26, 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 February 6, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to: (1) Adopt new fees applicable to holders of equity trading permits (''ETPs'') and ETP organizations;[3] (2) establish that certain fees, dues and charges currently applicable to members and member organizations will also be applicable to ETP holders and ETP organizations; and (3) amend the Exchange's member credit program to provide that monthly fees charged to ETP holders and ETP organizations are credit-eligible, and to clarify certain aspects of the Exchange's member credit program as it applies to ETPs.[4] The text of the proposed rule change is available at the Phlx's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On January 9, 2002, the Commission approved a proposed rule change to adopt Exchange Rule 23, which provides for ETPs.[5] Specifically, Exchange Rule 23(a) provides that the Exchange shall issue up to 75 ETPs outstanding from time to time. The Exchange anticipates commencing an ETP program in the near future. Accordingly, the purpose of the proposed rule change is to: (1) Establish that certain fees, dues and charges currently applicable to members and member organizations will be applicable to ETP holders and ETP organizations under Exchange Rule 23; (2) adopt new fees applicable to members by virtue of being ETP holders and to ETP organizations; and (3) amend the Exchange's member credit program to provide that monthly fees charged to ETP holders and ETP organizations are

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General Counsel, CHX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, and Joseph Morra, Special Counsel, Division, Commission.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange defines an ETP organization as a broker-dealer whose associated person has qualified the firm as an ''ETP organization'' pursuant to Exchange Rule 23(g).

[4] The fees proposed herein would be applicable to ETP holders, which, according to the Exchange, are members although they are not entitled to certain rights under Delaware corporate law. *See* Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (SR–Phlx–00–03, Amendment 3, footnote 1). Therefore, the fees that are proposed herein to be imposed on ETP holders are member fees. Hence, this proposed rule change is effective on filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder.

[5] *See* Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002)(approving SR–Phlx–00–02 and SR–Phlx–00–03). The Exchange notes, as a preliminary matter, that ETPs are not required in order to trade equities on the Exchange. ETPs are simply being made available pursuant to Exchange Rule 23 as an alternative to owning or leasing a membership on terms and conditions that reflect the Exchange's reasonable business judgment.

credit'eligible and to clarify certain aspects of the Exchange's member credit program as it applies to ETPs. Therefore, the Exchange proposes to amend Appendix A to the Exchange's Schedule of Dues, Fees and Charges to reflect the changes discussed herein.[6]

As discussed further below, the purpose of the proposed rule change is to generate revenue for the Exchange in order to enable it to provide a marketplace for its members and ETP holders. The Exchange anticipates that in permitting ETP Monthly Fees to be ''credit eligible,'' ETPs would become more attractive because they would enable ETP organizations, which are also member organizations, to maximize the value of the monthly member credits extended to their qualified members.[7] In addition, the Exchange believes that making ETP Monthly Fees ''credit-eligible'' should free up funds for trading activity on the Exchange that would otherwise be used for the payment of such fees.

A. Applicability of Existing Member/ Member Organization Fees and Charges

Inapplicable Existing Fees. Exchange Rule 23(e) provides that an ETP holder shall be subject to the Exchange's fees and other charges, as applicable, provided that an ETP holder shall not be subject to annual membership dues, technology fees or capital assessments. Additionally, the Exchange would not charge its current $1500.00 Initiation Fee to new ETP holders, whether or not they were previously members, Foreign Currency Option (''FCO'') participants or approved lessors.[8]

The Exchange also proposes to add clarifying language to its fee schedule with respect to the Trading Floor Personnel Registration Fee, which is imposed on member/participant organizations for individuals who are employed by such member/participant organizations and who work on the Exchange's trading floor, such as clerks, interns, stock execution clerks and other associated persons, but who are not registered as members or participants. The Exchange proposes to add language to a footnote in order to clarify that this fee is not to be billed to ETP organizations with respect to its ETP holders who work on the Exchange's trading floor.

Applicable Existing Fees. Except as indicated above, all other Exchange fees and charges applicable to Exchange members and member organizations would apply to ETP holders and ETP organizations.[9] However, ETP organizations, which are also member organizations by virtue of holding memberships, and which are subject to fees and charges assessed against member organizations, would not also be assessed such fees and charges a second time in their separate capacity as ETP organizations.[10]

B. New Fees Not Applicable to Current Members

The Exchange proposes to adopt a number of new fees which are to be applicable to ETP holders and ETP organizations.

1. ETP Monthly Fees

The Exchange proposes an Off-Floor ETP Fee, a Regular ETP RCS Fee, a Regular ETP 3-Seat Fee, and a Regular ETP Fee (collectively, the ''ETP Monthly Fees'') as described below.

Off-Floor ETP Fee. An Off-Floor ETP Fee of $500.00 per month would be charged for Off-Floor ETP holders.

Regular ETP RCS Fee. A Regular ETP RCS Fee of $1,000.00 per month would be charged in lieu of the Regular ETP Fee for ETP holders whose Exchange business is limited to operating as a remote competing specialist.[11]

Regular ETP 3-Seat Fee. A Regular ETP 3-Seat Fee of $1,350.00 per month would be charged for Regular ETP holders and ETP organizations in lieu of the Regular ETP Fee if the ETP organization has at all times at least three associated persons who are members of the Exchange by virtue of a membership, whether owned or leased.[12] For every 3 memberships, up to 3 ETPs would qualify for this lower rate.

Regular ETP Fee. A Regular ETP Fee of $3,500.00 per month would be charged for Regular ETP holders and ETP organizations, which are not eligible for the lower Regular ETP 3-Seat Fee or Regular ETP RCS Fee.

2. Other New Fees

ETP Organization Initiation Fee. A non-recurring ETP Organization Initiation Fee of $1,000.00 would be charged for an ETP organization when it is first qualified as such if it is not, at the time it first becomes so qualified, an FCO participant organization or member organization. For instance, if an existing member organization seeks an ETP, then no such fee applies because that member organization has already paid a membership-related Initiation Fee. At the same time, a completely new organization which gets an ETP and thereby becomes an ETP organization must pay this fee. The Exchange intends for this fee to cover the Exchange's expenses associated with a new firm commencing Exchange business.[13]

ETP Intra-Firm Transfer Fee. Finally, the Exchange proposes that a $500.00 fee would apply to intra-firm transfers of ETPs.[14]

C. Credit-Eligibility of ETP Monthly Fees

ETP holders would not, by virtue of the ETP, be holders of equitable title to Exchange memberships and thus would not be subject, by virtue of the ETP, to the Exchange's $1,500.00 capital funding fee.[15] Furthermore, an ETP holder who is also an owner of an Exchange membership would not be entitled, by virtue of the ETP, to the monthly credit of up to $1,000.00 to be applied against certain fees, dues, charges and other amounts owed to the Exchange in connection with the ETP.[16]

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[6] The Exchange states that it intends to separately file a proposed rule change to adopt an Application Fee for applicants for ETPs.

[7] The term ''qualified member'' is defined in the notice adopting the member credit for 36 months. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001). The term includes Phlx members who own the membership by which they are a member (''member owners'') and certain other categories of members described in the notice.

[8] The Exchange proposes to add a footnote to the fee schedule to provide that the Exchange's existing Initiation Fee would not be imposed on ETP holders. For members, the Initiation Fee is applicable upon admission to membership and is thus a member fee. *See* Securities Exchange Act Release No. 20651 (February 14, 1984), 49 FR 6817 (February 23, 1984). The Exchange proposes a different initiation fee, discussed below (the ''ETP Organization Initiation Fee''), with respect to ETP organizations.

[9] *See supra,* note 4.

[10] Exchange Rule 23(g) provides that ''[a]n individual ETP holder who is associated with a broker-dealer shall qualify such broker-dealer as an ETP firm or ETP corporation (either, an 'ETP Organization')''. Since it is possible that an existing member organization may have associated persons who are members at the same time it has associated persons who are ETP holders, it is possible that a firm will be both a member organization and an ETP organization at the same time. Fees currently assessed on ''member organizations'' (such as the Examinations Fee) would not be assessed twice because of this dual status.

[11] *See* Exchange Rule 461, PACE Remote Specialist; *See also,* Securities Exchange Act Release No. 45184 (December 21, 2001) 67 FR 622 (January 4, 2002) (approving SR–Phlx–2001–98).

[12] The Exchange states that these members would not need to conduct business on the Exchange's physical trading floor and need not be ''qualified members'' as that term is defined for purposes of the Exchange's member credit program.

[13] Like the Exchange's current Initiation Fee, the proposed ETP Organization Initiation Fee would apply after the organization has become an ETP Organization and is thus imposed on a ''member'' organization.

[14] The Exchange states that ETPs are not transferable except within the ETP organization as provided in Exchange Rule 23(f).

[15] Exchange membership owners (also referred to as seat owners) are assessed a monthly capital funding fee of $1,500.00. See Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 132 (July 10, 2000).

[16] *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001).

(These dues, fees and charges are identified on the Exchange's fee schedule by a mark which ''denotes fee eligible for monthly credit of up to $1,000.'')

The Exchange is proposing that the ETP Monthly Fees be made ''credit-eligible'' so that a member organization's aggregate monthly member credits may be applied to them.[17]

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(4),[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members. Also for the reasons described below, the Exchange believes that the application of the fees, dues and charges as described herein to ETP holders and ETP organizations is consistent with the requirement of Section 6(b)(5) of the Act,[20] which requires that the rules of the Exchange not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

1. ETP Monthly Fees

By assessing ETP Monthly Fees, the Exchange states that it is requiring ETP holders to make an economic contribution to the Exchange, as members and holders of equitable title have done in the past and continue to do. The Exchange believes that this economic contribution is reasonable and equitable in view of the fact that the Exchange provides the benefits of an Exchange marketplace to both members and ETP holders alike.

In light of the limitations on the number of ETPs the Exchange currently has authority to issue under Rule 23(a) (*i.e.,* 75), and the Exchange's prudential concerns relating to the potential effect on membership prices if existing members in large numbers were to choose to sell their seats to acquire permits, the Exchange has chosen to establish a fee structure for ETPs that the Exchange believes will allow the benefit of the program to the Exchange to be maximized while treating various constituencies fairly.

Off-Floor ETP Monthly Fees. The Exchange states that it wants to encourage order flow providers to send business to the Exchange. An Off-Floor ETP Monthly Fee of only $500.00 is designed to provide an incentive (or, stated otherwise, to remove the disincentive of a high access fee) to send order flow to the Exchange. Under Exchange Rule 23, the Exchange business of Off-Floor ETP holders is limited to the provision of order flow. Off-Floor ETP holders are not eligible to do business on the Exchange's physical trading floor and are not eligible to conduct a specialist business. Because an Off-Floor ETP holder's trading rights are circumscribed in this respect, and because an ETP holder operating from the Exchange floor would be able to take advantage of more Exchange facilities, utilizing Exchange resources and benefiting from the advantages floor presence affords, the Exchange believes that it is fair to charge less for Off-Floor ETP holders' trading rights than for trading rights which may be exercised by a Regular ETP holder, either at the Regular ETP Fee rate, the Regular ETP RCS Fee rate, or the Regular ETP 3-Seat Fee rate, as applicable.

Regular ETP RCS Fee. The Exchange states that it also wants to encourage the success of its Remote Competing Specialist Initiative program (''RCSI''), and is offering a lower fee than will be available to on-floor ETP holders to remote specialists in order to induce broker-dealers to participate in the RCSI program as remote specialists. The Exchange represents that the availability of a Regular ETP RCS Fee rate which is lower than the Regular ETP Fee rate or the Regular ETP 3-Seat Fee rate is designed to accomplish what the Exchange believes is a reasonable and legitimate business objective. The monthly Regular ETP RCS Fee also reflects the fact that remote specialists will not take up space and resources on the Phlx trading floor or use floor services to the same extent as Phlx floor-based specialists. The Exchange believes that it is fair that remote competing specialists be permitted to acquire trading rights at less cost than an ETP holder trading on the Exchange floor and utilizing Exchange resources and benefiting from the advantages floor presence affords.

Regular ETP 3-Seat Fee and Regular ETP Fee. The Exchange also represents that a goal of the ETP program is to make ETPs available to the Exchange's existing floor members without causing a drastic decline in seat values. The Exchange believes that the requirement that existing members retain 3 seats in order to qualify for the lower Regular ETP 3-Seat Fee will allow the Exchange to do this while creating a disincentive for members to sell all their memberships and replace them with ETPs.

The Exchange recognizes that seat owners who are not themselves members traditionally have, while benefiting from their memberships, also made contributions to the Exchange by making it possible for certain members (in particular, lessee-members) to trade without the member being first required to make a large capital investment in an Exchange membership. In creating the ETP program, the Exchange represents that it has carefully considered the effects on memberships, and has similarly done so respecting the fee structure proposed herein. Specifically, the Exchange states that its business strategy includes a concern not to unnecessarily create a sudden and drastic dislocation in seat prices. Accordingly, the lower Regular ETP 3-Seat Fee is designed to permit some of the ETPs to be issued to existing floor members while creating an incentive for firms which choose to take advantage of ETPs to cause legal title to 3 memberships to be retained by its members. The Exchange believes that making 3 ETPs available at the reduced ETP 3-Seat Fee for each 3 memberships a member organization maintains will result in the optimal mix of Exchange members and ETP holders.

The Exchange states that SROs have filed exchange fee and credit arrangements that do not treat all members (or other persons covered by Sections 6(b)(4) and (5)) equally, such as credits and discounts based on transaction volume, fees based upon the usage by certain members of equipment or other services or resources of an exchange, and fee structures that distinguish among the various activities of persons and firms.[21] Such measures

However, consistent with the Exchange's current general practice of invoicing the member organization rather than the member, thus aggregating the members' credit-eligible fees, a member organization which is also an ETP organization may include credit-eligible charges incurred by an ETP holder in the total amount that the member organization may offset with member credits. At no time shall the aggregate amount of member credits available to the member organization exceed $1,000.00 per membership per month.

[17] The Exchange notes that this would represent a change to the currently-approved member credit program, which excepted ''any fees paid by equity trading permit holders respecting any trading permits the Exchange may issue'' from the definition of ''credit-eligible fees''. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(5).

[21] *See, e.g.,* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (adopting a monthly credit of up to $1,000 to qualified members for an aggregate period of 36 months). The Exchange clarified that SRO fee filings made pursuant to Section 19(b)(3)(A) of the Act are noticed, and not approved, by the Commission, but are rather effective upon filing

Continued

are designed to promote and encourage certain behaviors.[22] In the case of the Regular ETP 3-Seat Fee, this fee is being made available as an alternative to the Regular ETP Fee to member organizations that are contributing to the value of Exchange memberships. The Exchange, in its business judgment, believes that to a certain degree the value of Exchange memberships is important to the well-being of the Exchange as a whole. The Exchange believes that the Regular ETP 3-Seat Fee is reasonably designed to further those interests and is available to any ETP organization by changing the manner in which it secures trading rights on the Exchange and the number of memberships it maintains.

2. Other Fees

With respect to the applicability and inapplicability of the existing fees to ETP holders and ETP organizations, the Exchange represents that the proposal is reasonable and equitable because the Exchange believes that the proposal generally treats ETP holders/organizations the same as other members/member organizations doing business on the Exchange in terms of fees assessed on the basis of transactions or the use of particular Exchange facilities or services. For instance, ETP holders executing transactions on the equity floor will be subject to equity transaction fees such as the equity transaction value charge. Similarly, ETP holders who utilize post space will be subject to post fees. By extending the applicability of fees currently applicable to existing members and member organizations (except as provided herein) to ETP holders and ETP organizations, the Exchange believes that ETP holders and ETP organizations be treated equally with members and member organizations doing business on the Exchange in terms of fees assessed on the basis of transactions or the use of particular Exchange facilities or services.

The Exchange believes that the one-time $1,000.00 ETP Organization Initiation Fee is fair and equitable. By assessing a one-time $1,000.00 ETP Organization Initiation Fee for new ETP organizations (and by not assessing the $1,500.00 Initiation Fee for new ETP holders) the Exchange states that it is affording ETP organizations new to the Exchange an initial comparative fee advantage relative to new members associated with member organizations. The Exchange believes this advantage is reasonable, however, in that it is designed to result in an optimal mix of ETPs and memberships as determined by the Exchange in the exercise of its reasonable business judgment. This comparative initial advantage is also reflective of the fact that ETP holders will not have voting privileges and that ETPs will not be transferable, except intra-firm to the extent permitted by Exchange Rule 23.

The Exchange proposes a $500.00 ETP Intra-Firm Transfer Fee be charged in the context of ETP transfers, which do not involve the transfer of legal or equitable title. ETP transfers are permitted on an intra-firm basis to the extent provided in Exchange Rule 23. The Exchange believes that this transfer fee is reasonable and equitable because the Exchange would devote administrative resources to ETP transfers as it currently does with transfers of legal and equitable title to memberships.

3. Credit-Eligibility

With respect to the credit eligibility of ETP Monthly Fees, the Exchange believes that this aspect of the proposal is reasonable and equitable, because ETP Monthly Fees will be ''credit-eligible'' across-the-board, such that any member organization which incurs them may apply any available member credits to them. By making the ETP Monthly Fees ''credit-eligible'' the Exchange intends to enhance the attractiveness of ETPs, which the Exchange believes is an appropriate, nondiscriminatory business strategy.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[23] and Rule 19b–4(f)(2) hereunder.[24] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 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–Phlx–2002–10 and should be submitted by March 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5145 Filed 3–4–02; 8:45 am]

BILLING CODE 8010–01–P

with the Commission. *See* telephone conversation between Carla Behnfeldt, Director, Phlx, and Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, on February 26, 2002.

[22] The Exchange clarified certain language regarding its views on the effects of such fees. *See* telephone conversation between Carla Behnfeldt, Director, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission, on February 26, 2002.

[23] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[24] 17 CFR 240.19b–4(f)(2).

[25] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of Veterans Affairs, Compensation and Pension Service) Match 1008

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as

amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138, or writing to the Acting Associate Commissioner for Program Support, 2-Q–16 Operations Building 6401 Security Boulevard, Baltimore, MD 21235.

All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving records of Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the match agreements by the Data Integrity Boards of the participating Federal Agencies.

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computers matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 25, 2002.

Frederick G. Strekewald,

Assistant Deputy Commissioner for Disability, and Income Security Programs.

Notice of Computer Matching Program, Department of Veteran Affairs (VA) With Social Security Administration (SSA).

A. Participating Agencies

SSA and VA.

B. Purpose of the Matching Program

To identify certain Supplemental Security Income (SSI) and Special Veterans Benefit (SVB) recipients under title XVI and title VIII of the Social Security Act (''Act'') respectively, who receive VA-administered benefits, and to update their SSI/SVB records to reflect the presence of such payments. To determine under section 1144 of the Act, potential eligibility for Medicare Savings Programs (MSP) and enable SSA, in turn, to identify these individuals to the States.

C. Authority for Conducting the Matching Programs

The legal authority for SSA to conduct this matching activity is contained in sections 1631(e)(1)(B) and 1631(f) of the Act, 42 U.S.C. 1383(e)(1)(B) and 1383(f) (SSI), section 806(b) of the Act, 42 U.S.C. 1006(b)(SVB) and section 1144 of the Act, 42 U.S.C 1320b-14.

D. Categories of Records and Individuals Covered by the Matching Program

The VA will provide SSA with electronic files containing compensation and pension data from its system of records entitled Compensation and Pension, Education and Rehabilitation Records—VA (58VA21/22). SSA will then match VA's data with SSI/SVB payment information maintained in the SSR SSA/OSR 60–0103.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after notice of this matching program is sent to Congress and OMB or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 02–5133 Filed 3–4–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3937]

Notice of Proposal to Extend U.S.-Mali Agreement

AGENCY: Department of State.

ACTION: Notice.

Pursuant to the authority vested in me under Department of State Delegation of Authority No. 236–3, and pursuant to 19 U.S.C. 2602(f)(1), I hereby propose extension of the Agreement between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger River Valley and the Bandiagara Escarpment, signed on September 19, 1997. Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee will be requested.

A copy of this Memorandum of Understanding, the designated list of restricted categories of material, and related information can be found at the following web site: *http://exchanges.state.gov/education/culprop.*

Dated: February 26, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–5204 Filed 3–4–02; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3935]

Bureau of Political-Military Affairs; Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR 120 to 130) on persons convicted of violating or conspiring to violate section 38 of the Arms Export Control Act (''AECA'') (22 U.S.C. 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Chief, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 633–2700.

SUPPLEMENTARY INFORMATION: Section 38 (g)(4) of the AECA, 22 U.S.C. 2778, prohibits licenses and other approvals for the export of defense articles or defense services to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA.

In implementing this section of the AECA, the Assistant Secretary of State for Political-Military Affairs is authorized by § 127.7 of the ITAR to prohibit any person who has been convicted of violating or conspiring to violate the AECA from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required. This prohibition is referred to as ''statutory debarment''.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States court, and as such the administrative debarment proceedings outlined in part 128 of the ITAR are not applicable.

The period for debarment will normally be three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4) of the AECA and in accordance with section 127.11(b) of the ITAR. Unless licensing privileges are reinstated, the person/entity will remain debarred.

Department of State policy permits debarred persons to apply to the Director of the Office of Defense Trade Controls for an exception from the period of debarment beginning one year after the date of the debarment, in accordance with section 38(g)(4)(A) of the AECA and § 127.11(b) of the ITAR. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied. If the exception is granted, the debarment will be suspended.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), 126.7, 127.1(c), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating or of conspiring to violate the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for Arms Control and International Security for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision, in accordance with 22 CFR 127.7(d) and 128.13(a).

Pursuant to section 38 of the AECA and section 127.7 of the ITAR, the following persons have been statutorily debarred by the Assistant Secretary of State for Political-Military Affairs for a period of three years following their conviction for AECA:

(1) A & C International Trade, Inc., April 13, 2000, U.S. District Court of Washington, D.C., Docket # 99–CR–21–ALL.

(2) John Raymond Thompson, October 28, 1999, U.S. District Court, Central District of California, Western Division, Docket # 98–CR–708–ALL.

(3) Daniel A. Malloy, March 4, 1999, U.S. District Court of Newark, New Jersey, Docket # 98–CR–177–ALL.

(4) Shalom Shaphyr, October 4, 1999, U.S. District Court, Eastern District of Virginia (Alexandria), Docket # 99–CR–288–ALL.

(5) Siraj International, Inc., February 17, 2000, U.S. District Court, Eastern District of Wisconsin (Milwaukee), Docket # 98–CR–189–ALL.

(6) Gia An Du a.k.a. Anthony Huynh, a.k.a. Simon Du, a.k.a. Gia Simon Du, March 2, 1999, U.S. District Court, District of Maryland (Baltimore), Docket #98–CR–462–ALL.

(7) Michael Nathan Kitundu, November 10, 1999, U.S. District Court, Eastern District of Virginia (Alexandria), Docket # 99–CR–278–ALL.

(8) Morris Rothenberg & Son, Inc. d.b.a. Rothco, July 19, 1999, U.S. District Court, Eastern District of New York (Uniondale), Docket # 99–CR–564–ALL.

(9) Far East Trading Company, Inc. a.k.a. FETCO, Inc., U.S. District Court, Eastern District of Virginia (Alexandria) Docket # 01–CR–119–ALL.

This notice is provided in order to make the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for each respective US District Court, citing the court docket number where provided.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls pursuant to 22 CFR 126.3. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interest; whether an exception would further law enforcement concerns which are not inconsistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist which are not inconsistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affair function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: January 3, 2002.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 02–5202 Filed 3–4–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 3936]

Notice of Meeting of the Cultural Property Advisory Committee

AGENCY: Department of State.

ACTION: Notice.

The Cultural Property Advisory Committee will meet on Monday and Tuesday, April 15 and 16, from approximately 9 a.m. to 5 p.m.; and on Wednesday, April 17, from approximately 9 a.m. to 2 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC, to review the proposals to extend: (1) the ''Agreement between the Government of the United States of America and the Government of the

Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger River Valley and the Bandiagara Escarpment,'' which expires on September 23, 2002; and (2) the ''Agreement between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Objects and Materials from the Pre Columbian Cultures of Guatemala,'' which expires on October 3, 2002.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). A copy of the Act, the subject agreements, and related information may be found at this web site: *http://exchanges.state.gov/education/culprop.*

During its meeting on Monday, April 15, the Committee will hold an open session, from 10 a.m. to 12 Noon to receive oral public comment on the proposals to extend these agreements. Persons wishing to attend this open session should notify the Cultural Property office at (202) 619–6612 by Tuesday, April 9, 2002, to arrange for admission, as seating is limited. Those who wish to make oral presentations should also request to be scheduled, and must submit a written text of the oral comments, by April 9, to allow time for distribution of them to Committee members prior to the meeting. Oral comments will be limited to five minutes each to allow time for questions from members of the Committee and must specifically address the proposals to extend the Agreements with particular attention to determinations that will be made under Section 303 (a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602. The Committee also invites written comments and asks that they be submitted by April 9. All written materials, including the written texts of oral statements, should be faxed to (202) 260–4893.

Other portions of the meeting on April 15, 16 and 17 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: February 26, 2002.

Patricia S. Harrison,

Assistant Secretary of State for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–5203 Filed 3–4–02; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the March 22, 2002, meeting of the Trade and Environment Policy Advisory Committee will be held from 9 a.m. to 11:30 a.m. The meeting will be closed to the public from 9 a.m. to 11 a.m. and open to the public from 11 a.m. to 11:30 a.m.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on March 22, 2002, from 9 a.m. to 11:30 a.m. The meeting will be closed to the public from 9 a.m. to 11 a.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 11 a.m. to 11:30 a.m., when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for March 22, 2002, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Gianini, Office of the United States Trade Representative, (202) 395–6120.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–5166 Filed 3–4–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–243]

WTO Consultations Regarding ''United States—Rules of Origin for Textiles and Apparel Products''

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on January 11, 2002, India requested consultations with the United States under the Understanding on Rules and Procedures Governing the Settlement of Disputes (''DSU''), the General Agreement Regarding Tariffs and Trade 1994 (''GATT 1994''), and the Agreement on Rules of Origin (''ROO Agreement'') regarding the rules of origin for textiles and apparel products set out in Section 334 of Uruguay Round Agreements Act and Section 405 of the Trade and Development Act of 2000, and implementing legislation. The European Communities (''EC'') and Bangladesh subsequently requested to join the consultations as third parties. India alleges that Section 334 and its modification, Section 405, are inconsistent with certain obligations of the United States under the ROO Agreement. Pursuant to Article 4.3 of the DSU, such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and the requesting parties. Consultations were held on February 7, 2002, and may be followed by subsequent consultations. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 27, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0015@ustr.gov,* Attn:''US-India Textile ROO Dispute'' in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: India Textile ROO Dispute, with a confirmation copy sent electronically or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Mélida N. Hodgson, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3852.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the Consultation Request

Section 334 changed certain rules of origin applicable to textile and apparel products to harmonize U.S. practice with that of our trading partners. Section 405 amended Section 334 to resolve certain concerns raised by the EC. The consultation request alleges that Section 334's changes to rules of origin wrongly differentiated between textile and apparel products and industrial products in order to protect U.S. industry from competition. Similarly, India alleges that the changes made in Section 405 to the textile and apparel rules of origin were adopted to achieve specific trade objectives. These changes, India alleges are inconsistent with Article 2(b)–(e) of the ROO Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0015@ustr.gov,* with ''India Textile ROO Dispute'' in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–234, US-India Textile ROO Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Christine Bliss,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–5137 Filed 3–4–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Lake Charles Regional Airport, Lake Charles, LA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Airport District No. 1, Calcasieu Parish, Louisiana, for Lake Charles Regional Airport under the provisions of title 49 U.S.C, chapter 475 (hereinafter referred to as ''Title 49'') and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Lake Charles Regional Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before August 5, 2002.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is February 5, 2002. The public comment period ends March 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mr Michael J. Saupp, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0640, (817) 222–5645. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Lake Charles Regional Airport are in compliance with applicable requirements of Part 150, effective February 5, 2002. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 5, 2002. This notice also announces the availability of this

program for public review and comment.

Under title 49, an airport operator may submit to the FAA noise exposure maps, which meet applicable regulations, and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Airport District No. 1, Calcasieu Parish, Louisiana, submitted to the FAA on December 18, 2000, noise exposure maps, descriptions and other documentation which were produced during the FAR Part 150 Noise Study initiated by Federal Grant 3–22–0026–21 on August 17, 1999. It was requested that the FAA review this material as the noise exposure maps, as described in Title 49, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under title 49.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Airport District No. 1, Calcasieu Parish. The specific maps under consideration are Exhibit 6–1, 1999 DNL Noise Contours, Exhibit 6–2, 2004 DNL Noise Contours, Appendix Exhibit 1, and 2020 DNL Noise contours in the submission.

The FAA has determined that these maps for Lake Charles Regional Airport are in compliance with applicable requirements. This determination is effective on February 5, 2002. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Lake Charles Regional Airport, also effective on February 5, 2002. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 5, 2002.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. The FAA to the extent will consider all comments, other than those properly addressed to local land use authorities, practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

Lake Charles Regional Airport, Mr. Alan Kratzer, Airport Manager, P.O. Box 5820, Lake Charles, LA 70606–5820, (337) 477–6051.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Forth Worth, Texas, *February 5, 2002.*

William J. Flanagan,

Acting Manager, Airports Division.

[FR Doc. 02–5214 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 199: Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 199 meeting

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Airport Security Access Control Systems.

DATES: The meeting will be held on March 19, 2002 starting at 9 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 199 meeting. The agenda will include:

- March 19:
- Opening Session (Welcome, Introductory and Administrative Remarks, Agenda Overview, Review Minutes of Previous Meeting, Action Items from Last Meeting)
- Workgroup Reports and Discussions on Developments, New Standard Test and Comments from Members (Sections 1–4, Biometrics workgroup, Smart card workgroup, Database workgroup)
- Closing Session (Any Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–5212 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on March 2022, 2002, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 8339339; fax (202) 8339434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- March 20:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Minutes of Previous Meeting)
  - Program Management Committee Actions: SC–198 Working Group 3 Document
  - Status of Working Group 4, VHF Data Link (VDL) 3 Implementation
  - Status of Working Group 5, OHA/ Safety and Performance Requirements (SPR) for Next-Generation Air/Ground Communications System (NEXCOM) VDL–3
  - Status of Working Group 6, Interoperability of NEXCOM
  - Closing Plenary Session (Date and Place of Next Meeting)
- March 21, 22:
  - Working Groups 4, 5 and 6

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–5213 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Tuesday, March 19, 2002, at its headquarters. The meeting runs from 1 p.m. to 5 p.m.

The General Session includes the following items: (1) Housekeeping Items: Welcome, Introductions, Antitrust statement; (2) Minutes—approval of minutes from meeting #41 (10/24/01); (3) President's Report; (4) Coordinating Council Reorganization (D/A); and (5) Closing Housekeeping.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Tuesday, March 19, 2002 from 1 p.m.–5 p.m.

ADDRESSES: Hilton Scottsdale Resort and Villas, 6333 North Scottsdale, Scottsdale, Arizona, 85250–5428. Phone (877) 768–9330.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: February 28, 2002.

Jeffrey Paniati,

Program Manager, ITS Joint Program Office, Department of Transportation.

[FR Doc. 02–5156 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork from gas service line operators to ensure that customers receiving gas pipeline service are aware of the availability of excess flow valves (EFV's). This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the paperwork collection on EFV's, ways to minimize the burden on operators who must respond, ways to enhance the quality of the information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on pipeline operators. By advising customers of the availability of excess flow valves, the notices give customers information to help them decide if they would like to purchase excess flow valves for their line.

DATES: Comments on this notice must be received by May 6, 2002 to ensure consideration.

ADDRESSES: Please address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the docket number RSPA–98–4957 at the beginning of you comments, and you should submit two copies of your comments. If you wish to receive confirmation that RSPA received your comments, include a self-addressed, stamped postcard. You may also submit comments by the Internet to *http://dms.dot.gov* Once on the DMS Web site scroll down the page and click on ''Electronic Submission'' and follow the instructions.

You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday except Federal Holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http.//dms.dot.gov/search*. Once on the search page, type in the last four digits of the docket number shown at the beginning of this notice (in this case 4957) and click on ''search.''

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, U.S. Department of Transportation (DOT), 400 Seventh Street, SW., Washington, DC 20950, telephone (202) 366–6205 or e-mail marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: *Title of Information Collection:* Excess Flow Valves, Customer Notification.

OMB Number: 2137–0593.

Abstract: 49 U.S.C. 60110 directed DOT to prescribe regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and the costs associated with installation. The regulations provide that, except where installation is already required, the operator will install an EFV that meets prescribed performance criteria at the customer's request, if the customer pays for the installation.

Respondents: Gas Distribution Pipeline Operators.

Estimated Number of Respondents: 1590.

Estimated Total Annual Burden on Respondents: 20,000 hours.

As used in this notice, the terms 'paperwork information' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this customer notification requirement including completing paperwork, gathering information and conducting telephone calls.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4479 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork information from gas distribution service line operators to ensure that those operators who do not maintain all of their piping notify their customers that they must maintain the piping. This notice is published to measure the need for the proposed paperwork collection, ways to minimize the burden on operators who must respond, ways to enhance the quality of the information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on the regulated industry. By advising customers of the need to maintain their buried gas piping, the notices reduce the risk of accidents.

DATES: Comments on this notice must be received by May 6, 2002 to be assured of consideration.

ADDRESSES: Please address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the docket number RSPA–98–4957 at the beginning of you comments, and you should submit two copies of your comments. If you wish to receive confirmation that RSPA received your comments, include a self-addressed, stamped postcard. You may also submit comments by the Internet to *http://dms.dot.gov* Once on the DMS website scroll down the page and click on ''Electronic Submission'' and follow the instructions. You may review the public docket containing comments in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http./ /dms.dot.gov/search*. Once on the search page, type in the last four digits of the docket number shown at the beginning of this notice (in this case 4957) and click on ''search.''

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, Department of Transportation (DOT), 400 Seventh Street, SW., Washington, DC 20590 or call at (202) 366–6205 by e-mail to *marvin.fell@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: *Title of Information Collection:* Customer-Owned Service Lines, Customer Notification.

Type of Request: Existing information collection.

Abstract: RSPA regulation (49 CFR 192.16) requires operators of gas service lines who do not maintain buried customer piping up to building walls or certain other locations to notify their customers of the need to maintain that piping. Congress directed DOT to take

this action in view of service line accidents. By advising customers of the need to maintain their buried gas piping, the notices may reduce the risk of further accidents.

In addition, each operator must make the following records available for inspection by RSPA or a State agency participating under 49 U.S.C. 60105 or 60106: (1) A copy of the notice currently in use; and (2) evidence that notices have been sent to customers within the previous 3 years.

As used in this notice, the terms 'information collection' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this customer notification requirement including completing paperwork, gathering information and conducting telephone calls.

Estimate of Burden: Minimal.

Respondents: Gas transmission and distribution operators.

Estimated Number of Respondents: 1,590,

Estimated Number of Responses per Respondent: 350.

Estimated Total Annual Burden on Respondents: 9,137 hours.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4480 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork information from state agencies that maintain programs to regulate pipelines. The purpose of the paperwork requested from the state agencies is to ensure that these states are properly monitoring the operations of pipeline operators in their states, and to determine Federal grant amounts for these states. This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the paperwork collection from these state agencies, ways to minimize the burden on states that must respond, ways to enhance the quality of information collected, and to verify the accuracy of the RSPA's estimate of the burden (measured in work hours) on states. The RSPA published a notice on October 12, 2001 requesting public comment. No comments were received. This notice also seeks approval from the Office of Management and Budget to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by April 4, 2002 to be assured of consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957. Comments can be mailed directly to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer for DOT.

Interested persons are invited to send comments regarding the burden estimated or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, RSPA, DOT, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–6205 or by e-mail at *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: Chapter 601, Title 49, United States Code (49 U.S.C.) authorizes DOT to regulate pipeline transportation. While DOT is primarily responsible for developing, issuing, and enforcing minimum pipeline safety regulations, Chapter 601, 49 U.S.C., provides for state assumption of all or part of the regulatory and enforcement responsibility for intrastate pipelines.

Section 60105 of 49 U.S.C. set forth specific requirements a state must meet to qualify for *certification* status to assume regulatory and enforcement responsibility for intrastate pipelines, *i.e.*, state adoption of minimum federal safety standards, state inspection of pipeline operators to determine compliance with the standards, and state provision for enforcement sanctions substantially the same as those authorized by Chapter 601, 49 U.S.C. A participating state must annually submit a section 60105(a) Gas Pipeline Safety Program Certification and/or a Hazardous Liquid Pipeline Safety Program Certification to the Office of Pipeline Safety (OPS) signifying compliance with the terms of the certification.

As used in this notice, 'information collection' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Certification and Agreement Forms for the Gas and Hazardous Liquid Pipeline Safety Program.

OMB Approval Number: 2137–0584.

Frequency: Annually.

Use: This collection is used by RSPA to ensure that State agencies attesting they have regulatory jurisdiction over pipeline safety have adopted and are complying with minimum Federal safety standards. This information is used to calculate grants to States.

Estimated Number of Respondents: 61.

Respondents: State Agencies.

Total Annual Hours Requested: 3,649.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4481 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957]

Submission for Office of Management and Budget Approval and Public Comment Request

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Request for public comments and Office of Management and Budget (OMB) approval of an existing information collection.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork information from liquefied natural gas operators to ensure that these operators are properly operating and maintaining their facilities. This notice is published (pursuant to the Paperwork Reduction

Act of 1995) to measure the need for the proposed paperwork collection, ways to minimize the burden on operators who must respond, ways to enhance the quality of information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on pipeline operators. The RSPA published a notice on October 12, 2001, requesting public comment. No comments were received. This notice also seeks approval from the Office of Management and Budget to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by April 4, 2002 to assure consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957. Comments can be mailed directly to the Office of Regulatory Affairs, OMB, 726 Jackson Place, NW, Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation.

Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6205 or by e-mail at *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: 49 U.S.C. 60103 titled ''Standards for Liquefied Natural Gas Pipeline Facilities'' delegates the responsibility for ensuring safe operation of LNG facilities to the Secretary of Transportation. Regulations for enforcing this legislation are found in 49 CFR part 193 ''Liquefied Natural Gas Facilities: Federal Safety Standards.'' These regulations include recordkeeping requirements that allow Federal and State inspectors to ensure that these facilities are operated and maintained in a safe manner.

Type of Information Request: Renewal of an existing information collection.

Title of Information Collection: Recordkeeping for Liquid Natural Gas (LNG) Facilities.

OMB Approval Number: 2137–0048.

Frequency: On occasion.

Use: This collection is used by RSPA to ensure that LNG facilities are being operated in a safe manner.

Estimated Number of Respondents: 150.

Respondents: LNG facility operators.

Total Annual Hours Requested: 18,000 hours.

As used in this notice, the terms ''information collection'' and ''paperwork collection'' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4477 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of Existing Information Collection

AGENCY: Research and Special Programs Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice seeks comments from the public regarding the need for RSPA to collect paperwork information from gas pipeline operators. The purpose of the paperwork requested from gas operators is to ensure that these operators are properly operating and maintaining their pipelines. This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the paperwork collection from gas operators, ways to minimize the burden on operators who must respond, ways to enhance the quality of information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on pipeline operators. The RSPA published a notice on October 12, 2001, requesting public comment. No comments were received. This notice also seeks approval from the Office of Management and Budget to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by April 4, 2002 to be assured of consideration.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957. Comments can be mailed directly to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, Attn: Desk Officer for the Department of Transportation (DOT).

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, OPS, RSPA, DOT, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–6205, or by e-mail at *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: *Title of Information Collection:* Recordkeeping for Gas Pipeline Operators.

OMB Number: 2137–0049.

Type of Request: Renewal of a currently approved information collection.

Abstract: 49 U.S.C. 60117 explains that, in order to enable the Secretary of Transportation to decide whether a person transporting gas is complying with Federal safety standards, this statute requires the maintenance of records and reports and that these and other requested information be provided to DOT upon request. These records help ascertain compliance and provide information for incident investigation.

Estimate of Burden: The average burden hours per operator is 41.5.

Respondents: Gas Pipeline operators.

Estimated Number of Respondents: 22,700.

Estimated Total Annual Burden on Respondents: 940,991.

As used in this notice, 'information collection' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Issued in Washington, DC, on February 20, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–4478 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34122]

Dallas, Garland & Northeastern Railroad, Inc.—Acquisition of Trackage Rights Exemption—Dallas Area Rapid Transit

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 11323–25 for Dallas, Garland & Northeastern Railroad, Inc., to acquire trackage rights over certain lines of railroad in the vicinity of Dallas, TX, that are owned by Dallas Area Rapid Transit.

DATES: This exemption is effective on April 4, 2002. Petitions to stay must be filed by March 20, 2002. Petitions to reopen must be filed by April 1, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34122 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative, Gary Laakso, Dallas, Garland & Northeastern Railroad, Inc., 5300 Broken Sound Blvd. NW., Boca Raton, FL 33487.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services at 1–800–877–8339.]

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: February 26, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–5216 Filed 3–4–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–156 (Sub–No. 21X)]

Delaware & Hudson Railway Company—Discontinuance of Trackage Rights Exemption—in Niagara and Erie Counties, NY

Delaware & Hudson Railway Company, d/b/a Canadian Pacific Railway (D&H), has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 26.7+/′mile portion of trackage owned by CSX Transportation, Inc. from a point near the base of the international railway bridge at Niagara Falls, Niagara County, NY, to Buffalo, Erie County, NY (line). The line is described as the following track segments: (i) Lockport Branch—milepost 75.8+/−to milepost 70.4+/−; (ii) Niagara Branch—milepost 19.7+/−to milepost 5.6+/−; and (iii) Belt Line Branch—milepost 7.2+/−to milepost 0.0+/−. The line traverses United States Postal Service Zip Codes 14304, 14305, 14120, 14150, 14206, 14207, 14211, 14212, 14214, 14216, and 14217.

D&H has certified that: (1) No local traffic has been handled to or from any customer for at least 2 years; (2) any overhead traffic routed over the line can be and has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1152.50(d)(1) (notice to governmental agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 4, 2002, unless stayed pending reconsideration. Petitions to stay [1] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by March 15, 2002. Petitions to reopen must be filed by March 25, 2002, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to D&H's representative: Diane P. Gerth, Esq., Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–4927 Filed 3–4–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c)(6).

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket BTS–2001–10909]

Agency Information Collection Activities Under OMB Review: OMB No. 2139–0002 and 2139–0004 (Financial and Operating Statistics for Motor Carriers of Property)

AGENCY: Bureau of Transportation Statistics (BTS), U.S. DOT.

ACTION: Notice.

SUMMARY: The BTS announces that two Information Collection Requests (ICR) described in this notice have been sent to the Office of Management and Budget (OMB) for review and approval. The BTS is requesting OMB's renewal of the information collections required for the Financial and Operating Statistics for Motor Carriers of Property. The ICRs describe each information collection and its expected cost and burden. The **Federal Register** notice allowing for a 60-day comment period on the two information collections was published on November 5, 2001 (66 FR 55981). The BTS is required to send ICRs to OMB under the Paperwork Reduction Act.

DATES: Comments must be submitted by April 4, 2002.

ADDRESSES: Send comments to the U. S. Department of Transportation, Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No. BTS–2001–10909, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Comments should identify the docket number and be submitted in duplicate. If you would like the Department to acknowledge receipt of your comments, you must submit a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–2001–10909. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251.

If you wish to file comments using the Internet, you may use the DOT DMS Web site at *http://dms.dot.gov.* Please follow the online instructions for submitting an electronic comment.

We particularly request your comments on the accuracy of the estimated burden; ways to enhance the quality, usefulness, and clarity of the collected information; and ways to minimize the collection burden without reducing the quality of the information collected including additional use of automated collection techniques or other forms of information technology. The OMB requests comments within 30 days of publication of this notice to process the ICR expeditiously.

FOR FURTHER INFORMATION CONTACT: Paula R. Robinson, Compliance Program Manager, Office of Motor Carrier Information, K–13, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–2984; fax: (202) 366–3364; e-mail: *paula.robinson@bts.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

You may view all comments submitted to Docket BTS–2001–10909

online through the Document Management System at *http://dms.dot.gov.*

Title: Financial and Operating Statistics for Motor Carriers of Property

OMB Approval Numbers: 2139–0002 (Form QFR) and 2139–0004 (Form M)

Following the publication of the November 5, 2001 Notice, the BTS received three comments. The issues raised in the comments are also addressed in the agency's supporting statement that was submitted previously to OMB. Requests for information on the supporting statement should be directed to the Information Contact named in this notice.

Background: The Quarterly Report of Class I Motor Carriers of Property (Form QFR) and Annual Report of Class I and Class II Motor Carriers of Property (Form M) are mandated reporting requirements for for-hire motor carriers. Motor carriers required to comply with the BTS regulations are classified on the basis of their gross annual operating revenues. Under the financial and operating statistics (F&OS) program, the BTS collects balance sheet and income statement data along with information on tonnage, mileage, employees, transportation equipment, and other related data. The data and information collected are made publicly available and used by the BTS to determine a motor carrier's compliance with the F&OS program requirements prescribed in the BTS regulations (49 CFR 1420). The regulations were formerly administered by Interstate Commerce Commission (ICC) and later transferred to the U.S. Department of Transportation on January 1, 1996, by the ICC Termination Act of 1995 (the Act), Public Law 104–88, 109 Stat. 803 (1995) (codified at 49 U.S.C. 14123).

The BTS published the required notice offering a 60-day comment period on two ICRs on November 5, 2001 (66 FR 55981). The agency received three comments to the docket. The commenters were: The Central Analysis Bureau, Inc.(CAB); International Brotherhood of Teamsters (IBT); and Inland Marine Underwriters Association (IMUA).

The first commenter, the CAB supported the agency's need for the data collection and categorized themselves as a ''major user'' of the F&OS data. They did however, point out that one ICR, the Form M, could be completed in substantially less time than 9 hours based on a motor carrier's efforts to compile the same data for corporate and tax purposes. The CAB felt the burden estimate for the second ICR, the Form QFR, was reasonable. Additionally, CAB recommended the agency include additional data items on the Form M.

The second commenter, the IBT, made similar comments to those made by the CAB, estimating that the agency may have overstated the burden hours for Form M, and commented on other specific issues. Regarding the IBT's recommendation about ''an explanatory statement,'' BTS does now include detailed instructions with the forms and does solicit ''explanatory statement[s] * * * setting forth [any alternative] methodology used'' by filing motor carriers, as suggested by the IBT.

Based on the fact that BTS collects F&OS data of critical importance, the agency recognizes the need to improve compliance as commenters suggested. BTS now carefully documents all communication (phone calls, faxes, e-mails, letters, etc.) and is adding staff in preparation for continuing to decrease the number of motor carriers not in compliance with BTS regulations.

Furthermore, the IBT commented on the need for a more automated system to track nonfilers and remind late-filers. BTS has, within the past year, developed and implemented a detailed, automated quality control and edit-check (QC/EC) system to improve the completeness of filed reports and the accuracy of the data submitted on them. In combination with motor carriers filing their Form M and Form QFR data over the Internet, which was implemented in the past year, this provides a system to track and remind carriers who aren't filing regularly. BTS notes that motor carriers are increasingly using electronic filing methods provided by the agency—diskettes, CDs, and the Internet.

In response to the IBT's comments on new-entrant classification, BTS recognizes the challenges in correctly classifying new-entrant carriers and welcomes suggestions of the IBT and other commenters to improve the system. The IBT states that ''[a]lthough the regulations provide for [classification] * * * on the basis of estimated annual revenues, 49 CFR 1420(b)(2), in practice this is not done. Instead, new entrant carriers are automatically placed in Class III, where they may remain until BTS discovers that they have revenues sufficient to be in Class I or II.'' In practice, according to 49 CFR 1420.2(b)(1), BTS uses the three-year/$3-million rule to classify carriers: ''Upward and downward classification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.'' However, applying that rule to new entrants is particularly challenging and requires using private sector data in the absence of a new-entrant carriers abiding by the mandatory self-classification requirement: ''Carriers must notify [BTS] of any change in classification'' (49 CFR 1420.2(b)(4)). BTS is working to remedy that new-entrant classification conundrum (no data upon which to estimate) by working with the Federal Motor Carrier Safety Administration (FMCSA) to include revenue data in the proposed Motor Carrier Replacement Information/Registration System. The BTS expects the revenue information on the proposed form, combined with number-of-power-units and other information, will improve the basis for carrier classification by providing public sector revenue-estimating information where there is none now (prior to a carrier's filing its Form M). However, BTS encourages the IBT and other commenters to provide information to BTS for new-entrant and other carrier classification purposes.

BTS recognizes the challenges that will arise as new Mexican carrier entrants appear in U.S. commerce. The IBT suggested that BTS use procedures to classify Mexican motor carriers based on annual earnings from their existing operations in Mexico combined with estimated or actual revenues from U.S. operations. With regard to the new-entrant classification regulations in 49 CFR 1420.2(b)(2), BTS understands the IBT is suggesting that [Mexican] revenue earned by Mexican carriers in Mexico could be used to estimate whether and how much a Mexican carrier likely began to earn over $3 million gross operating revenue while traveling on U.S. highways. Such estimates would be used to classify the Mexican carrier as Class I, II or III. BTS will investigate that possibility, although BTS is not aware of the availability of public sector individual-carrier revenue-size data for Mexican carriers operating in Mexico. The point made by the IBT is that a more active effort needs to be taken to classify and include new-entrant North American carriers earning revenue on U.S. highways and intermodally. While this comment goes beyond the immediate paperwork burden issues, BTS will work with the available private sector data sources and develop FMCSA and other public sector sources. BTS recognizes this challenge and will continue to place emphasis on this issue.

The third commenter, the Inland Marine Underwriters Association (IMUA), supported the agency's need to renew the data collection and placed great value on the data and information collected by BTS. However, the IMUA, like the CAB, suggested that BTS

expand Form M to include suggested refinements to line items to collect what they consider useful data. With respect to the IMUA's recommendation about ''names of corporate officers,'' it is instructive to point out that those data were collected in the past on predecessor forms to Form M and, as a result of a previous rulemaking, after receiving public comments, line items of limited value, including the listing of corporate officers were eliminated from predecessor forms to Form M. BTS is a statistical and a data agency specializing in numerical data for analysis. Although useful to some users, directory-like information would probably fall below the threshold of usefulness when compared with the additional burden to collect it. For public companies, this type of corporate information is a matter of record in the state of incorporation and easily retrieved by interested parties.

BTS thanks CAB, IBT, and IMUA for their comments and assures them and other potential commenters that BTS will continue to balance the need for a reduction in the paperwork burden against the need for additional financial information. The CAB and IMUA provided no estimates for the additional data items suggested and the agency is reluctant to impose additional burdens without accurate estimates. Based on its previous efforts, BTS has found that the shorter the form, the easier it is for carriers to file; the easier it is for carriers to file, the more numerous the carriers that file; the greater the number of carriers that file, the less time needs to be devoted to compliance activities. Additional resources can then be put toward increasing data accuracy and report completeness to make the F&OS data more useful to thousands of users who value the increased comprehensiveness BTS has accomplished within the past year (approximately 50% increase in the number of motor carriers filing the 2000 Form M when compared to the number filing the 1999 Form M).

For additional information, interested parties may review the supporting statement the agency submitted to OMB.

(1) *Title:* Quarterly Report of Class I Motor Carriers of Property.

OMB Control No.: 2139–0002.

Respondents: Class I Motor Carriers of Property.

Number of Respondents: 1,000 (per quarter).

Estimated Time Per Response: 1.8 hours (27 minutes per quarter)

Total Annual Burden: 1,800 hours.

(2) *Title:* Annual Report of Class I and Class II Motor Carriers of Property. OMB Control No. 2139–0004.

Form No.: BTS Form M.

Respondents: Class I and Class II Motor Carriers of Property.

Number of Respondents: 3,000 (per year)

Estimated Time Per Response: 9 hours.

Total Annual Burden: 27,000 hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.73.

Issued on: February 26, 2002.

Russell B. Capelle, Jr.,

Assistant BTS Director for Motor Carrier Information, Department of Transportation.

[FR Doc. 02–5155 Filed 3–4–02; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 4, 2002 to be assured of consideration.

Departmental Offices/Assistant Secretary to International Affairs/Office of Program Services

OMB Number: 1505–0123.

Form Number: TD F SHL–1 and SHL–2 (and in different years, TD F SHLA–1 and SHLA–2).

Type of Review: Revision.

Title: Survey of Foreign Portfolio Investment in the United States.

Description: This survey determines the level of foreign portfolio investment in the United States, the types of investors, and foreign investment patterns. The data is used for policy formulation, the computation of the U.S. balance of payments accounts and international investment position, and to satisfy 22 U.S.C., 3101. The affected publish consists of major U.S. corporations.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 435.

Estimated Burden Hours Per Respondent/Respondent: 68 hours.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 30,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–5141 Filed 3–4–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 26, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 4, 2002 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–1755.

Form Number: IRS Form 8878.

Type of Review: Extension.

Title: IRS e-file Signature Authorization–Application for Extension of Time to File.

Description: Form 8878 is used to allow taxpayers to enter their PIN on their electronically filed application for extension of time to file.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Minutes
Learning about the law or the form	3
Preparing the form	12

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 610,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–5142 Filed 3–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of Veterans Affairs gives notice that the Special Medical Advisory Group has scheduled a meeting on March 27, 2002. The meeting will convene at 9 a.m. and end at 2 p.m. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The purpose of the meeting is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include an update on VHA Quality and Performance program and an update on Capital Asset Realignment for Enhanced Services (CARES) program.

All sessions will be open to the public. Those wishing to attend should contact Celestine Brockington, Office of the Under Secretary for Health, Department of Veterans Affairs. Her phone number is 202.273.5878.

Dated: February 26, 2002.

By Direction of the Secretary of Veterans Affairs.

Nora Egan,

Committee Management Officer.

[FR Doc. 02–5135 Filed 3–4–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held on March 12–14, 2002, from 8:30 a.m. until 5 p.m., at the Department of Veterans Affairs Central Office (VACO), 810 Vermont Avenue, NW., Conference room 230, Washington, DC.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to healthcare, rehabilitation, compensation, outreach, and other programs and activities administered by the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

All sessions will be open to the public. Those who plan to attend should contact Ms. Maryanne Carson, Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–6193. Tentative agenda follows:

Tuesday, March 12

8:30a Full Advisory Committee—Conference Room 230, Welcome and Introduction of New Members, Dr. Irene Trowell-Harris, Director Center for Women Veterans
9:00a Presentation of Appointment Certificates & Photo Op, The Honorable Anthony Principi, Secretary of Veterans Affairs
9:30a Review Agenda, Review March and June 2001 Minutes, Colonel Karen Ray, Chair
9:45a Welcome and Greet Committee, Dr. Leo Mackay, Deputy Secretary of Veterans Affairs (awaiting confirmation)
10:00a Briefing: Assistant Secretary for Congressional & Legislative Affairs, The Honorable Gordon H. Mansfield
10:30a BREAK
10:45a Briefing: Acting, Under Secretary for Health, Frances M. Murphy; Update—Veterans Health Administration Issues (awaiting confirmation)
11:15a Briefing: National Cemetery Administration
11:30a LUNCH
1:15p Veterans Benefits Administration, Lynda Petty, Women Veterans Coordinator
2:00p Briefing: VA Pharmacy Service (awaiting confirmation)
2:30p Briefings: National Strategic Work Group on Women Veterans Health Programs and Women Veterans Coordinator Study, Carole Turner, Director, Women Veterans Health Program
3:00p BREAK
3:15p Update on Center for Women Veterans, Dr. Irene Trowell-Harris
3:30p Advisory Committee Follow-up: Chair, Discussions: Full Committee
- Summit 2000 Proceedings
- Advisory Committee 2000 Report
- Agenda for Visit to the Hill

5:00p Adjourn

Wednesday, March 13

8:30a Update: Survey of Veterans, Susan Krumhaus, Office of Policy and Planning (awaiting confirmation)
10:00a Update: Center for Minority Veterans, Charles W. Nesby, Director
10:30a BREAK
10:45a Briefing: VA Funded Research on Women Veterans, John R. Feussner, MD, MPH, Chief, Research and Development Officer (awaiting confirmation)
11:30a Briefing: Veterans Benefits Administration, Robert Epley, Director, Compensation and Pension Service (awaiting confirmation)
12n LUNCH
1:15p Meeting with Congressional Staffers, (Depart VACO 1:30p) (awaiting confirmation)
3:00p Return to VACO
3:15p BREAK
3:30p Discussion: Full Committee, Debrief: Meeting on the Hill, 2001 Boston Site Visit: Minutes and Follow-up
5:00p Adjourn

Thursday, March 14

Executive Session

9:00a Update: Facilities with Areas of Concern, Carole Turner
9:30a Budget Update—Office of Finance, Kathleen Hamilton, Budget Analyst
10:00a Discussion—Chair, Agenda Items, FY 2002 Objectives, Missed Meetings, National Agenda for Women, Vision Statement
10:30a BREAK
10:45a (Discussion Continued)
11:00a 2002 Site Visit Designation, Agenda for Site Visit Target: ''Hot'' Areas
11:30a 2002 Advisory Committee Report, 2002 Timeline, Title of Report
12n LUNCH
1:30p (Discussion Continued)
2:00p Discussion: Committee, Individual Updates
3:30p Next Meeting
Adjourn

Dated: February 27, 2002.

By Direction of the Secretary:

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–5167 Filed 3–4–02; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
March 5, 2002

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Tires; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–00–8011]

RIN 2127–AI54

Federal Motor Vehicle Safety Standards; Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 mandates a rulemaking proceeding to revise and update our safety performance requirements for tires. In response, this document proposes to establish new and more stringent tire performance requirements in a new Federal motor vehicle safety standard that would apply to all new tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less. The agency recently proposed to establish a new tire standard, Standard No. 139, in a December 2001 NPRM on tire safety information. Today's document proposes to include the new tire performance requirements in that standard.

This document seeks comments on the proposed new standard, including its applicability and test procedures, modifications to related existing standards, and lead time provided for manufacturers to achieve compliance. It also seeks comments on the possible future specification of shearography analysis, a technique which evaluates the condition of a tire using laser technology. Finally, it seeks comments on NHTSA's research plans.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than May 6, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Mr. George Soodoo or Mr. Joseph Scott, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) by going to the street address given above under **ADDRESSES.** The hours of the Docket Management System (DMS) are indicated above in the same location.

You may also read the materials on the Internet. To do so, take the following steps:

(1) Go to the Web page of the Department of Transportation DMS (*http://dms.dot.gov/*).

(2) On that page, click on ''search'' near the top of the page or scroll down to the words ''Search the DMS Web'' and click on them.

(3) On the next page (*http://dms.dot.gov/search/*), scroll down to ''Docket Number'' and type in the four-digit docket number (8011) shown in the title at the beginning of this document. After typing the docket number, click on ''search.''

(4) On the next page (''Docket Summary Information''), which contains docket summary information for the materials in the docket you selected, scroll down to ''search results'' and click on the desired materials. You may download the materials.

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I. Executive Summary and Overview

Section 10 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act mandates that the agency issue a final rule to revise and update its tire performance standards. However, the Act gives the agency substantial discretion over the substance of the final rule. The Act does not specify what revisions or updatings should be made. For example, it does not specify which particular existing tests should be improved or how much they should be improved. Likewise, it does not specify which particular new tests should be added or how stringent they should be. However, the legislative history does contain specific references to some tests like aging tests.

In response to section 10, the agency comprehensively examined possible ways of revising and updating its tire standards. In doing so, it placed particular emphasis on improving the ability of tires to withstand the effects of factors mentioned during the consideration and enactment of the TREAD Act such as tire heat build up, low inflation, and aging. The agency has examined the value of modifying the existing tests in its tire standards. In addition, it has examined the value of adopting several new tests.

As a result of these efforts, the agency has identified an array of amendments for revising and updating its tire standards and thereby improving tire performance. Some would upgrade existing tests, while the others would add new ones.

The agency recently proposed to establish a new tire standard, Standard No. 139, in a December 2001 NPRM on tire safety information (Docket No. NHTSA–01–11157, 66 FR 65536, December 19, 2001). Today's document proposes to include the new tire performance requirements in that standard. The standard would apply to light vehicle tires. As used in the December 2001 proposal, ''light vehicles'' are vehicles (except motorcycles) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

Under today's proposal, the new standard would contain requirements and test procedures addressing the following aspects of tire performance: Tire Dimension, High Speed, Endurance, Road Hazard Impact, Bead Unseating, Low Inflation Pressure, and Aging Effects.[1]

The proposed High Speed and Endurance tests would replace the current High Speed and Endurance tests in FMVSS No. 109, New Pneumatic Tires—Passenger Cars, 49 CFR 571.109, with a more stringent combination of testing parameters (ambient temperature, load, inflation pressure, speed, and duration.) Most significantly, the proposed High Speed test specifies test speeds (140, 150 and 160 km/h (88, 94, and 100 mph)) that are substantially higher than those currently specified in FMVSS No. 109 (120, 128, 136 km/h (75, 80, 85 mph)). Likewise, the proposed Endurance Test specifies a test speed 50 percent faster (120 km/h (75 mph)) than that currently specified in FMVSS No. 109 (80 km/h (50 mph)), as well as a duration 6 hours longer (40 hours total) than that currently specified in FMVSS No. 109 (34 hours total). At the specified test speed (120 km/h), the Proposed Endurance Test distance (4800 km) is almost double the distance accumulated than under the current Endurance Test (2720 km at 80 km/h). These new testing parameters are based on NHTSA's activities undertaken in response to the TREAD Act, including extensive agency testing, data gathering and analyses as well as agency review of other existing international, industry and National standards and proposals, and submissions by the public.

The proposed Road Hazard Impact Test and the Bead Unseating Test are modeled on SAE Recommended Practice J1981, Road Hazard Impact Test for Wheel and Tire Assemblies (Passenger Car, Light Truck, and Multipurpose Vehicles), and the Toyota Air Loss Test, respectively. These new tests would replace the Strength and Bead Unseating Resistance tests in the current FMVSS No. 109 with tests that are more dynamic as opposed to quasi-static.

In addition to the tests cited above, the proposed standard contains tests for two new aspects of performance: Low Inflation Pressure Performance and Aging Effects. By creating tests for these aspects of performance, the agency is attempting to address concerns raised by members of Congress in hearings that preceded the enactment of the TREAD Act that NHTSA's current test requirements do not evaluate how well tires perform when significantly underinflated or after being subjected to environmental variables, such as heat, which accelerate aging. In particular, underinflation and heat were factors highlighted as contributing to failure of the Firestone ATX and Wilderness tires in the TREAD hearings, and in the agency's Firestone investigation (NHTSA Office of Defects Investigation (ODI) investigation number EA00–023).

To test Low Inflation Pressure Performance, the agency is proposing two alternative tests based on agency testing and data analyses. Both tests utilize tires significantly under-inflated, for instance 20 psi for P-metric tires (the low inflation pressure threshold requirement for warning lamp activation in the proposed Tire Pressure Monitoring System (TPMS) standard, Docket No. NHTSA–00–8572 (66 FR 38982, July 26, 2001)), as the ''inflation pressure'' testing parameter for standard load P-metric tires. To test for resistance to Aging Effects, the agency proposes three alternative tests that would evaluate a tire's long term durability through methods different than and/or beyond those required by both the current and the proposed Endurance Test parameters. The three tests use peel strength testing, long-term durability endurance requirements, and oven aging, respectively. The agency solicits comments on which of the two proposed tests for addressing Low Inflation Pressure Performance, and which of the three tests proposed for addressing Aging Effects, should be chosen for the new standard.

In addition to proposing test procedures for the new standard, the agency also discusses in this document its ongoing and future research plans on tire safety, and seeks comments on the future use of shearography analysis (a method of analysis using laser technology) for evaluating the condition of tires subjected to the proposed testing procedures and the plans for revising the Uniform Tire Quality Grading Temperature Grading Requirement testing speeds so that they are consistent with the test speeds in the proposed High Speed tests.

Finally, the agency discusses revising FMVSS Nos. 110, Tire selection and rims, for passenger cars, 49 CFR 571.110, and 120, Tire selection and rims for motor vehicles other than passenger cars, 49 CFR 571.120, to reflect the applicability of the proposed light vehicle tire standard to vehicles up to 10,000 pounds GVWR, and revising FMVSS Nos. 117, Retreaded pneumatic tires, 49 CFR 571.117, and 129, New non-pneumatic tires for passenger cars, 49 CFR 571.129, to replace the performance tests which reference or mirror those in FMVSS No. 109 with

[1] See 66 FR 65536 for the proposed tire information requirements. For the convenience of the reader, we have placed in the docket for today's NPRM a document that shows how the tire safety information and performance requirements may appear together in Standard No. 139.

those specified in the proposed new light vehicle tire standard.

Wishing to adopt only those amendments that contribute to improved safety, and mindful of the principles for regulatory decisionmaking set forth in Executive Order 12866, Regulatory Planning and Review, NHTSA has examined the benefits and costs of these amendments. Its efforts to do so, however, have been limited by several factors. Two factors stand out. One is the limited time allowed by the schedule specified in the TREAD Act for completing this rulemaking. That has limited the amount and variety of information that the agency could obtain and testing that the agency could conduct to examine the effects of different versions of the amendments under consideration. The other is the difficulty inherent in crash avoidance rulemakings, stemming from the multiplicity of the factors contributing to the occurrence of any crash and the difficulty of ascertaining the relative contribution of each factor, in linking specific improvements in safety requirements with specific reductions in crashes and resulting deaths and injuries. Together, these limitations have made it difficult to assess and compare the benefits and costs of this rulemaking.

At this time, the agency believes that improving tires will be beneficial in reducing tire failures and crashes resulting from tire failures. However, we do not have a good estimate of the extent to which the improvements will improve safety. We have made an estimate of the target population—373 fatalities and 9,247 injuries in the target population. If the improvements needed to pass the high-speed and endurance tests (estimated to be 22 percent) related directly to an improvement in safety, the total potential improvement would be 82 lives saved (373* .22) and 2,034 injuries avoided. Since 32.8 percent of the tires currently do not pass the proposed requirements, the benefits would be 27 lives saved (373 * 0.22 * 0.328) and 667 injuries reduced.

The agency emphasizes that not all benefits could be quantified. Specifically, the agency believes that there will be other, currently non-quantifiable, benefits from the proposed Aging test and aspects of the proposal that address the overloading of vehicles. Additionally, there could be benefits from the proposed Low Inflation Pressure Performance tests and from the proposed Road Hazard and Bead Unseating tests.

The agency's estimate of the price increase to improve tires up to the performance levels required in the High Speed and Endurance tests is $3 per affected tire. Based on testing, we estimate that about one-third (32.8 percent) of all tires would need improvements to pass those two tests. If the cost for these improved tires were spread across the entire new light vehicle fleet, the average new vehicle price increase would, we estimate, be $4.09 per vehicle. The overall annual cost of these tests for new original equipment (64 million tires) and replacement tires (223 million tires) is estimated at $282 million for a total of 287 million tires sold annually and the net costs per equivalent life saved would be about $7.2 million.

We do not anticipate an increase in costs for the proposed Road Hazard Impact and Bead Unseating tests because our testing indicates that most of current production tires would pass these tests. The agency has not conducted sufficient testing of the proposed Aging tests to anticipate their potential costs. The agency believes, however, that most manufacturers already perform an aging test. Therefore, it is likely that the incremental cost of adding an aging test would be minimal.

With regard to the Low Inflation Pressure Performance tests, one alternative would provide no added costs because agency testing indicates that current production tires pass the test. Tires tested to the other alternative have a higher failure margin. Costs for this test cannot be characterized by the agency at this point.

The agency is concerned about the overall costs of this rulemaking and the net costs per equivalent life saved. While the agency believes that its proposed amendments represent a reasoned proposal that is based on best currently available information and that would improve tire safety, it is concerned about the apparent overall costs of those amendments. The agency is particularly concerned that the cost per equivalent life saved is significantly higher than that in most NHTSA vehicle safety rulemakings.

Because of the broad mandate from Congress and the uncertainty associated with the analysis of benefits and costs, the agency believes that the most appropriate course of action is for it to seek public comment on the full array of potential amendments that it has identified. As a result of this NPRM, the agency anticipates receiving cost data and other information that will enable it to refine its assessment of benefits and costs. The agency will then be in a better position to pick and choose among the proposed amendments. Its intention is to use that information to fashion a final rule consistent with the principles of Executive Order 12866.

II. Background

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414, signed into law on November 1, 2000, requires the agency to address numerous vehicle safety matters through rulemaking. Section 10 of the Act directs the Secretary of Transportation to conduct a rulemaking to revise and update the tire safety standards published at 49 CFR 571.109 and 571.119, and to complete the rulemaking, i.e., issue a final rule, by June 1, 2002.[2]

III. Existing Tire Standards—Performance Requirements

The following discussion summarizes current provisions relating to tires.

FMVSS No. 109, New pneumatic tires, 49 CFR 571.109, specifies the requirements for all tires manufactured for use on passenger cars manufactured after 1948. This standard, which was issued in 1967 under the National Traffic and Motor Vehicle Safety Act (Safety Act), specifies dimensions for tires used on passenger cars and requires that the tires meet specified strength, resistance to bead unseating, endurance, and high speed requirements, and be labeled with certain safety information. FMVSS No. 109 applies to passenger car (P-metric) tires produced for use on passenger cars, multipurpose passenger vehicles (MPV), and light trucks (sport utility vehicles (SUV), vans, minivans, and pickup trucks). The standard was adopted from the Society of Automotive Engineers (SAE) recommended practice J918c, Passenger Car Tire Performance Requirements and Test Procedures, which was first issued by the SAE in June 1965.[3] The current FMVSS No. 109 includes four performance requirements for tires:

- A strength test, which evaluates the strength of the reinforcing materials in the tire;
- A resistance-to-bead unseating test, which evaluates how well the tire bead

[2] The title of section 10 is ''Endurance and resistance standards for tires.'' The section reads in full as follows:

The Secretary of Transportation shall conduct a rulemaking to revise and update the tire standards published at 49 CFR 571.109 and 49 CFR 571.119. The Secretary shall complete the rulemaking under this section not later than June 1, 2002.

[3] SAE is an organization which develops voluntary standards for aerospace, automotive and other industries. Many of SAE's recommended practices are developed using technical information supplied by vehicle manufacturers and automotive test laboratories.

is seated on the rim (regulating the tire-rim interface guards against sudden loss of tire air pressure when a tire is subjected to lateral forces such as during severe turning maneuvers);

• An endurance test, which evaluates resistance to heat buildup when the tire is run at its rated load nonstop for a total of 34 hours, and

• A high speed test, which evaluates resistance to heat buildup when the tire is run at 88 percent of its maximum load at speeds of 75 mph, 80 mph, and 85 mph for 30 minutes at each speed.

For the purposes of testing tires to determine their compliance with these requirements, the standard specifies values for several factors, such as tire inflation pressure, the load [4] on the tire, and the rim on which a tire is mounted. The standard specifies permissible inflation pressures (or wheel sizes, in the case of bead unseating test) to facilitate compliance testing. The standard requires that each passenger car tire must have a maximum permissible inflation pressure labeled on its sidewall (S4.3). Section 4.2.1(b) lists the permissible maximum pressures: 32, 36, 40, or 60 pounds per square inch (psi) or 240, 280, 290, 300, 330, 340, 350, or 390 kiloPascals (kPa). A manufacturer's selection of a maximum pressure has the effect of determining the pressures at which its tire is tested. For each permissible maximum pressure, Table II of the standard specifies pressures at which the standard's tests must be conducted. The intent of this provision is to limit the number of possible maximum inflation pressures and thereby reduce the likelihood of having tires of the same size on the same vehicle with one maximum load value, but with different maximum permissible inflation pressures.

Closely related to FMVSS No. 109 is FMVSS No. 110, Tire selection and rims, 49 CFR 571.110. FMVSS No. 110 requires that each passenger car be equipped with tires that comply with FMVSS No. 109, that tires on the cars be capable of carrying the GVWR of that vehicle, that the rims on the car be appropriate for use with the tires, and that certain information about the car and its tires appear on a placard in the passenger car. FMVSS No. 110 also specifies rim dimension requirements and further specifies that, in the event of a sudden loss of inflation pressure at a speed of 97 km/h (60 mph), rims must retain a deflated tire until the vehicle can be stopped with a controlled braking application. FMVSS No. 110 initially became effective in April 1968.

FMVSS No. 117, Retreaded pneumatic tires, 49 CFR 571.117, establishes performance, labeling, and certification requirements for retreaded pneumatic passenger car tires. Among other things, the standard requires retreaded passenger car tires to comply with the tubeless tire resistance to bead unseating and the tire strength requirements of FMVSS No. 109. FMVSS No. 117 also specifies requirements for casings to be used for retreading, and certification and labeling requirements.

FMVSS No. 119, New pneumatic tires for vehicles other than passenger cars, 49 CFR 571.119, specifies performance and labeling requirements for new pneumatic tires designed for highway use on multipurpose passenger vehicles, trucks, buses, trailers and motorcycles manufactured after 1948, and which requires treadwear indicators in tires, and rim matching information concerning those tires. Under this standard, each tire has to meet requirements that are qualitatively similar to those in FMVSS No. 109 for passenger car tires. The high speed performance test in this standard only applies to motorcycle tires and to non-speed-restricted tires of 14.5-inch nominal rim diameter or less marked load range A, B, C, or D. In addition, FMVSS No. 119 does not contain a resistance-to-bead unseating test.

A tire under FMVSS No. 119 is generally required to meet the performance requirements when mounted on any rim listed as suitable for its size designation in the publications, current at the time of the tire's manufacture, of the tire and rim associations that are listed in the standard. Further, the tire is required to meet the dimensional requirements when mounted on any such rim of the width listed in the load-inflation tables of this standard. In addition to the permanent marking for any non-matching listed rims, each tire manufacturer is required to attach to the tire, for the information of distributors, dealers and users, a label listing the designations of rims appropriate for use with the tire.

FMVSS No. 120, Tire Selection and rims for motor vehicles other than passenger cars, 49 CFR 571.120, requires that vehicles other than passenger cars equipped with pneumatic tires be equipped with rims that are listed by the tire manufacturer as suitable for use with those tires and that rims be labeled with certain information. It also requires that these vehicles shall be equipped with tires and rims that are adequate to support the fully-loaded vehicle under contemplated operating conditions.

The primary effect of Standard No. 120 is to specify the minimum load-carrying characteristics of tires not already subject to the passenger car tire and rim selection requirements of FMVSS No. 110.

Tire selection under FMVSS No. 120 consists of two elements. With one exception, each vehicle must be equipped with tires that comply with FMVSS No. 119 and the load rating of those tires on each axle of the vehicle must together at least equal the gross axle weight rating (GAWR) for that axle. If the certification label lists more than one GAWR-tire combination for the axle, the sum of the tire's maximum load ratings must meet or exceed the GAWR that corresponds to the tire's size designation. If more than one combination is listed, but the size designation of the actual tires on the vehicle is not among those listed, then the sum of the load ratings must simply meet or exceed the lowest GAWR that does appear.

FMVSS No. 120 also contains a requirement related to the use of passenger car tires on vehicles other than passenger cars. The requirement states that when a tire that is subject to FMVSS No. 109 is installed on a multipurpose passenger vehicle, truck, bus, or trailer, the tire's load rating must be reduced by a factor of 1.10 by dividing by 1.10 before determining whether the tires on an axle are adequate for the GAWR. This 10 percent de-rating of P-metric tires provides a greater load reserve when these tires are installed on vehicles other than passenger cars. The reduction in the load rating is intended to provide a safety margin for the generally harsher treatment, such as heavier loading and possible off-road use, that passenger car tires receive when installed on a MPV, truck, bus or trailer, instead of on a passenger car.

FMVSS No. 129, New non-pneumatic tires for passenger cars, 49 CFR 571.129, includes definitions relevant to non-pneumatic tires and specifies performance requirements, testing procedures, and labeling requirements for these tires. To regulate performance, the standard contains performance requirements and tests related to physical dimensions, lateral strength, strength (in vertical loading), tire endurance, and high speed performance. The performance requirements and tests in FMVSS No. 129 were based upon those contained in FMVSS No. 109.

The FMVSS No. 129 labeling requirements are similar to those set

[4] Load percentages stated throughout this document, unless otherwise specified, are based on the sidewall maximum rated load.

forth in section S4.3 of FMVSS No. 109 for size, designation, load, rating, rim size and type designation, manufacturer or brand name, certification, and tire identification number. The standard also includes temporary use and maximum speed labeling requirements and allows methods of permanent marking other than ''molding'' in anticipation of the difficulty of molding required information on non-pneumatic designs. FMVSS No. 129 initially became effective in August 1990.

IV. Current Safety Problem—Outdated Performance Requirements

A. Transition From Bias Ply to Radial Tires

When FMVSS No. 109 was issued in 1967, nearly all (more than 99 percent) of passenger car tires in the U.S. were of bias, or bias belt construction. The test procedures that appear in FMVSS No. 109 were developed in a bias tire environment. Today, bias tires have been almost completely replaced by radial tires on passenger cars. The use of radial tires has grown to the extent that they represent more than 95 percent of passenger tires in both the U.S. and Europe and are used on most new light vehicles sold in the U.S.[5] NHTSA does not require radial tires, but regulates their performance through FMVSS Nos. 109 and 119.

Radial tires are less susceptible than bias ply tires to most types of failures. Also, radial tire design resulted in significant improvements in tire performance compared with bias ply tires, thus making it easier for radial tires to comply with the requirements of FMVSS No. 109 than for bias tires.

A bias passenger car tire carcass is typically made up of two or four plies of cord material that run from bead to bead at an angle of approximately 35 degrees to the centerline of the tire. Alternating plies are applied at alternating angles during tire manufacture so that the cord paths of alternating plies criss-cross. This type of construction provides a very strong, durable carcass for the tire. However, it has drawbacks. Because the ply cords criss-cross and all the cords are anchored to the beads, the carcass is stiff and relatively inflexible. This type of construction prevents different parts of the tire from acting independently of one another when forces are applied to the tire. As a result, a bias construction is susceptible to impact breaks because it does not easily absorb road irregularities.

By comparison, a radial passenger car tire carcass is typically made up of one or two plies of cord material that run from bead to bead at an angle of approximately 90 degrees to the centerline of the tire. As a result, the cords do not criss-cross. Because the cords do not criss-cross and because the opposite ends of each cord are anchored to the beads at points that are directly opposite to each other, the radial tire carcass is very flexible. The radial tire is reinforced and stabilized by a belt that runs circumferentially around the tire under the tread. This construction allows the sidewalls to act independently of the belt and tread area when forces are applied to the tire. This ''independent'' action is what allows the sidewalls to readily absorb road irregularities without overstressing the cords. Impact breaks caused by cord rupture do not occur in radial-ply passenger car tires. This ''independent'' action also allows two important things to happen during cornering: (1) The tread of a radial tire remains fully in contact with the road over the entire tread width, and (2) the ply cords and sidewall are able to absorb the cornering forces without exerting the twisting force on the beads that are exerted by bias constructions.

These characteristics of a radial tire construction are what make the existing high speed test, endurance test, strength test[6], and bead-unseating test appear to be ineffective in differentiating among today's radial tires with respect to these aspects of performance.

B. Safety Problems Associated With Tires

Tire under-inflation, high ambient temperatures, and vehicle load are among the factors being considered in the ongoing evaluation of the radial tire failures that have occurred in recent years. Data concerning tire failure, blowouts, and rollovers are discussed below.

1. Population of Tire Related Crashes

Several crash files contain information on ''general'' tire related problems that precipitate crashes. These files are the National Automotive Sampling System—Crashworthiness Data System (NASS–CDS)[7] and the Fatality Analysis Reporting System (FARS).[8]

[5] Statistics relating to the increase in use of radial tires since 1968, as reported in the Rubber Manufacturers Association's *(RMA's) Factbook 2000—U.S. Tire Shipment Activity Report for Statistical Year 1999 (RMA 2000 Yearbook),* are as follows:

- OE Passenger Tires Shipments: (included are all P-metric tires even if destined for light truck usage) In 1970 radial tires comprised 0.5 percent of the market and bias/bias ply tires comprised 99.5 percent. In 1999 radial tires comprised 93.7 percent of the market and bias/bias ply tires comprised 6.3 percent.
- Replacement Market Passenger Tire Shipments: (Replacement shipments include all domestically produced and imported tires sent to the U.S. replacement market. Figures include all sizes and types of tires designed for standard highway passenger car service, including P-Metric tires destined for light trucks.) In 1970 radials comprised 2.1 percent of market and in 1999 radials comprised 99.8 percent of market.
- Production of Passenger Tires: (Passenger tire production covers all tires produced in the United States whether for domestic consumption or for export. Figures represent the production for all sizes and types of tires designed for standard highway passenger car service and include P-Metric tires destined for use on light trucks.) In 1970 radial tires comprised 0.0 percent of tires produced. In 1999 radial tires comprised 99.1 percent of tires produced.
- OE Light Truck Tires Shipments: (Light truck tire original equipment shipments covers all tires sent to manufacturers or original equipment vehicles in the U.S. and includes all sizes/types of tires designed by the participants for fitment to light truck.) In 1980 radial tires comprised 14.8 percent of shipments and in 1999 radial tires comprised 98.3 percent of shipments.
- Replacement Light Truck Tires Shipments: (Light truck tire replacement shipments designates all tire shipments sent for replacement purposes to the domestic tire market in the U.S. and includes all sizes/types of tires designed by the participants for fitment to light truck.) In 1980 radials comprised 9.9 percent of shipments and in 1999 radials comprised 94.5 percent of shipments.
- Production of Light Truck Tires: (Tires produced in US whether for domestic consumption or for export outside the United States—does not include P-metric tires). In 1980 radials comprised 7.1 percent of production and in 1999 radials comprised 98.7 percent of production.

[6] The FMVSS 109 plunger energy or strength test was designed to evaluate the strength of the reinforcing materials in bias ply tires, typically rayon, nylon or polyester, and it continues to serve a purpose for these tires. However, a radial tire is not susceptible to the kind of failure for which this test was designed to prevent. The flexible sidewalls of radial tires easily absorb the shock of road irregularities.

Because of the belt package, radial tires far exceed the strength requirements of the test and many times the plunger bottoms out on the rim instead of breaking the reinforcing materials in the radial tire. During the years 1996 through 1998 RMA members reported conducting nearly 19,000 plunger energy (strength) tests on radial tires. There were no reported failures.

[7] For the NASS–CDS system, trained investigators collect data on a sample of tow-away crashes around the country. These data can be ''weighted up'' to national estimates. A NASS–CDS General Vehicle Form contains the following information: A critical pre-crash event, such as vehicle loss of control due to a blowout or flat tire. This category includes only part of the tire-related problems which cause crashes. This coding would only be used when the tire went flat or there was a blowout that caused a loss of control of the vehicle, resulting in a crash.

[8] In FARS, tire problems are noted after the crash, if they are noted at all. The FARS file does not indicate whether the tire problem caused the crash, influenced the severity of the crash, or just occurred during the crash. For example, some crashes may have been caused by a tire blowout, while in others the vehicle may have slid sideways and struck a curb, causing a flat tire which may or may not have influenced whether the vehicle experienced rollover. Thus, while an indication of a tire problem in the FARS file give some indication as to the

NASS–CDS data for 1995 through 1998 indicate that there are an estimated 23,464 tow-away crashes per year caused by blowouts or flat tires.

ESTIMATED ANNUAL AVERAGE NUMBER (1995–98 NASS) AND RATES OF BLOWOUTS OR FLAT TIRES CAUSING TOW-AWAY CRASHES

	Tire related cases	Percent tire related
Passenger Cars Total	10,169	0.31
Rollover	1,837 (18%)	1.87
Non-rollover	8,332 (82%)	0.26
Light Trucks Total	13,294	0.99
Rollover	9,577 (72%)	6.88
Non-rollover	3,717 (28%)	0.31
Light Vehicles Total	23,463	0.51
Rollover	11,414 (49%)	4.81
Non-rollover	12,049 (51%)	0.28

Therefore, about one half of one percent of all crashes are caused by these tire problems. The rate of blowout-caused crashes for light trucks (0.99 percent) is more than three times the rate of those crashes for passenger cars (0.31 percent). Blowouts cause a much higher proportion of rollover crashes (4.81) than non-rollover crashes (0.28); and again more than three times the rate in light trucks (6.88 percent) than in passenger cars (1.87 percent).

FARS data for 1995 through 1998 show that 1.10 percent of all light vehicles in fatal crashes were coded with tire problems. Light trucks had slightly higher rates of tire problems (1.20 percent) than passenger cars (1.04 percent). The annual average number of vehicles with tire problems in FARS was 535 (313 passenger cars and 222 light trucks).

2. Geographical and Seasonal Effects

The agency further examined the FARS data to determine whether heat is a factor in tire problems. We examined two surrogates for heat: (1) The region of the U.S. in which the crash occurred, and (2) the season in which the crash occurred. The highest rates of tire problems occurred in light trucks in southern states in the summertime, followed by light trucks in northern states in the summertime, and then by passenger cars in southern states in the summertime. The lowest rates occurred in winter and fall.

GEOGRAPHICAL AND SEASONAL ANALYSIS OF TIRE PROBLEMS (PERCENT OF VEHICLES) IN FARS WITH TIRE PROBLEMS

	Passenger cars (percent)	Light trucks (percent)	All light vehicles (percent)
Northern States:			
Winter	1.01	0.80	0.94
Spring	1.12	1.01	1.08
Summer	0.98	1.46	1.15
Fall	1.04	0.93	1.00
Southern States:			
Winter	0.87	0.99	0.92
Spring	1.09	1.27	1.16
Summer	1.31	1.99	1.59
Fall	0.89	1.07	1.00

Winter = December, January, February; Spring = March, April, May; Summer = June, July, August; Fall = September, October, November. Southern States = AZ, NM, OK, TX, AR, LA, KY, TN, NC, SC, GA, AL, MS, and FL; Northern States = all others.

Based on these data, tires on light trucks appear to be more affected by higher ambient temperatures than tires on passenger cars.

3. Tire Problems by Tire Type and Light Truck Type

The agency also examined tire problems in the NASS–CDS from 1992 to 1999 by types of light trucks and vehicle size to determine whether LT tires used on light trucks exhibited more problems than P-metric tires. LT tires are used on vehicle classes identified for this analysis as Van Large B and Pickup Large B groups of vehicles. These groups of vehicles typically represent the 3/4 ton and 1-ton vans and pick-ups. P-metric tires are used on most of the other light trucks. The data indicate that the average percentage of light trucks in the NASS–CDS having a LT tire problem is 0.84 (10/1,186), while the average percent of light trucks having a P-metric tire problem is 0.47 percent (53/11,226).

potential magnitude of the tire problem in fatal crashes, it can neither be considered the lowest possible number because the tire might not have caused the crash, nor the highest number of cases because not all crashes with tire problems might have been coded by the police.

TIRE PROBLEMS BY LIGHT TRUCK VEHICLE TYPE 1992 TO 1999 NASS–CDS UNWEIGHTED DATA [9]

Light truck type	No. of cases with a tire problem	Total No. of cases	Percent of cases with a tire problem
Van—Compact	11	2,125	0.52
Van—Large A	3	431	0.70
Van—Large B	4	501	0.80
Pickup—Compact	13	3,155	0.41
Pickup—Large A	7	1,849	0.38
Pickup—Large B	6	685	0.88
SUV—Compact	16	3,147	0.51
SUV—Large	3	519	0.58
Total	63	12,412	0.51

The Van—Large A group includes vehicles such as the Ford Econoline 150.
The Van—Large B group includes vehicles such as the Ford Econoline 250/350.
The Pickup—Large A group includes vehicles such as the Ford F 150.
The Pickup—Large B group includes vehicles such as the Ford F 250/350.

These larger Pickups and vans, however, are also vehicles that carry heavier loads and are more likely to be more overloaded than lighter trucks. In addition, these heavier vehicles are often used at construction sites and may be more apt to encounter nail punctures and experience flat tires. Thus, there may be usage issues that increase the percentage of tire problems for these larger trucks, rather than exclusively a qualitative difference between P-metric and LT tires.

4. Crashes Indirectly Caused by Tire Problems

While the agency has not attempted to estimate the extent to which improved tires would reduce the chance of having a flat tire it has looked at crashes indirectly caused by or involved with tire problems.

The agency has identified several types of such crashes. For instance, if a driver stops his vehicle on the side of the road due to a flat tire, curious passing drivers often slow down to view the incident. This can cause congestion, potentially resulting in a rear impact involving two or more of the passing vehicles toward the rear of the congested traffic. Another crash type indirectly caused by tire problems involves tire repair on the shoulder of the road. Sometimes drivers repairing tires or seeking assistance due to tire problems are struck, as pedestrians, by other vehicles. These phenomena are not captured in NHTSA's data files. However, Pennsylvania, Washington, and Ohio have data files that allow for combining and search for codes for this phenomena; for instance, searching simultaneously for ''Flat tire or blowout'' and ''Playing or working on a vehicle'' and ''Pedestrians.'' Our examination of these files for calendar year 1999 for Ohio and Pennsylvania and 1996 for Washington showed the following information:

STATE DATA ON TIRE PROBLEMS AND PEDESTRIANS

	Ohio	Washington	Pennsylvania
Pedestrians Injured	3,685	2,068	5,226
Pedestrians Injured While Playing or Working on Vehicle	50 (1.4%)	27 (1.3%)	56 (1.1%)
Pedestrians Injured While Working on Vehicle with Tire Problem	0	2	0
Total crashes	385,704	140,215	144,169

The combined percentage of total crashes with tire problems in these three states (3,100/670,088 = 0.46) is consistent with the NASS–CDS data percentage of 0.51 percent. The portion of pedestrians coded as being injured while working on a vehicle with tire problems is 2/10,979 = 0.018 percent. Applying this to the estimated number of pedestrians injured annually across the U.S. (85,000 from NASS–GES) results in an estimated 15 pedestrians injured per year. The agency, however, does not have data to estimate how many pedestrian injuries could be reduced by having better tires.

C. Implications of Changes in U.S. Light Vehicle Market

Sales of light trucks have risen steadily for over the past 20 years and now account for almost half of the U.S. light vehicle market—more than twice their market share as recently as 1983. (*Industries in Transition*, 1/01/00; *Journal of Transportation and Statistics*, December 2000.) While 9.0 million passenger cars were sold in 2000, the consumer preference for light truck vehicles continued to grow, with sales reaching approximately 8.4 million units, just short of parity with passenger car sales. (*Automotive News 2001 Market Data Book*). According to analysts and manufacturers, sales of light trucks are expected to surpass sales of cars by approximately 100,000 units this year and the light truck segment is likely to reach ''around 60%'' before stabilizing. (*Auto & Truck Manufacturers Industry Report*, 5/15/00).

In addition to purchasing more SUVs, Americans have shifted toward a significantly higher use of minivans, pickup trucks, and SUVs for personal travel. (*Journal of Transportation and Statistics*, December 2000). The 1995 Nationwide Personal Transportation Survey (NPTS) data set suggests that the average light duty truck (LDT) (pickup trucks, SUVs, and minivans) is used over longer distances and with more

people aboard than passenger cars.[10] Additionally, SUVs are popular for long distance weekend travel.

Approximately 90 percent of these light trucks use passenger car (P-metric) tires. The other 10 percent use load range C, D, or E tires which are LT tires and are typically used on heavier light trucks with a gross vehicle weight rating (GVWR) between 6,000 and 10,000 pounds.[11] Sales growth of heavier light trucks, those that have GVWRs above 6,000 pounds, increased at a much faster rate than their lighter counterparts, with larger SUVs (6,000–10,000 pounds GVWR) showing an average increase of 38 percent annually between 1990 and 1998.

V. Agency Response to Safety Problem

A. Relationship Between TREAD Act and Tire Harmonization (Work in UN/ECE's World Forum for Harmonization of Vehicle Regulations (WP.29))

Prior to this rulemaking, NHTSA embarked on a program of global harmonization for light vehicle tire standards under the auspices of the United Nations/Economic Commission for Europe's (UN/ECE) World Forum for Harmonization of Vehicle Regulations (WP.29).[12] NHTSA, within the WP.29's Working Party on Brakes and Running Gear (GRRF),[13] has been working cooperatively with other countries to develop a global tire standard that could better assess the safety performance of modern tires.

In July 1999, NHTSA participated in a GRRF meeting in London, England which initiated deliberations to develop a global technical regulation for tires with other countries. An industry developed standard, Global Tire Standard 2000 for New Pneumatic Car Tires (GTS–2000),[14] was used as a basis for initial discussions on harmonization at that meeting. GTS–2000 would substitute a single high-speed test for the four performance tests in FMVSS No. 109 for most radial tires.[15] More specifically, GTS–2000 would replace the current FMVSS No. 109 high speed test with the high-speed test required by ECE–R30 (the European tire regulation for tires used on light passenger vehicles), including temporary spares. It would also limit the application of the other three tests currently required by FMVSS No. 109, namely the strength test, the bead unseating test, and the endurance test, to bias tires and low speed rated radial tires because industry believes that these three tests have relevance to bias and bias-belted tires, but little, if any, relevance to radial tires, with the single exception of the endurance test for low speed (160 km/h/99 mph, or less) radial tires.

Since the July 1999 meeting, the GRRF has been considering a draft global technical regulation (GTR). Prior to the enactment of the TREAD Act, tentative consensus within an ad hoc tire harmonization working group of the GRRF concerning the draft GTR had been reached on the following issues: (1) To adopt the ECE R30 high speed test methodology[16] in place of the FMVSS 109 high speed test, (2) to keep the current FMVSS 109 resistance-to-bead unseating test until NHTSA develops an alternative that is more appropriate for radial tires, and (3) to develop an optional requirement for testing wet grip. Other issues also under discussion in the ad hoc group prior to the TREAD Act included: (a) the U.S.'s suggestion to lower the inflation pressures in and increase the duration of the high speed test (current ECE R30 test), (b) the U.S.'s suggestion to agree on the need for tire labeling requirements that are unique to the U.S., such as maximum inflation pressure, and UTQG consumer information, (c) the U.S.'s suggestion to identify requirements that should be included as optional requirements, (d) assigning to the UN the responsibility for tire plant code registration for a global standard, and (e) the U.S.'s suggestion to increase the ambient temperature for the high speed test.

In a February 2001 submission to the docket (Docket No. NHTSA–2000–8011), the Chairman of the GRRF Tire Harmonization Working Group recommended on behalf of the GRRF that NHTSA adopt a draft text that reflects the current state of deliberations for developing a harmonized tire standard.

B. Submissions to NHTSA Tire Upgrade Docket (Docket No. NHTSA–2000–8011)

In September 2000, NHTSA opened a docket, NHTSA–2000–8011, entitled ''Tire Testing—Federal Motor Vehicle Safety Standard (FMVSS 109).'' The purpose of this docket was to collect tire test data and receive feedback on its high speed and endurance performance testing matrices.

As of the issuance of this document, comments and recommendations from 7 entities have been received in the docket. Substantive comments and recommendations in response to NHTSA's testing matrices are discussed below. Additionally, Toyota Motor Company (Toyota) submitted a copy of its Air Loss Test Procedure.

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[10] Passenger cars average 12,258 miles per year during the first 6 years after purchase, while light trucks average 12,683 miles per year during the same time period. NPTS data also indicates that minivans make the most person-trips per day, followed by SUVs, passenger cars, and finally pickups. SUVs are estimated to make, on average, 4.6% more person-trips per day than passenger cars.

[11] The net impact on original equipment passenger car tire shipments in 1999 reflects an increase of 3.9 million units for a record total of 61 million units, or a 6.8 percent growth over 1998's figure of 57.1 million units. Continued growth in the sales and production of light truck vehicles also drove the number of original equipment light truck (LT) tires to a record high of approximately 8.4 million units or a 25.2 percent increase over 1998's figures. (*RMA 2000 Yearbook*)

[12] Formerly, ''Working Party on the Construction of Vehicles (WP.29).'' The Forum's website is http://www.unece.org/trans/main/welcwp29.htm

[13] The GRRF is a Working Party within WP.29 which is responsible for developing draft global technical regulations on brakes, tires, wheels, and other chassis components of motor vehicles.

[14] On January 25, 1999, the Rubber Manufacturers Association (RMA), along with five other petitioners, submitted a petition requesting the agency to begin a rulemaking proceeding to amend FMVSS No. 109 by adopting a new standard. According to the petitioners, GTS–2000 is a suggestion for a harmonized standard that the tire industry believes incorporates the best safety practices, including those from the U.S., Europe, Japan, China, and Australia. On June 8, 1999, NHTSA granted this petition.

[15] As described by RMA, GTS–2000 lists the following test criteria: (1) Physical dimensions for overall width and outer diameter; (2) strength test (plunger energy) for bias ply and bias-belted tires; (3) bead unseating resistance tests for bias-ply and bias-belted tires; (4) low speed (not less than 50 mph) endurance tests for bias-ply and bias belted tires plus all radial tires with a speed symbol of Q or below; and (5) high speed endurance tests for all tires (bias-ply, bias-belted, and radial). In addition, it contains labeling requirements covering tire pressure, load rating and tire construction.

[16] The ECE Regulation 30 includes a single performance requirement, the high speed test, which is conducted at a speed close to and up to the rated speed of the tire. The methodology used in ECE R30 and suggested by the tire industry in GTS–2000 for tire harmonization determines the test speed based on the tire's speed symbol rated speed. The following chart illustrates the rated speed in km/h for each speed symbol.

Speed symbol and Rated Speed—km/h:

F—80
G—90
J—100
K—110
L—120
M—130
N—140
P—150
Q—160
R—170
S—180
T—190
U—200
H—210
V—240
W—270
Y—300
ZR—>300

These speeds range from a minimum of 140 km/h (88 mph) to 300 km/h (188 mph) for W, Y categories. The total test time is 50 minutes. The inflation pressures for the ECE R30 high speed test are typically much higher than those recommended by vehicle manufacturers for vehicle operation.

1. RMA December 2000 Testing Protocol

In December 2000, RMA presented to NHTSA a test protocol (RMA 2000) that was designed and administered with the participation of the following tire companies: Bridgestone/Firestone, Continental/General, Cooper Tire and Rubber, Michelin, Goodyear, Pirelli, Yokohama. The test protocol is divided into the following principal parts: Passenger Car Tire High Speed, Passenger Car Tire Endurance, Light Truck High Speed, and Light Truck Tire Endurance. One hundred thirty-two tests on approximately 900 tires were included in this protocol. A brief summary of RMA 2000's conclusions and recommendations are discussed below.

a. Passenger Tires—High Speed Test

RMA 2000 concluded that

[t]he SAE test [J1561] conditions were found to be the most consistent discriminators required for completion of the rated speed within the customary one-hour duration.[17] Test inflation pressure had the greatest effect in determining completion of the rated speed. Maximum load was also shown to have an effect on performance, although not as great as inflation.

RMA 2000 recommended that the agency revise the High Speed Performance test in FMVSS No. 109 to reflect the conditions found in SAE J1561:

(1) Test speed and duration: (Initial Test Speed (ITS) = Tire's rated speed minus 40 km/h), 6 speed steps, each 10 min in duration: (1) 0 to ITS, (2) ITS, (3) ITS + 10 km/h, (4) ITS + 20 km/h, (5) ITS + 30 km/h, (6) ITS + 40 km/h.[18]

(2) Inflation pressures (kPa): 240 for speed rating through N, 260 for P, Q, R, & S, 280 for T, U, & H, 300 for V & Z, 320 for W & Y.

(3) Load and ambient temperature: 80 percent of maximum rated load, 38°C ± 3°C.

b. Passenger Tires—Endurance Test

RMA concluded that ''the results seem to indicate that speed, followed closely by inflation pressure, are key determinants affecting the number of hours to failure.''

RMA recommended revising the Endurance test in FMVSS No. 109 to include the following parameters:

(1) Inflation pressure: 180 kPa.

(2) Test speed: constant at 120 Km/h.

(3) Duration and load: 8 hours at 85 percent of maximum rated load, 8 hours at 90 percent of maximum rated load, 8 hours at 100 percent of maximum rated load.

(4) Ambient temperature: 38°C ± 3°C.

c. Light Truck Tires—High Speed Test

RMA concluded that

[f]or load range C tires an analysis of the results shows the maximum load conditions of 90 percent to be more realistic than the 80 percent. Also, it appears that the inflation pressure of 350 kPa is the most suitable for this test. For load range E tires the data showed that conditions of 90 percent maximum load and 550 kPa pressure, while not particularly discerning for the Q speed rated tires did become much more rigorous for the R speed rated tires (no S rated tires were included in the load range E tests).

RMA recommended that NHTSA incorporate a test similar to SAE J1633 or ISO 10454 into its light truck tire standard, using maximum inflation pressure, limited to tires marked ''LT'' or ''C'' and load range A–E or Load Index 124 or below. The parameters are as follows:

(1) Speed and duration (ITS = Tire's rated speed − 20 km/h): 3-speed steps: 0 to ITS for 10 min, ITS for 10 min, ITS + 10 km/h for 10 min, ITS + 20 km/h for 30 min.

(2) Inflation pressure corresponding to maximum load.

(3) Load: 90 percent of maximum.

(4) Ambient temperature: 38°C +/− 3°C.

d. Light Truck Tires—Endurance Test

RMA 2000 concluded that

[a]s with passenger car endurance tests, speed is deemed to be the greatest determinate of tire failure, followed closely by inflation pressure * * * In the FMVSS 119 test it wasn't until load limits became unrealistically high that tires begin to fail. However, in the four test protocols using combinations of the test conditions cited above, average hours to failure were more realistically demonstrated when testing at 120 km/h using the inflation pressures corresponding to the maximum load rating marked on the tire (350 kPa for load range C, and 550 kPa for load range E).

RMA 2000 recommended revising the light truck tire standard to include the following test parameters:

(1) Inflation pressure: at pressure corresponding to the maximum load rating marked on the tire.

(2) Speed: constant at 120 Km/h.

(3) Duration and load: Load range A, B, C, & D for 8 hours at 75 percent of maximum rated load, 8 hours at 97 percent of maximum rated load, and 8 hours at 114 percent of maximum rated load. Load Range E for 8 hours at 70 percent of maximum rated load, 8 hours at 88 percent of maximum rated load, and 8 hours at 106 percent of maximum rated load.

(4) Ambient Temperature: 38°C +/− 3°C.

2. Other Substantive Submissions

In February 2001, Michelin presented its suggested Endurance Certification Test to NHTSA. This is an endurance test for long term durability, which evaluates the following factors: belt edge stress, long-term cyclic fatigue and compound evolution. The following table illustrates the parameters of this test:

	Metric passenger car		Light truck			
			Load range			
	Standard load	Extra load	B	C	D	E
Test Temperature (°F)	100+/−5		100+/−5			

[17] The SAE J1561 Test parameters, which are also consistent with International Standards Organization (ISO) 10191 testing conditions, are as follows:

(1) Test speed and duration: (ITS = Tire's rated speed minus 40 km/h), 6 speed steps, each 10 min in duration: (1) 0 to ITS, (2) ITS, (3) ITS + 10 km/h, (4) ITS + 20 km/h, (5) ITS + 30 km/h, (6) ITS + 40 km/h.

(2) Inflation pressure: 240, 260, 280, 300, or 320 kPa based on speed rating.

(3) Load: 80 percent.

(4) Ambient Temperature: 38° C.

[18] The following chart illustrates the rated speed in km/h for each speed symbol. ''ZR'' is an open ended speed category for tires with a maximum speed capability above 240 km/h, but is also used specifically for tires having a maximum speed capability above 300 km/h.

Speed symbol and rated speed—km/h:

F—80
G—90
J—100
K—110
L—120
M—130
N—140
P—150
Q—160
R—170
S—180
T—190
U—200
H—210
V—240
W—270
Y—300
ZR—> 300

	Metric passenger car		Light truck			
			Load range			
	Standard load	Extra load	B	C	D	E
Speed (mph)	60		60			
Filling Gas	$50\%O_2/50\%N_2$		$50\%O_2/50\%N_2$			
Load (lbs)—% Max Single	111		142	112	98	92
Initial Pressure (psi)—Regulated	40	46	57	57	65	80
Regulated						

In May 2001, Michelin supplemented its requested endurance test with a discussion of the influence of its long term durability endurance test variables on tire endurance and crack propagation.

Michelin has also recommended replacing the current high speed test with ISO 10191. ISO 10191 contains test variables substantially similar to those in SAE J1561 and those recommended by RMA 2000 for the high speed test for passenger tires.

In a November 2000 submission to the docket, GM provided the following general comments on the first phase of NHTSA's tire testing matrix: (1) Increased high speed capability will result directly in compromises with mass, fuel economy (rolling resistance) and ride comfort, (2) correlation of laboratory tests with performance of tires in the field environment is necessary and tires with known acceptable field performance should serve as reference to acceptable performance on such laboratory tests, (3) tests that take the tire to failure can always be developed but may not indicate poor performance and tire failures on these tests should not be interpreted as an indication of unacceptable performance, (4) the definition of failure for these tests should be clarified, and (5) it is recommended that temperature monitoring be included in the testing.

GM also submitted a number of comments on NHTSA's test matrices. These comments, specific to NHTSA's preliminary test parameters, are not discussed in detail here, but are available for review in the docket.

C. NHTSA Tire Testing at Standards Testing Lab (STL)

Shortly after the enactment of the TREAD Act, the agency initiated tire testing at Standards Testing Labs (STL) in November 2000 to evaluate the high-speed performance, endurance performance, and low inflation pressure performance of a limited number of current production tires. The agency developed a test matrix which focused on the five main parameters currently used in tire testing under FMVSS Nos. 109 and 119: load, inflation pressure, speed, duration, and ambient temperature. Copies of the test matrix and testing results for P-metric tires and for LT tires is available in the docket (see the Tire Test Matrix in NHTSA Docket No. 2000–8011–1).

1. High Speed Testing

The high speed tests included a wide range of values for the test parameters to facilitate evaluation of the performance of a variety of tires used on light vehicles. A baseline high speed test was performed on each of the tire brands using the GTS–2000 high speed test for P-metric tires and FMVSS No. 109 for the LT tires.[19]

The Phase I test matrix included loads of 80, 90, and 100 percent[20]; inflation pressures of 180 kPa, 210 kPa and 240 kPa; durations at each speed step of 10 minutes, 20 minutes and 30 minutes; and four speeds steps beginning at an initial test speed (ITS) 30 km/h below the rated speed of the tire, and increasing in 10-km/h increments up to the rated speed (ITS + 30km/h). Some tests were conducted to failure, beyond the rated speed of the tires, to assess the performance margin for the tires. In this phase of testing, nine P-metric tire brands and three LT tire brands were tested using 28 tires per brand, one tire for each of the 28 high speed tests performed. The total number of tires tested to the high speed test in this phase was 336 tires.

The test results from the Phase I tests show that all but one of the tires completed the baseline high speed tests up to their rated speed without failure. The results of the matrix tests indicate that all the parameters have an impact on tire failure in the high-speed test; however, a decrease in inflation pressure appeared to have the greatest impact on time to failure in the high-speed test. For example, at an inflation pressure of 180 kPa using 20-minute speed intervals, the results of the P-metric tire tests indicate 3 of 9 tire failures, while at 240 kPa, under similar test conditions, all 9 tires completed the high speed test. The data also indicate that RMA 2000's suggested 10-minute test duration at each speed appears to be too short to properly evaluate the high speed performance of a tire. In the agency's testing, few failures occurred at the 10-minute steps, and all tires tested were able to complete many of the tests conducted using 10-minute speed intervals. In general, the most stringent mix of parameters was 100 percent load, low inflation pressure of 180 kPa, combined with the longest test duration for each speed step, 30 minutes. This test condition resulted in only one of nine P-metric tires completing the high speed test. A similar test condition for the test on three LT tires resulted in one tire completing the high speed test. The agency notes that these severe test conditions enabled us to evaluate the high speed performance limits of some current production tires.

The agency conducted additional high speed testing using a Phase II matrix. This second phase of the high-speed testing included 12 tire brands (8 P-metric and 4 LT tires) with a sample of five tires per test per brand. The test parameters included loads at 80 and 85 percent; inflation pressures at 210 kPa and 220 kPa; duration of 20 minutes; and speeds similar to the ITS plus 10, 20, 30 km/h method used in Phase I, and also three fixed speeds of 160, 170, and 180 km/h for 30 minutes at each speed step. For the LT tires tested to the high-speed test, the parameters were similar as those used for P-metric tires, except that the inflation pressures were changed to reflect the higher maximum inflation pressures on those tires.

The test results from the second phase testing demonstrated that there is variability in the manufacturing quality of tires since a mix of passes and failures occurred within the 5 samples tested for each brand.

2. Endurance Testing

The endurance testing was also comprised of two phases of matrix testing. The baseline endurance test used for the P-metric tires was the one

[19] LT tires were not included in GTS–2000 nor are they required to comply with the high speed test in FMVSS No. 119.

[20] As stated earlier in this document, load percentages, unless otherwise specified, are based on the sidewall maximum rated load.

in GTS–2000 for radial tires rated ''Q'' or below. For LT tires, the FMVSS No. 119 endurance test was used as the baseline. The agency also conducted endurance testing with load combinations of 100/115/125 percent load, test speeds of 120 and 140 km/h, inflation pressures of 160 kPa and 200 kPa for P-metric tires, and for a duration of 50 hours. Similar parameters were used for LT tires, except with different inflation pressures since these tires have higher maximum inflation pressures than P-metric tires.

All the tires completed the baseline endurance tests without any failures. The results of the matrix tests for endurance indicate that the higher test speed, 140 km/h, had a large impact on the time to failure, even at the higher inflation pressure of 200 kPa. The high load percentages also contributed significantly to the short time to failure, especially for some of the LT tires.

The second phase of the endurance testing included test parameters closer to those that the agency is proposing in this NPRM. The parameters were as follows: lower loads of 100/110/115 percent combined with a test speed of 120 km/h at 180 kPa inflation pressure for a duration of 50 hours; higher loads of 100/115/125 percent combined with a lower test speed of 100 km/h at 180 kPa inflation pressure for 50 hours.

The results of the second phase of endurance testing indicate that fewer failures occurred in Phase II testing with the combination of high load (100/115/125 percent) and lower speed (100 km/h) than under the parameters of Phase 1 testing. In Phase 2, 7 of the 8 P-metric tires completed the test without any failures in any of the 5 samples of each brand tested. The 4 LT tires tested also performed well with one failure in the five samples in 3 of the 4 brands tested. One brand completed the test with all 5 tires completing the 50-hour test. The test conditions that produced the most failures in the P-metric tires were the higher load combinations at 120 km/h. These conditions, surprisingly, did not produce many failures in the LT tires tested.

3. Low Inflation Pressure Testing

The agency also conducted a test at low inflation pressures (140 kPa (20 psi) inflation pressure for P-metric tires), at a speed of 120 km/h (75 mph) for a duration of 90 minutes, on the same tires (2 samples of each of the 12 brands) that successfully completed the endurance test. The purpose of this test was to evaluate tire performance at a low inflation pressure threshold level, 20 psi, being proposed for tire pressure monitoring systems for light vehicles.[21] Similar tests were performed using the LT tires, but at low inflation pressures values commensurate with 58 percent of their maximum inflation pressure. These low threshold values were selected based on the lowest inflation pressure at which a tire load is provided by the tire industry standardizing bodies. The test results indicate that all 24 tires tested completed the 90 minute test low inflation pressure test without failure.

4. Conclusions From Testing Results

In summary, the results of the high speed and endurance tests indicated that the agency can develop and propose test requirements that are realistic in terms of the test parameters, yet more stringent than the current FMVSS No. 109, FMVSS No. 119 requirements, European Regulation ECE R 30, GTS 2000, and RMA 2000. The proposed test requirements differentiate tires with better high speed and endurance performance from those with lesser performance. The low pressure validation tests indicate that tires that were able to successfully complete the endurance testing can also complete an additional 90-minute test at a low inflation pressure, 140 kPa for P-metric tires, thus providing an adequate safeguard for consumers to take corrective action when the low pressure warning lamp proposed under the tire pressure monitoring system rulemaking is activated at a ''significantly'' under-inflated level.

VI. Agency Proposal

A. Summary of Proposal

The agency is proposing a single standard for light vehicle tires, FMVSS No. 139, New Pneumatic Tires for Light Vehicles, which would require light vehicle tires to meet a high-speed test, an endurance test, a low inflation pressure performance test, a resistance-to-bead unseating test, a road hazard impact/strength test, and an accelerated aging test. This standard would require tires for passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, manufactured on or after November 1, 2003, to comply with the test requirements. Therefore, this proposal is applicable to LT tires up to load range E.[22] The following chart compares the types of test requirements that currently exist, those that have been suggested by third parties, and those are being proposed by this agency:

TABLE 1.—COMPARISON OF TYPES OF TIRE PERFORMANCE REQUIREMENTS IN VARIOUS EXISTING AND DRAFT TIRE STANDARDS

Tests	FMVSS 109	FMVSS 119	GRRF Draft GTR	GTS–2000	RMA 2000	ECE R30	Proposed FMVSS 139
High Speed	X		X*	X†	X	X	X
Endurance	X	X	X*	X**	X		X
Low pressure performance							X
Strength; or Road Hazard Impact	X	X					X
Bead Unseating	X		X***				X
Accelerated Aging							X

* Endurance test for radial tires rated ''Q'' and below. Identical testing parameters as FMVSS No. 109 Endurance Test.
** Endurance test for radial tires rated ''Q'' and below.
*** Identical testing parameters as FMVSS No. 109 Bead Unseating Test.
† Testing parameters have not been agreed upon by the ad hoc working group.

[21] In its recent TPMS NPRM, Docket No. NHTSA–2000–8572, the agency proposed two options for activation of the warning lamp: 1) 20 percent below the recommended cold inflation pressure or 140 kPa (20 psi) whichever is higher; and 2) 25 percent below the recommended cold inflation pressure or 140 kPa (20psi), whichever is higher.

[22] This load range is typically used on large SUVs, vans, and trucks.

Both the proposed High Speed Test and the Endurance test contain testing parameters (ambient temperature, load, inflation pressure, speed, and duration) that make the tests more stringent than those tests currently found in FMVSS Nos. 109 and 119, as well as the tests suggested by industry. Most significantly, the proposed High Speed test specifies test speeds (140, 150 and 160 km/h (88, 94, and 100 mph)) substantially higher than those specified in FMVSS No. 109 (120, 128, 136 km/h (75, 80, 85 mph)). Likewise, the proposed Endurance Test specifies a test speed 50% faster (120 km/h (75 mph)) than that currently specified in FMVSS 109 (80km/h (50 mph)), as well as a duration 6 hours longer (40 hours total) than that currently specified in FMVSS 109 (34 hours total). At the specified test speed (120 km/h), the Proposed Endurance Test mileage (3,000) is almost double the mileage that a tire endures under the current Endurance Test (1,700 miles at 80 km/h).

The proposal also contains two alternative Low Inflation Pressure tests which seek to ensure a minimum level of performance safety in tires when they are underinflated to 140 kPa. The agency requests comments on which test is more appropriate to be included in the new standard.

In place of the current strength test in FMVSS No. 109, the agency proposes that the new standard contain a Road Hazard Impact test which is modeled after a SAE recommended practice. This test, which simulates a tire impacting a road hazard, such a pothole or curb, provides both a more stringent and more real world test than the FMVSS No. 109 ''plunger test.''

The proposal would also replace the current FMVSS No. 109 Bead Unseating Test with a new Bead Unseating test which is based on a test currently used by Toyota. Industry has previously recommended to the agency that the current bead unseating test be deleted from the standard because radial tires are easily able to satisfy the test. Results from the agency's 1997–1998 rollover testing, however, provide a strong rationale for upgrading, rather than deleting, the bead unseating requirement in FMVSS No. 109. The Toyota test uses test forces more stringent than those in current FMVSS No. 109 which were developed for bias ply tires and are typically not stringent enough for radial tires.

To address the deterioration of tire performance caused by aging, the proposal contains three alternatives for an Aging Effects Tests. These tests, the Adhesion (Peel) Test, Michelin's Long-term Durability Endurance test, and Oven Aging all seek to expose tires to the type of failures experienced by consumers at 40,000 kilometers or beyond. The agency requests comments on which test is most appropriate to be included in the new standard.

The proposal would also revise FMVSS Nos. 110 and 120 to reflect the applicability of the new standard and would revise certain of the tests in FMVSS Nos. 117 and 129 to ensure that all light vehicle tires are required to comply with the identical minimum performance requirements. Lastly, the proposal discusses NHTSA's ongoing and future Road Hazard Impact Test and Bead Unseating Test research plans, the lead time for implementation of the new tire standard, the use of shearography analysis, and the revision of the requirements for the test speeds in UTQG Temperature Grading Requirement to mirror those in the proposed High Speed Test.

NHTSA believes that the proposed upgraded standard would specify more stringent and real-world, yet practicable, tests that would provide a higher level of operation safety and performance for tires on today's light vehicles.

B. Applicability

FMVSS No. 139 would apply to new pneumatic tires for use on motor vehicles with a GVWR of 10,000 pounds or less, manufactured after 1975, except for motorcycles. Given the increasing consumer preference for light truck use for passenger purposes, the agency is proposing that the safety requirements for passenger car tires also be made applicable to LT tires (load range C, D, and E) used on light trucks.

Currently, the performance requirements for LT tires in FMVSS No. 119 are less stringent than the requirements for P-metric tires in FMVSS No. 109. LT tires are required to comply with a strength test and a low speed endurance test, but are not required to be tested to a high speed performance test or a resistance-to-bead unseating test as required under FMVSS No. 109. However, LT tires are increasingly used in the same type of on-road service as P-metric tires on light vehicles. Further, recent sales data for heavier light trucks indicate that the use of these tires on passenger vehicles will continue to increase in the near future.

NHTSA is not proposing to require that FMVSS No. 139 apply to motorcycle tires because motorcycle tires are of a design and construction unlike the types of vehicle tires that would be subject to the proposed standard (*e.g.,* tread, load carrying capacity) and motorcycle tires still often use inner tubes. Further, the agency is not currently aware of any safety problems associated with motorcycle tires.

NHTSA is also not proposing to require that the new standard be applicable to tires beyond load range E, which are typically used on medium (10,001–26,000 lbs. GVWR) and heavy (greater than 26,001 lbs. GVWR) vehicles, and temporary spare tires,[23] for two reasons. This rulemaking is required by the TREAD Act, and must be completed by June 2002. To meet this statutory deadline, the agency has limited its tire upgrade research and analysis to conventional tires for light vehicles. The issues associated with upgrading performance standards for tires on medium and heavy vehicles and temporary spare tires are different from the issues associated with upgrading performance standards for conventional tires on light vehicles. For example, medium and heavy vehicles are equipped with tires that are much larger and have higher pressure levels than the tires used on light vehicles. Temporary spare tires are smaller, have higher inflation pressures, and are intended for shorter distance and lower speed driving than conventional light vehicle tires. Given the TREAD Act deadline on this rulemaking, the agency does not have the time to study and analyze sufficiently the different issues presented by medium and heavy vehicle tires and temporary spare tires. NHTSA will examine these types of tires after we have completed this rulemaking.

C. Proposed Test Procedures

1. High Speed Test

NHTSA proposes that the High Speed test be conducted using the following five parameters:

(1) *Ambient Temperature:* 40°C (104°F).

(2) *Load:* 85 percent.

(3) *Inflation Pressure:* 220 kPa (32 psi) for standard P-metric tires; 320 kPa (46 psi), 410 kPa (60 psi), 500 kPa (73 psi), for LT tires load range C, D and E, respectively.

(4) *Speed:* 140, 150, 160 km/h (88, 94, 100 mph).

(5) *Duration:* 30 minutes for each speed.

A tire complies with the proposed requirements if, at the end of the high speed test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the

[23] For the purposes of this notice, a temporary spare tire is a compact tire intended for temporary use. It is typically labeled for limited durations and speeds.

tire pressure is not less than the initial test pressure.

The agency proposes a high speed test with three pre-selected speeds. This testing methodology is different from that in two alternatives which were considered by the agency: (1) GTS–2000, and (2) a high speed test using identical parameters to those proposed above, except that the test speeds are based on the rated speed of the tire (initial test speed (ITS), ITS + 10, ITS + 20, ITS + 30) for durations of 20 minutes at each speed step with a 10-minute warm-up from 0 km/h-ITS.[24]

The methodology suggested by the tire industry in GTS–2000 for tire harmonization and the second alternative determines the test speed based on the tire's speed symbol rated speed. The following chart illustrates the rated speed in km/h for each speed symbol.

Speed symbol	Rated speed—km/h
F	80
G	90
J	100
K	110
L	120
M	130
N	140
P	150
Q	160
R	170
S	180
T	190
U	200
H	210
V	240
W	270
Y	300
ZR	> 300

The initial test speed (ITS) in GTS–2000 is the rated speed of the tire minus 40 km/h. The test is conducted at the following speed steps: ITS, ITS+10 km/h, ITS+20 km/h, ITS+30 km/h and ITS+40 km/h. The final speed step, ITS+40 km/h, is identical to the rated speed of the tire. Similarly, the ITS in the second alternative is the rated speed of the tire minus 30 km/h. The test is conducted at the following speed steps: ITS, ITS+10 km/h, ITS+20 km/h, and ITS+30 km/h, with the final speed step being identical to the rate speed of the tire. Therefore, under both alternatives, each tire with a different speed rating is tested at different speeds during the high speed test.

Historically, the agency establishes uniform minimum performance requirements for its safety standards for the item of motor vehicle equipment. Testing for compliance using the tire's rated speed differs from that philosophy since it does not establish a single absolute minimum requirement for all tires, but establishes a relative requirement based on each tire's maximum design capabilities.

The agency's proposal, based on pre-selected test speeds and independent of the rated speed of the tire, establishes the same minimum requirement for all tires, regardless of the designed level of performance. We believe that such a methodology is equitable for all tire manufacturers and does not impose higher safety standard requirements on a tire with a higher level of performance.

The following table illustrates an at-a-glance comparison of the other standards and suggestions discussed in this document.[25]

TABLE 2.—HIGH SPEED TEST COMPARISON

Test parameters	FMVSS 109	GTS 2000	RMA 2000	ECE 30	Proposed FMVSS 139
Ambient (°C)	38	25	38	25±5	40
Load (%):					
P-metric	88	80	80	80	85
LT			90		
Inflation Pressure (kPa):					
Standard load P-metric	220				220
Extra load P-metric	260				260
LT load range C/D/E			sidewall max		320/410/500
SpeedRating (Std/Extra):					
L,M,N		240/280	240/280		
P,Q,R,S		260/300	260/300	260/300	
T,U,H		280/320	280/320	280/320	
V		300/340	300/340	300/340	
W,Y		320/360	320/360	320/360	
Test speed* (km/h)	120, 128, 136	0–ITS, ITS, +10, +20, +30.	0–ITS, ITS, +10, +20, +30 +40.	ITS, +10, +20, +30	140, 150, 160
Duration (mins)	90	60	60	60	90

*For GTS–2000, RMA 2000, and ECE 30, initial test speed (ITS) is defined as the tire's rated speed minus 40 km/h.

An explanation of the proposed parameters is provided below.

a. Ambient Temperature

The proposed ambient temperature is 40°C. This temperature is a slight increase over the temperature, 38°C, currently specified in FMVSS No. 109. This temperature reflects the typical daytime temperatures in the South and Southwestern regions of the U.S. during the Summer. As discussed earlier, the highest rates of tire problems occurred in the southern states in the summertime.

b. Load

The load proposed for the high-speed test is 85 percent. The load percent currently specified in FMVSS No. 109 is 88 percent. As discussed in greater detail below, decreasing the load from 88 percent to 85 percent increases the tire reserve needed by a vehicle under normal loading conditions from 12 percent to 15 percent, resulting in a larger margin of safety when a vehicle is loaded to its GVWR or its tires are underinflated.

[24] Analysis of the results of the NHTSA's high speed testing at STL indicate that less than 25 percent of the p-metric tires would have failed the second alternative (3 of 8 p-metric brands had at least one failure in the five samples tested and for LT tires there was a 5% failure rate in the 5 tire brands tested).

[25] FMVSS No. 119 does not currently include a high speed test for LT tires with a rim diameter above 14.5 inches.

Changing the load from 88 percent to 85 percent in the high speed test would affect the current requirement in S4.2.2 of FMVSS No. 110 which states that the vehicle normal load on the tire is to be no greater than the applicable load used in the high speed performance test. ''Tire reserve load'' refers to a tire's remaining load-carrying capability when the tire is inflated to the vehicle manufacturer's recommended inflation pressure and the vehicle is loaded to its gross vehicle weight rating (GVWR).[26] When a tire is loaded to 88 percent of the maximum load labeled on the tire sidewall, the unused 12 percent is considered the reserve load of the tire under normal loading conditions (curb weight of the vehicle plus three occupants in a vehicle with a designated seating capacity of five or more.) A change from 88 percent to 85 percent load on the tire for the high speed test would, in essence, require a vehicle manufacturer to increase the reserve load under normal loading from 12 percent to 15 percent. This requirement may, in turn, necessitate the use of a larger tire size on some vehicles since the load limit on existing tires may not be sufficiently high to provide a load reserve of 15 percent of the tire's maximum rated load.

In addition, the requirement for a 12 percent tire reserve under normal loading conditions currently applies only to passenger cars. This notice proposes to require light trucks for the first time to have a specified tire reserve under normal loading conditions. Light trucks would have to provide the same 15 percent reserve proposed for passenger cars.

The agency also proposes revised language in FMVSS No. 110 to clarify that the test load that is compared with the vehicle normal load must be determined at the vehicle manufacturer's recommended cold tire inflation pressure, and not at the maximum tire load limit on the sidewall. The agency believes that since the vehicle normal load defines loading during normal operation of the vehicle, it is appropriate to require the load to be determined at the vehicle's recommended cold tire inflation pressure.[27]

Although 85 percent loading for the high speed testing of tires represents a slight decrease from the current 88 percent specification in FMVSS No. 109, test data from the agency's testing and from RMA testing indicate that tire failure is more sensitive to speed and inflation pressure than to loading variations in the 80 to 90 percent range.[28] The agency believes that a speed increase from 75, 80 and 85 mph to speeds up to 160 km/h (100 mph) would contribute to a more stringent test which would more than offset a small decrease in test load requirements. In Phase I of the agency's testing, 5 of 9 P-metric tires failed at 90 percent load and 2 of 9 failed at 80 percent. Phase II of the testing included testing of 8 P-metric tire brands, 5 samples each, at 80 and 85 percent loads, and with all other test parameters remaining constant (inflation pressure-220 kPa, 20-minute steps, speeds ITS to ITS + 30 km/h). In these tests, fewer tire failures occurred at 85 percent load than at 80 percent load.[29] At 85 percent load, 5 of 8 tire brands had no tire failures in their 5 samples and the other three brands had at least one failure in the five samples. One brand experienced failures in all 5 samples tested to the high speed test. Four brands of LT tires were also tested and all samples for each of the brands completed the high speed test at 85 percent load without any failures. This testing appears to confirm that small increases in tire load have less of an impact on time to failure as compared with changes in inflation pressure and test speed.

c. Inflation Pressure

The agency proposes a test inflation pressure of 220 kPa (32 psi) for all unrated and speed rated P-metric tires and 260 kPa for extra load tires. The proposed P-metric tire pressure is the same as that specified in FMVSS No. 109. The agency proposes the following inflation pressures for LT tires based upon their higher maximum inflation pressures: 320 kPa for load range C, 410 kPa for load range D, and 500 kPa for load range E tires. During its testing, the agency incorrectly used 600 kPa as the maximum load rate inflation pressure for LT tires with load range ''E'', and calculated test pressures utilizing 600 kPa. Based on the Tire and Rim Association (T&RA) Yearbook, load range E tires have an inflation pressure of 550 kPa at its maximum load rating. Therefore, the test inflation pressures are revised accordingly.

The proposed inflation pressures are based on surveys showing that tires are typically operated at some level of underinflation.[30] Given the tire pressure survey data, the agency selected the proposed test pressures based on the level of underinflation experienced during normal vehicle operation. The 220 kPa value represents an under-inflation of 20 kPa (3 psi) or 8 percent from the 240 kPa maximum inflation pressure, and 260 kPa represents an under-inflation of 20 kPa (3 psi) or 7 percent from the 280 kPa maximum inflation pressure.

Although 220 kPa is the same test pressure specified in FMVSS No. 109, this test pressure, in conjunction with the new proposed test speeds, represents a more stringent test than that contained in FMVSS No. 109. Agency testing results indicate that 220 kPa is a test inflation pressure that would be appropriate for the high speed test given the parameters of speed, load and test duration.

RMA suggested basing the test inflation pressure on the rated speed of the tire. Tires rated P, Q, R, and S would be tested at 260 kPa; tires rated T, U, and H are tested at 280 kPa; tires rated V are tested at 300 kPa; and tires rated W, Y, and Z are tested at 320 kPa.[31] The agency believes that these inflation pressure values are too high for high speed testing because (1) they do not reflect values that are similar to the cold inflation pressures recommended by vehicle manufacturers, and (2) they do not correspond well with the real-world inflation pressures recently obtained

[26] A reserve load margin is provided by manufacturers to account for overloading of the vehicle, under-inflation of the tires, or both.

[27] Vehicle normal load on the tire means that load on an individual tire that is determined by distributing to each axle its share of the curb weight, accessory weight, and normal occupant weight and dividing by 2.

[28] RMA's test data indicate that the time to failure for P235/75R15 tires decreased by 4 minutes when the load was increased from 80 percent to 90 percent. However, time to failure on the same type (brand, model, and size) tires decreased by 16 minutes when the inflation pressure was reduced by 9 psi.

[29] The agency reviewed the production dates for the tires tested to the above loads at 80 percent and 85 percent loads to determine whether the production dates of the tires may have affected the failure rates. No correlation between production date and failure at the lower load percentages is concluded because all of the tires were produced during 2000 and 2001. The agency concludes that a combination of minor quality differences in the tires, test procedures, and the relatively small (5 percent) load change may account for the fewer tire failures at the higher load factor.

[30] A tire pressure survey conducted by Viergutz, et al., on 8,900 tires in 1978 reported that almost 80 percent of all tires were under-inflated with approximately 50 percent under-inflated by 4 psi (28 kPa) or more below the recommended pressure. The average amount of under-inflation recorded in this survey was approximately 3.2 psi (22kPa) below the recommended amount. More recently, data from the 2001 NASS Tire Pressure Study, conducted on over 11,000 vehicles, indicate that about 60 percent of P-metric tires used on passenger cars were under-inflated with about 40 percent being under-inflated by 3 psi or more below the recommended inflation pressure. For P-metric tires used on light trucks, about 70 percent were under-inflated, with about 50 percent under-inflated by 3 psi or more below the recommended inflation pressure.

[31] In some cases, RMA's proposed test inflation pressures are higher than those labeled on the tire sidewall.

from the vehicles measured during a recent NHTSA sponsored consumer tire pressure survey.[32] Further, the agency has stated in previous rulemakings that standard load tires with higher maximum inflation pressures (300 and 350 kPa) are not capable of carrying additional load at higher inflation pressures beyond 240 kPa. They should be tested at an inflation pressure similar to that of the 240 kPa maximum inflation pressure tires. (53 FR 17950, 5/19/88; 53 FR 936, 1/18/88)

d. Speed

The proposed test speeds, 140, 150 and 160 km/h (88, 94, and 100 mph) represent a substantially increased stringency from the test speeds currently used in FMVSS No. 109 and 119 for which tires are tested at 75, 80, and 85 mph for 30 minutes at each speed. This approach would more closely mirror the upper limit of real world operational speeds beyond which drivers have few opportunities to operate their vehicles and eliminate from production any tires whose production just achieved the lowest rung of Temperature resistance rating in our Uniform Tire Quality Grading System (UTQGS), ''C'' rated tires.

The agency considered proposing a higher threshold test speed of 180 km/h so that speed rated tires with a speed rating lower than ''S'' (180 km/h) would not have been able to comply with the high speed test. In the U.S., light vehicles are typically equipped with tires speed rated no lower than Q (160 km/h). GM suggested that the agency consider basing our test speed on the speed rating of the tire since many of their light trucks are equipped with LT tires rated Q and R, 160 km/h (100 mph) and 170 km/h (106 mph), respectively. NHTSA, however, believes that an upper test speed threshold of 160 km/h (100 mph) ensures a minimum level of safe operation that is 25–30 mph beyond typical speed limits on interstate highways in the U.S.

Under the UTQG test procedure, a tire is rated C if it fails to complete the test at 100 mph for 30 minutes. The test is initiated at 75 mph for 30 minutes and then successively increased in 5 mph increments for 30 minutes each until the tire has run at 115 mph for 30 minutes. Therefore, tires with a temperature rating of C would be able to complete 30 minutes at speeds of 75, 80, 85, 90, and 95 mph (120, 128, 136, 144, and 152 km/h), but not complete the 100-mph (160 km/h) step. NHTSA, as mentioned above, believes that testing at an upper test speed threshold of 160 km/h (100 mph) ensures a minimum level of safe operation.

As discussed above, NHTSA used test speeds based on the speed rating of the tires for its high speed testing at STL (see the Tire Test Matrix in Docket No, NHTSA–00–8011–1). While representing a departure from the methodology of utilizing three predetermined test speeds (as proposed above and currently used in the FMVSS Nos. 109 and 119 high speed tests), this approach is identical to that contained in ECE R 30, GTS–2000, RMA 2000, and in SAE Recommended Practice J15161, Laboratory Speed Test Procedure for Passenger Car Tires. NHTSA seeks comment on whether test speeds based on speed ratings would be more appropriate, than those proposed above, for the High Speed Test and, more specifically, whether the method for determining test speeds contained in NHTSA's high speed testing matrix or the two alternatives mentioned above would be appropriate for the High Speed Test in the final rule.

e. Duration

NHTSA proposes a 30-minute test duration for each of the 3 speed steps, 140, 150, and 160 km/h. The total test time equals 90 minutes. The 30-minute duration allows the tire to attain and maintain its operating temperature at each speed step so that the tire's performance could be evaluated during a steady rate of speed for a duration longer than 10 minutes.

Based on its testing, the agency believes that RMA 2000's 10 minute duration at each speed step (10 minute speed build-up from 0 km/h to ITS, then five 10 minute speed steps) is too short to provide a proper evaluation of high-speed performance. Very few failures occurred in the agency's testing using the 10-minute duration for speed steps. Additionally, RMA's recommendation reduces the duration currently specified in FMVSS No. 109 by almost 50 percent.

3. Endurance Test

NHTSA proposes that the Endurance test be conducted using the following five parameters:

(1) *Ambient temperature:* 40°C.

(2) *Load:* 90 percent, 100 percent, 110 percent.

(3) Inflation Pressure—180 kPa (26 psi) for P-metric, 260 kPa (38 psi), 340 kPa (50 psi), and 410 kPa (59 psi), for LT load range C, D and E, respectively.

(4) Speed—120 km/h (75 mph).

(5) Duration (hrs): 8, 10, 22 (total 40) at the corresponding loads listed above.

A tire complies with the proposed requirements if, at the end of the endurance test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

This combination of these parameters for P-metric tires represents a more real-world test and an increase in stringency over FMVSS No. 109's endurance test with an 18 percent increase in the duration, a 10 percent increase in the load, and a 50 percent increase in speed.

Two alternatives to the proposed test parameters were considered by the agency: (1) RMA 2000, and (2) an endurance test using identical parameters to those proposed above except for test loads at 100/110/115 percent for durations of 8, 10, 32 (total 50).

RMA 2000 includes no change in the load combination of 85/90/100 percent and a 10-hour (almost 30%) decrease in duration from the current standard, FMVSS No. 109. The load and duration increase of the second alternative to a load combination of 100/110/115 and a 16-hour (almost 50%) increase in duration from FMVSS No. 109 would fail over 40 percent of P-metric tires and 20 percent of LT tires tested.[33]

The agency proposes an endurance test that has parameters different from the two alternatives in load and duration. The agency believes that, given the change in the composition of the light vehicle market in the U.S. over the past 10 years towards a greater proportion of light trucks and vans being used for passenger purposes, the load values for an endurance tire test should be increased up to 110 percent to reflect the greater likelihood of vehicle overloading that is more likely to occur with light trucks and vans than with passenger cars. Further, the agency believes that an increase in duration for the test is warranted reflecting the increased life of today's tires. The increase in duration from 34 hours to 40 hours combined with the proposed test speed of 120 km/h represents an increase in the total test distance from

[32] In Spring 2001, the National Center for Statistics and Analysis (NCSA) conducted the 2001 National Automotive Sampling System (NASS) Tire Pressure Special Study (NASS Study) in response to the TREAD Act. The Preliminary Analysis of Findings, 2001 NASS Tire Pressure Special Study, dated May 4, 2001, has been placed in Docket No. NHTSA–00–8572. Data obtained as part of this study indicate that about 36 percent of passenger cars and 40 percent of light trucks had at least one tire that was at least 20 percent below the vehicle manufacturer's recommended cold inflation pressure. About 26 percent of passenger cars and 29 percent of light trucks had at least one tire that was least 25 percent below the vehicle manufacturer's recommended cold inflation pressure.

[33] These results, based on NHTSA's endurance testing at STL, are discussed in more detail below.

2720 km (1700 miles) to 4800 km (3000 miles).

The following chart illustrates an ''at-a-glance comparison'' of the proposed standard to the other standards and suggestions discussed in this document.[34]

TABLE 3.—ENDURANCE TEST

Test parameters	FMVSS 109	FMVSS 119	GTS-2000*	RMA 2000	ECE R30	New FMVSS 139
Ambient (°C)	38	38	38	38	N/A	40
Load (%):						
P-metric	85/90/100	.....	100/110/115	80/90/100	N/A	90/100/110
LT-load C/D	.....	75/97/114	.....	75/97/114	N/A	90/100/110
LT-load E	.....	66/84/101	.....	70/88/106	N/A	90/100/110
Inflation Pressure (kPa):						
Standard load P-metric	180	.....	180	180	N/A	180
Extra load P-metric	220	.....	220	220	N/A	220
LT-Load C/D	.....	(**)	.....	(**)	N/A	260/340
LT-load E	.....	(**)	.....	(**)	N/A	410
Speed (km/h)	80	80	80	120	N/A	120
Duration (hrs)	34	34	34	24	N/A	40

* Endurance test recommended for GTS–2000 is only for radial tires rated ''Q'' and below.
** Sidewall max.

The endurance testing conducted in Phase 1 of the agency's testing was performed at 120 km/h and 140 km/h, with loads of 100 percent, 115 percent, and 125 percent for a total of 50 hours, and at inflation pressures of 160 kPa and 200 kPa. Many failures occurred at the combination of low inflation pressure (160 kPa) and high speed (140 km/h). At a test speed of 120 km/h with an inflation pressure of 200 kPa, 2 of the 9 P-metric tires failed to complete the 50 hour test.

In Phase 2 of the testing, the agency tested with loading conditions of 100/110/115 percent, (identical to the load recommended by the tire industry for the endurance test in GTS–2000), 180 kPa inflation pressure, 120 km/h for 50 hours. For P-metric tires, 2 of the 8 tire brands completed the test without any failures in their 5 samples; the remaining tire brands experienced at least one failure in the five samples used during the test.

Although neither phase of the endurance testing tested tires at exactly the same conditions as those proposed above, analysis conducted by the agency indicates that 19 of the 24 tires tested would pass the proposed endurance test. This analysis is contained in the PEA. NHTSA seeks comment on this analysis and whether the two alternatives mentioned above would be appropriate for the Endurance Test in the final rule.

A more detailed explanation of the proposed parameters is discussed below.

a. Ambient Temperature

The proposed ambient temperature is 40°C. This temperature is a slight increase over the temperature, 38°C, currently specified in FMVSS No.109, and reflects typical daytime temperatures in the South and Southwestern regions of the U.S. during the Summer months. As discussed earlier, the highest rates of tire problems occurred in the southern states in the summertime.

b. Load

The proposed loads for the endurance test are 90, 100, and 110 percent. These load percentages represent an approximate 10 percent increase over the load percentages specified for the endurance test in FMVSS No. 109 (85, 90, and 100 percent) and an increase over those recommended by RMA 2000.

The load levels originally proposed by the tire industry in GTS–2000 for P-metric tires rated Q or below were 100/110/115 percent at a test speed of 80 km/h. Given the increased use of light trucks and vans by the general public and the larger cargo volumes available in these vehicles, the agency believes that they are more likely to be operated in an overloaded condition than passenger cars. Our proposal for loads in the endurance test, 90/100/110 percent, reflects the need to increase the loads beyond the loads currently required in FMVSS No. 109 but not to the levels proposed by industry in the original GTS–2000 proposal. The RMA now supports a load combination of 85/90/100 percent for P-metric tires, which is identical to the test loads currently required for the endurance test in FMVSS No. 109, but at the higher speeds of 120 km/h, as proposed by the agency. The load combination proposed by RMA for LT tires with load C or D is 75/97/114 percent, and for load range E tires is 70/88/106 percent. The industry's endurance test proposal for P-metric and LT tires is based on a 24-hour test, which represents a 10-hour reduction in the endurance test time from FMVSS No. 109.

c. Inflation Pressure

The inflation pressure of 180 kPa represents a 25 percent under-inflation for 240 kPa maximum inflation pressure tires and is the same inflation pressure currently required for the endurance test in FMVSS No. 109. Tires tested to more severe levels of underinflation, e.g., 160 kPa, failed much sooner into the 50-hour endurance test than those tested at 180 kPa.

d. Speed

The proposed test is conducted at 120 km/h (75 mph). The current endurance test in FMVSS 109 is conducted at 80 km/h (50 mph). A 80 km/h test speed

[34] For global harmonization, the tire industry recommended an endurance test for radial tires rated Q and below. The test parameters included a load of 100/110/115 percent at a speed of 80 km/h. The agency's testing indicates that all the P-metric tires tested completed the industry's recommended test without any failures.

may have been an appropriate test speed in 1968 when initially proposed for bias ply tires. However, today, it is too low a speed for evaluating the endurance of today's tires given current vehicle performance capabilities and speed limits.[35] In addition, speed limits on interstate highways across the U.S. have reached as high as 75 mph, with actual vehicle traffic speeds typically at least several miles per hour above the posted speed limit.

e. Duration

NHTSA is proposing a 40-hour test at 120 km/h. The total test distance is 4800 km (3000 miles), which is almost double the distance for the current endurance test in FMVSS No. 109 (1700 miles at 80 km/h). The proposed test duration represents a slight increase from the current 34-hour test in FMVSS No. 109.

3. Low Inflation Pressure Tests

The TREAD Act requires that light vehicles be equipped with a tire pressure monitoring system, effective November 1, 2003, to indicate to the driver when any of the tires on his vehicle is significantly underinflated. NHTSA has proposed to establish 20 psi as a low pressure threshold at or above which the low pressure lamp must be activated.[36]

NHTSA proposes to include in the new light vehicle tire standard a low inflation pressure test to ensure a minimum level of endurance and/or high speed performance/safety when operated at a significant level of under-inflation. To aid the agency in choosing an appropriate test, NHTSA seeks comments on the following alternative tests: (1) The Low Pressure—TPMS test, (2) or the Low Pressure High Speed test. Both proposed tests are described and detail below.

a. Low Pressure—TPMS

The Low Pressure—TPMS test includes a linkage between the proposed requirements of the tire pressure monitoring system standard and the proposed endurance test for the tire standard upgrade proposed requirements. The former test is predicated upon the notion that a low pressure test would be most appropriate on tires that have completed the endurance test because a significantly underinflated condition for a tire is more likely to occur in a tire after several weeks of natural air pressure loss or due to a slow leak. The parameters for this test, which the tire must complete without failure, are as follows:

(1) Load: 100 percent.

(2) Inflation pressure: 140 kPa (20 psi).

(3) Test speed: 120 km/h (75 mph).

(4) Duration: 90 minutes at the end of the 40-hour endurance test.

(5) Ambient temperature: 40°C.

A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

As discussed, *supra*, the agency also conducted a test at 140 kPa (20 psi) inflation pressure, at a speed of 120 km/h (75 mph) for a duration of 90 minutes, on the same tires (2 samples of each of the 12 brands) that successfully completed the endurance test to evaluate tire performance at the low inflation threshold level being proposed for tire pressure monitoring systems for light vehicles. Similar tests were performed using the LT tires, but at low inflation values commensurate with about 58 percent of their maximum inflation pressure. The test results indicated that all 24 tires tested completed the 90-minute low inflation test without failure.

The agency believes that this test provides an extra safeguard to ensure that tires which were able to successfully complete the endurance testing can also complete an additional 90-minute test at low inflation pressures.

b. Low Pressure—High Speed Test

This proposed test provides a linkage between the proposed TPMS requirements and the proposed high speed test. While it would evaluate tires at a lower load than that specified in the Low Pressure—TPMS test, the Low Pressure—High Speed test would ensure that a manufacturer designs a tire so that its high speed performance would comply with the test requirements not only at recommended inflation pressure, but also at a low inflation pressure. The parameters for this test are as follows:

(1) *Test speed:* 140, 150, and 160 km/h (88, 94, 100 mph).

(2) *Inflation pressure:* 140 kPa (20 psi).

(3) *Load:* 67 percent.

(4) *Duration:* 30 minutes at each speed.

(5) *Ambient Temperature:* 40°C.

A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

The above conditions place the test point slightly below the T&RA load curves. The T&RA load curves establish the load capacity a tire is designed to carry at a specific inflation pressure. A tire is considered to have passed the test if it completes the 30 minute step at 160 km/h (100 mph).

NHTSA recently conducted testing of the above parameters on 8 tire brands. The results of this testing are contained in a report which has been added to the docket for this rulemaking. The results indicate that 30 percent of tires with an ''S'' speed rating, 63 percent of tires with an ''R'' speed rating, and 75 percent of tires with a ''Q'' speed rating would not pass this test. However, 70 percent of tires with an ''S'' speed rating, and all ''T'' and ''H'' rated tires would have completed the test. The following bullets summarize key conclusions derived from the results:

- Effect of test pressure on tire performance—Inflation pressure has a significant effect on speed-at-failure. An inflation pressure of 180 kPa (26 psi) produces a substantial number (32 out of 168, or 19 percent) of failures at speeds less than the rated speed of the tire.
- Combined effect of load and pressure on tire performance—The combination of NHTSA and RMA data supports the hypothesis that the performance of a tire is the same for a test condition anywhere on the T&RA load curve except for inflation pressure below 180 kPa (26 psi). At these lower pressures, specifically at 140 kPa (20 psi), failure rates are higher for tires with lower speed ratings than would be predicted from the results of tests run at higher pressures and loads that correspond to points on the T&RA load curve, i.e., the proposed high-speed test condition.

[35] According to Automotive News (5/14/01), ''since 1981, average horsepower has risen 79 percent and vehicle weight has grown 21 percent.'' The power to weight ratio has increased over the past 10 years based on data on selected mid-priced Ford, Chevrolet, Pontiac, Toyota, and Honda vehicles ranged from about 70 to 90 horsepower (HP) per ton. (Ward's Automotive Yearbooks, 1990 and 2000). In 1995, the federally-mandated 55 mph speed limit was repealed. Since that time, numerous States have increased speed limits up to 75 mph.

[36] The proposed requirements of the tire pressure monitoring system standard would allow each vehicle manufacturer to establish the level of under-inflation at which the low inflation pressure warning lamp will be illuminated, subject to a low inflation pressure threshold requirement for the warning lamp activation. In its recent TPMS NPRM, Docket No. NHTSA–00–8572, the agency proposed two options for activation: (1) 20 percent below the recommended cold inflation pressure or 140 kPa (20 psi) whichever is higher; and (2) 25 percent below the recommended cold inflation pressure or 140 kPa (20psi), whichever is higher.

• Effect of length of time at a speed on tire performance—For high-speed tests of tires at the maximum sidewall pressure (240 kPa (35 psi) for the tires tested), it may be necessary to test with durations greater than 10 minutes to fully judge failure rates. For tests at lower pressures, the results do not provide a consistent picture. For example, the RMA data at 180 kPa (26 psi) suggests that it probably is not necessary to test for more than 10 durations. However, the NHTSA data at 140 kPa (20 psi) suggests that 10 minutes may not be a sufficiently long duration.

4. Road Hazard Impact Test

The agency proposes that a road hazard impact test replace the strength (plunger) test in the new standard. A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

A road hazard impact test simulates a tire impacting a road hazard, such as a pothole or curb, and is a more realistic test for radial tires than the current strength test in FMVSS No. 109. For this test, NHTSA is utilizing the existing SAE Recommended Practice J1981, Road Hazard Impact Test for Wheel and Tire Assemblies (Passenger Car, Light Truck, and Multipurpose Vehicles) (''J1981'').

J1981 was developed to provide a uniform test procedure for evaluating the effect, on wheel and tire assemblies, of impacting a road hazard such as a pothole or curb. J1981 does not attempt to simulate the exact conditions encountered when the wheel and tire assembly strikes such a hazard. The equipment developed for this test does, however, attempt to reproduce under controlled conditions the wheel and tire deformations that may be experienced with a road hazard impact. The test equipment can also be used to determine, with a high degree of accuracy, the threshold condition at which tire damage first occurs.

In the preparation of J1981, laboratory and road tests carried out by a number of manufacturers were studied. The pendulum test specified in J1981 was designed to provide equivalent damage with low cost equipment that would give accurate and reproducible results. The test is designed for testing of wheel and tire assemblies used with passenger cars, light trucks, and multipurpose vehicles. The test is limited to a front (radial) impact with both wheel rim flanges being impacted simultaneously.

The following bullets summarize the key components of a Road Hazard Impact Test Machine (used by STL) and the test procedure for the Road Hazard Impact Test as specified by SAE J1981:

• The basic machine consists of a framework designed to guide the Pendulum Weight System so that, when released, it will free fall and impact the wheel tire assembly. The wheel/tire assembly is adjustable so that it can be aligned with the Pendulum Weight Assembly.

• The equipment must be calibrated to ensure that the impact force is correct since the impact force on the wheel and tire assembly depends on the length of the pendulum, the shape of the striker, and the friction at the fulcrum.

• The tire and wheel assembly, inflated to the required test pressure, is installed on the test fixture. The inflation pressure proposed for P-metric tires is 180 kPa, and for LT tires load ranges C, D, and E, it is 260 kPa, 340 kPa, and 410 kPa, respectively.

• The 54 kg striker is raised to the predetermined drop height based on the pendulum centerline angle of 80 degrees to the vertical. The striker is allowed to fall freely from this predetermined height to impact the test tire and wheel assembly.

• The test is repeated for a total of five equally spaced points around the circumference of the tire.

• The tire pressure at the end of the test shall not be less than the initial test pressure, and there must be no visual evidence of tire failure.

5. Bead Unseating

The current resistance-to-bead unseating test is designed to evaluate how well the tire bead remains on the rim during turning maneuvers. The test forces currently used in FMVSS No. 109 are based on bias ply tires and are typically not stringent enough for radial tires. For this reason, the industry, in GTS–2000, recommended that the test be deleted from the standard because radial tires are able to satisfy the test easily. Results from the agency's 1997–1998 dynamic rollover testing, however, provide a strong rationale for seeking to upgrade, rather than delete, the bead unseating requirement in FMVSS No. 109. In this NHTSA test program, vehicles experienced bead unseating on three of twelve test vehicles. This bead unseating occurred during severe maneuvers, but on level surfaces without any external impact to the tire. Such bead unseating in the real world would pose serious safety concerns. Therefore, NHTSA proposes to replace the current bead unseating test in FMVSS No. 109 with the Toyota Air Loss Test.

The Toyota Air Loss Test was developed by Toyota to evaluate tubeless tire performance. While the current FMVSS No. 109 bead unseating test applies force in the middle of the sidewall, the Toyota Air Loss Test applies force at the tire tread surface edge. The tire tread surface edge is the actual location at which force occurs due to tire/road interface during severe vehicle maneuvers. There are two general methods for conducting the Toyota test:

1. *Air Loss Bench Test Method:* A tire that receives a lateral force from the ground is deformed and may be deflated as its tire bead is separated from the rim bead. The air loss test is intended to measure the tire inflation pressure at which a tire is deflated under the above condition. The test may be conducted with an actual vehicle or with a tire assembly on a test bench.

2. *On-Vehicle Air Loss Test Method:* When an actual vehicle is used for the air loss test, the vehicle is driven at 60 km/h along a straight course, then makes a curve with a radius of 25 meters, so that a lateral force is applied to the tire. This so-called J-turn test method is recommended because the fluctuation in input load is relatively small.

NHTSA proposes to adopt the Air Loss Bench Test Method because the test is independent of vehicle type, although the agency seeks comments on both methods. This test method uses a force of 2.1 times the maximum load labeled on the tire sidewall, which is applied at the tread surface. The wedge-shaped device applies a force on the tire, laterally, at the tread surface. This force simulates the lateral force at the tread surface, which a tire experiences during severe maneuvers that could produce bead unseating of the tire.

Toyota has provided a brief description of the test apparatus and the test method used for the bench test. The apparatus includes a tire mounting hub that positions the tire vertically at an angle 5 degrees to the vertical axis, a hydraulic-powered sliding wedge-shaped block that applies force to the tire tread surface, and a control panel that includes controls for monitoring and regulating the tire's inflation pressure and a load indicator. The test procedure recommends inflating the tire to an initial inflation pressure of maximum (design) inflation pressure plus 50 kPa. Therefore, the initial inflation pressure for a P205/65R15 standard load tire (rated at a load limit of 635 kg (1400 lbs.) at an inflation

pressure of 240 kPa) is 290 kPa. Force, using the wedge-shaped block, is applied at a rate of 200 millimeters per second (mm/s) to a properly mounted tire and is maintained for a duration of 20 seconds. A tire successfully completes the test if the test pressure is not less than the initial test pressure.

The agency has recently conducted research using the Toyota test apparatus and test to verify that the recommended force levels are appropriate for a minimum safety requirement. Based on the agency's evaluation of this bead unseating method, it proposes 180 kPa for an inflation pressure in P-metric tires and 2.0 times the maximum tire load labeled on the tire sidewall for an application load appropriate for a minimum safety standard. The test inflation pressure for other tires are identical to the inflation pressures used in the proposed endurance test, which specifies 260 kPa, 340 kPa, and 410 kPa for LT tires load range C, D, and E, respectively.

The preliminary test results for the bead unseating testing have been placed in the docket. The agency requests comment on the data.

6. Aging Effects

During the Firestone hearings and the passage of the TREAD Act, some members of Congress expressed the view that there is a need for an aging test to be conducted on light vehicle tires. The agency tentatively concludes that we agree there is a need for an aging test in the proposed light vehicle tire standard because most tire failures occur at mileages well beyond 2,720 kilometers (1,700 miles) to which tires are exposed in the current FMVSS No. 109 Endurance Test.[37] The proposed endurance test, while accumulating 4,800 kilometers (3,000 miles) on a tire, still will not expose the tire to the type of environmental factors experienced on vehicles at 40,000 kilometers or beyond.

Currently, no industry-wide recommended practice for accelerating the aging of tires exists.[38] The agency, therefore, proposes the following three tests for consideration and comment: (1) Adhesion Test, (2) Michelin's Long-term Durability Endurance Test, and (3) Oven Aging. NHTSA plans to adopt one of these tests. These tests are discussed in detail below.

a. Adhesion (Peel) Test

The Adhesion (peel) test is based on the American Society for Testing and Materials (ASTM) 413–98, Standard Test Methods for Rubber Property—Adhesion to Flexible Substrate. The Adhesion (peel) test evaluates a tire's resistance to belt separation by determining the adhesion strength, measure by force per unit width, required to separate a rubber layer from a flexible substrate such as fabric, fibre, wire, or sheet metal. The adhesion levels of a tire will vary based on rubber formulations, the different materials used to construct a tire, and the curing process.

The test methods in ASTM D 413–98 cover the determination of adhesion strength between plies of fabric bonded with rubber or adhesion of the rubber layer in article made from rubber attached to other material. They are applicable only when the adhered surfaces (adjacent tire belts) are approximately plane or uniformly circular in belting, hose, tire carcasses, or rubber covered sheet metal.

The test methods described in this ASTM standard determine the force per unit (pounds per inch) width required to separate a rubber layer from a flexible substrate such as fabric. There are two general methods for this test:

(1) *Static-Mass Method:* The force required to cause separation between adhered surfaces is applied by means of gravity acting on a mass.

(2) *Machine Method:* The force required to cause separation between adhered surfaces is applied by means of a tension machine.

Due to the greater accuracy of the tension testing machine, the agency proposes to utilize the Machine Method to apply a peel strength requirement for new tires after they complete a 24-hour test with parameters similar to the proposed 40-hour endurance test. The parameters for this 24-hour test are as follows:

(1) Ambient temperature—40°C.
(2) Load—90/100/110 percent.
(3) Inflation pressure—180 kPa.
(4) Test speed—120km/h.
(5) Duration—24 hours with three 8-hour periods at each load.

For a tire to satisfy the proposed test, it must exhibit a minimum peel strength of 30 pounds per inch at the end of the 24-hour test period. This value was tentatively chosen based on data made available to NHTSA from Ford and Firestone.[39]

b. Michelin's Long-Term Durability Endurance Test

The second accelerated aging method being considered by the agency is based on a method utilized by Michelin. This method uses a road wheel endurance test with the following controlled parameters to simulate testing the tire to tread wear-out: load, inflation pressure, speed, and duration. The test tire is inflated with a 50/50 blend of O_2/N_2 and run for between 250–350 hours. Michelin has estimated that 100 hours of this testing correlates with approximately one year of real-world tire usage. For example, a 250-hour test correlates with approximately 2½ years of real world field operation.

The Michelin long-term durability endurance test research findings were initially published at a 1985 International Rubber Conference.[40] The research pointed toward four factors as comprising the best balance to achieve good/accurate correlation with field data—(1) filling gas; (2) test speed; (3) test temperature; and (4) tire load. Michelin discovered that if any one or several of these factors was disproportionately altered in an attempt to make the test more stringent or to complete the test faster, the result was a test failure condition that displayed an abnormal failure mode and did not reflect actual field conditions. Therefore, temperature and mechanical stress must be controlled to avoid failures that are not representative of real-world conditions.

The following test parameter values have been developed, through a multi-year research program at Michelin, to minimize variance from field test end conditions and minimize test hours:

(1) *Filling gas blend:* 50 percent O_2 (oxygen) and 50 percent N_2 (nitrogen).
(2) *Test speed:* 97 km/h (60 mph).
(3) *Test temperature:* 38°C (100°F).
(4) *Load:* 111 percent for standard load P-metric tires; 112 percent, 98 percent and 92 percent for LT tires load range C, D, and E, respectively.
(5) *Inflation pressure:* 40 psi (275 kPa) for standard load P-metric tires; 57, 65, and 80 psi (390, 450, 550 kPa) for LT tires load range C, D, and E, respectively.
(6) *Test duration:* 250 hours.

These values were chosen to make each test parameter proportionally

[37] Based on a review of a sample of complaints received by the agency's Office of Defects Investigation, complaint dates for tires are typically two to three years later than the model year of the vehicle on which they are equipped. This indicates, based on available data, that tire mileage may have been in the 20,000 to 30,000-mileage range when the complaint was submitted.

[38] The American Society for Testing and Materials (ASTM) has recently established a working group to develop a long-term durability endurance test standard.

[39] In light of the Firestone recall, NHTSA has obtained sufficient information in this area to assist in specifying the appropriate peel strength parameters. This information, however, has not been made public and, therefore, will not be discussed in this document.

[40] In the late 1980s and early 1990s, the test was used by Uniroyal and BF Goodrich for test validation and implementation in new tire development. The test was also used by General Motors as an internal indicator for GM's accelerated tire endurance test.

severe without exceeding a critical temperature which, in turn, would lead to failure conditions unrepresentative of real-world conditions/actual field conditions.

A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

c. Oven Aging

The agency also proposes a two-step test combining oven aging and a 24-hour test that is similar in method to the proposed 40-hour endurance test. The parameters for this test are as follows:

(1) Oven aging
(a) Oven temperature: 75°C (167°F).
(b) Duration: 14 days.
(2) 24-hour endurance test
(a) Ambient temperature: 40°C.
(b) Load: 90/100/110 percent.
(c) Inflation pressure: 180 kPa.
(d) Test speed: 120 km/h.
(e) Duration: 24 hours with three 8-hour periods at each load.

A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

One tire manufacturer, Michelin, commented during discussions with NHTSA that oven aging a tire does not create a representative heat differential (*e.g.,* a higher belt edge temperature than sidewall temperature) that a tire experiences in various areas of the tire in real world/field testing conditions. Also, Michelin asserted that the oxidative reaction that takes place in tires at increased strain levels does not occur in oven aging because no load is applied to the tire. According to Michelin, the presence of excess oxygen in a tire under simulated road conditions, with proportional increased in load and inflation pressure, accelerates the oxidation process while not exceeding the critical temperature. Oxidation at the belt edges is critical to testing as it leads to belt separation.

D. Deletion of FMVSS No. 109

The requirements of the proposed new standard, FMVSS No. 139, would supercede the current requirements of FMVSS No. 109. Therefore, the agency proposes the deletion of FMVSS No. 109 from its standards. FMVSS No. 109 is applicable to tires for vehicles manufactured after 1948. The proposed standard is would be applicable to tires for vehicles manufactured after 1975. While deletion of FMVSS No. 109 would theoretically preclude application of any requirements to tires produced for vehicles manufactured 1975 and before, the agency has no data showing that these vehicles are overrepresented in crashes involving tire failures. Additionally, the number of these vehicles operated today is very limited and this limited number makes them less likely to be involved in a crash caused by tire failure. Finally, the GRRF committee has tentatively agreed on 1975 as the date of applicability for a globally harmonized tire standard. The agency solicits comments on the deletion of FMVSS No. 109 and the issues discussed above.

E. FMVSS Nos. 110 and 120

The purpose of FMVSS Nos. 110 and 120 is to provide safe operational performance by ensuring that vehicles to which they apply are equipped with tires of adequate load rating and rims of appropriate size and type designation. FMVSS No. 110 currently applies to passenger cars and FMVSS No. 120 currently applies to vehicles other than passenger cars including motorcycles and trailers.

The agency proposed in the Tire Safety Information NPRM (Docket No. NHTSA–01–11157) that FMVSS Nos. 110 and 120 be revised to correspond with the applicability of the new light vehicle tire standard. FMVSS No. 110 would include passenger cars and other light vehicles with a GVWR of 10,000 pounds or less. Therefore, most SUVs, vans, trailers, and pickup trucks would be required to comply with the same tire selection and rim requirements as passenger cars. FMVSS No. 120 will continue to apply to vehicles over 10,000 pounds GVWR and motorcycles.

All requirements of FMVSS No. 110 would be retained including S4.2.2 which establishes a linkage between the vehicle normal load [41] and the load specified for the high speed test in FMVSS No. 109.[42] This requirement will be extended to SUVs, vans, trailers, and pickup trucks, which means that P-metric and LT tires used on these vehicles will have a load reserve similar to P-metric tires used on passenger cars. Since the load proposed for the high speed test is 85 percent of the maximum load rating of the tire, these tires will be required to have at least a 15 percent load reserve for a vehicle normal loading condition. The agency believes that, combined with the de-rating of P-metric tires when used on SUVs, vans, trailers, and pickup trucks, the reserve load requirements of FMVSS No. 110 should provide a sufficient safety margin for P-metric tires used on these vehicles.

The proposal also retains S4.4.1(b) of FMVSS No. 110 which requires that each rim shall retain a deflated tire in the event of a rapid loss of inflation pressure from a vehicle speed of 97 km/h until the vehicle is stopped with a controlled braking operation.

F. FMVSS Nos. 117 and 129

FMVSS No. 117, which specifies performance requirements for retreaded pneumatic passenger car tires and FMVSS No. 129, which specifies performance requirements for new non-pneumatic tires for passenger cars, contain test requirements and test procedures which either reference or are modeled after those in the current FMVSS No. 109. More specifically, FMVSS No. 117 specifies that each retreaded tire shall comply with FMVSS No. 109 strength and resistance-to-bead unseating tests and the FMVSS No. 129 tire strength and high speed tests specifications mirror those in FMVSS No. 109. In order to maintain consistent testing procedures and requirements for all tires for use on light vehicles, the strength and resistance-to-bead unseating test procedures and requirements in FMVSS No. 117 would be replaced with the proposed road hazard impact test and bead unseating tests. Similarly, the strength and high speed test procedures and requirements in FMVSS No. 129 would be revised to include the proposed road hazard impact test and high speed test. Additionally, the applicability of FMVSS Nos. 117 and 129 would be revised to include retreaded and non-pneumatic tires, respectively, for use on motor vehicles with a GVWR of 10,000 pounds or less, manufactured after 1975, except for motorcycles.

G. De-Rating of P-Metric Tires

FMVSS No. 120 requires that the load rating of a tire subject to FMVSS No. 109 must be reduced by a factor of 1.10 when installed on a MPV, truck, bus or trailer. This factor equals a 10 percent ''de-rating'' and provides a greater load reserve when passenger car tires are installed on SUVs, vans, trailers, and pickup trucks. The rationale for the de-rating requirement is that SUVs, vans,

[41] Vehicle normal load on the tire means that load on an individual tire that is determined by distributing to each axle its share of the curb weight, accessory weight, and normal occupant weight and dividing by 2.

[42] This, under the proposed high speed test, would ensure at least a 15 percent load reserve (high speed test load proposed is 85 percent) when the vehicle is operated at normal load.

trailers, and pickup trucks are generally easier to overload than passenger cars because SUVs, vans, trailers, and pickup trucks have greater cargo-carrying volumes than passenger cars. The reduction in the load rating is intended to provide a safety margin for generally harsher treatment, such as heavier loading and possible off-road use, which passenger car tires receive when installed on a MPV, truck, bus, or trailer.

Tire manufacturers have recommended that the agency retain the de-rating provision in the revised standard for tire selection and rims for light vehicles. The agency, for the reasons cited above, agrees with the tire manufacturers' suggestion and has inserted this provision in the proposed regulatory text for the revised FMVSS No. 110.

H. Other NHTSA Research Plans

As discussed above, NHTSA is currently conducting Bead Unseating and Road Hazard Impact Test (SAE J1981) research. The purpose of this research is to establish and to determine force levels for the Bead Unseating Test and to establish a minimum force requirement and test values for the Road Hazard Impact Test. The specific aspects of testing in these two areas are discussed below.

1. Bead Unseating Research

This research will be conducted in two testing phases. In Phase 1, potential bead unseat tests will be evaluated using a limited sample of tire types and sizes. In the first segment of Phase 1 testing (Phase 1a), an initial series of tests will be performed to evaluate basic aspects of the test procedures, such as the effect of test parameter variation and repeatability. These tests will consist of the following:

(1) FMVSS No. 109/110 Bead Unseat Test—tests completed when bead unseating or rim contact occurs.

(2) Toyota Air Loss Bench Test—tests using wedge-shaped loading fixture, two variations for each of vertical load and load rate application (four combinations total).

The Phase 1a testing will be conducted using five different brands of a single tire size. Four samples of each tire will be tested using each of the five tests and testing variations described above. A total of 100 bead unseat tests will be performed in Phase 1a.

Based on the findings from Phase 1a, a second segment of Phase 1 testing (Phase 1b) will be initiated within which promising test procedures will be further explored in an expanded matrix of tests. This testing will include utilizing a larger variety of tire types and sizes and/or additional variations in the selected test procedure(s).

Based on the findings of Phase 1, a final test procedure will be selected for use in Phase 2. In Phase 2, a series of tests will be performed to evaluate the performance of the current tire fleet when subjected to the bead unseat test identified in Phase 1. The agency anticipates that approximately 50 different tire brands and sizes will be tested. A subset of 10 of these tires will be further selected for repeatability testing. Preliminary test results have been placed in the docket. NHTSA requests comments on the data.

2. Road Hazard Impact Test (SAE J1981) Research

This testing will also be conducted in two phases. In Phase 1, potential tire strength tests will be evaluated, as well as potential methods for evaluating tire damage (i.e., pass/fail criteria). In the first segment of Phase 1 testing (Phase 1a), an initial series of tests will be performed to evaluate basic aspects of the test and evaluation procedures, such as the effect of test parameter variations, repeatability, and objectivity. This series of tests consist of the following:

(1) FMVSS No. 109/119 plunger test—test completion when current pass/fail energy level is obtained.

(2) Modified FMVSS No. 109 plunger tests—test completion when an increased energy level is reached. (The contractor will assist in the selection of the higher energy limit.)

(3) SAE J1981 Road Hazard Impact Test—tests conducted with wedge-shaped striker.

(4) SAE J1981 Road Hazard Impact Test—tests conducted with plunger-shaped striker. The Phase 1a tests will be conducted using 10 different types of tires, including different aspect ratios, brands, and models. One sample of each tire will be tested using the two FMVSS No. 109-type tests, and two samples of each will be tested using the SAE J1981-type tests. A total of 60 tire strength tests will be performed in Phase 1a. Prior to testing, all tires will be visually inspected for damage. After the strength tests are performed, all 60 tires will be inspected for damage visually, using x-ray, and shearography.

After the initial series of tests, 20 of the tested tires will be selected for high speed dynamometer testing. These tires are inspected using visual inspection, x-ray, and shearography.

Based on the findings from Phase 1a, a second segment of Phase 1 testing (Phase 1b) will be initiated where promising test procedures and evaluation methods will be further explored in an expanded matrix of tests. This testing will include utilizing a larger variety of tire types and sizes and/or additional variations in the selected test procedure(s) and evaluation method(s) than in the Phase 1a testing.

Based on the findings of Phase 1, a final test procedure and damage evaluation method(s) will be selected for use in Phase 2. In Phase 2, a series of tests will be performed to evaluate the performance of the current tire fleet when subjected to the strength tests and evaluation method(s) identified in Phase 1. The agency anticipates that approximately 50 different tire models and sizes will be tested. A subset of these tires will be selected for further repeatability testing. Preliminary test results have been placed in the docket. NHTSA requests comments on the data.

I. Additional Considerations

1. Lead Time for Implementation of New Tire Standard

Congress did not set a lead time by which all applicable tires would be required to meet the upgraded standard. The agency proposes two alternative implementation schedules: a two-year phase-in whereby all applicable tires must comply with the final rule by September 1, 2004, and a three-year phase-in whereby all applicable tires must comply with the final rule by September 1, 2005.

As mentioned above, the proposed new tire standard would apply to radial and non-radial tires for use on passenger cars, SUVs, vans, trailers, and pickup trucks, but not tires for motorcycles or heavy trucks. The applicability of this standard would consolidate the current FMVSS No. 109 and part of FMVSS No. 119. The agency anticipates that many P-metric tires rated C for UTQG Temperature Resistance will either have to be taken off the market or redesigned to pass the proposed tests. Similarly, the agency anticipates that a larger percentage of LT tires, than P-metric tires, will need to be redesigned to pass the proposed standard.

Given the number of additional test requirements and possible design changes that may be required for some tires, particularly LT tires, the agency proposes a phase-in period that allows for up to three years for manufacturers to comply with the requirements of the new standard. The agency believes that a three-year phase-in period would give tire manufacturers sufficient time to make necessary design changes to their tires so that they will comply with the new requirements. A three-year phase-in period would also quickly provide the American public with tires that are

certified to a higher standard than presently exists. As an alternative, NHTSA also proposes a 2-year phase-in period. The details of both plans are discussed below.

For the three-year phase-in, the agency proposes that beginning on September 1, 2003, approximately one year after issuance of the final rule, 50 percent of P-metric tires would be required to comply with the new standard. As of September 1, 2004, two years after the final rule is published, 100 percent of P-metric tires would be required to comply with the new standard. As for LT tires, 100 percent must comply with the new standard beginning on September 1, 2005, three years after issuance of the final rule. Under this implementation scheme, tire manufacturers would be required to provide the agency with tire production data for the year September 1, 2003 to August 31, 2004. This requirement would enable the agency to verify that tires certified to the new standard constitute 50 percent of a manufacturer's production of P-metric tires for that period of time. No production data would be required for subsequent years because all P-metric tires would be required to be certified to the new standard beginning on September 1, 2004. Similarly, no production data would be required for LT tires because all LT tires would be required to be certified to the new standard beginning on September 1, 2005.

As an alternative to the three-year implementation scheme, the agency proposes a two-year phase-in period. Beginning September 1, 2003, 100 percent of P-metric tires would be required to be certified to the requirements of the new standard. Beginning September 1, 2004, 100 percent of LT tires would be required to be certified to the requirements of the new standard. This implementation plan does not require manufacturers to provide production data because it does not contain provisions for partial compliance. Optional early compliance would be permitted by the agency for both alternatives.

2. Shearography Analysis

Shearography analysis evaluates the condition of a tire using laser technology. This technology provides information on impending tread or belt separations that cannot be detected through visual inspection. While currently used in the tire industry, shearography analysis requires a technician to exercise his judgement in determining whether an indication of the size and prospective rate of growth of a belt or tread failure could lead to failure. This analysis has proven to be a valuable tool in analyzing tire failures during the agency's high speed and endurance testing program.[43]

For the aforementioned reasons, the agency solicits comments on the appropriateness of specifying shearography analysis for inspection purposes, in addition to the visual inspection now required, to determine tire failure at the end of the high speed test, the endurance test, the low pressure performance test, and the road hazard impact test. In particular, the agency seeks comments on whether the physical indications of possible future tire failure can be described with sufficient specificity to fulfill the statutory requirement that FMVSSs be stated in objective terms.

3. Revised Testing Speeds in UTQG Temperature Grading Requirement

The agency, in a future rulemaking, may propose to revise the testing speeds specified in the Uniform Tire Quality Grading (''UTQG'') temperature grading requirement in Part 575.104, Uniform Tire Quality Grading Standards, by allowing manufacturers to substitute the High Speed Test speed steps for those currently specified in UTQG, up to 100 mph.

The current temperature resistance test assigns a grade of A, B, C to a tire based on whether it completes or fails to complete a road wheel test for 30 minutes at a given speed. A tire is rated C if it fails to complete the test at 100 mph for 30 minutes, B if it completes the test at 100 mph for 30 minutes, and A if it completes the test at 115 mph for 30 minutes. Under the UTQG test procedure, the test is initiated at 75 mph for 30 minutes and then successively increased in 5 mph increments for 30 minutes each until the tire has run to 115 mph for 30 minutes. Therefore, tires with a temperature rating of C would be able to complete 30 minutes at speeds of 75, 80, 85, 90, and 95 mph (120, 128, 136, 144, and 152 km/h), but not complete the 100-mph (160 km/h) step.

Utilizing the proposed High Speed Test test speeds, a tire could simultaneously complete the High Speed Test speed steps of 140, 150, and 160 km/h (88, 94, 100 mph) and the first 6 speed steps of the UTQG testing procedure. NHTSA requests comments on whether manufacturers should be permitted to substitute, up to 100 mph, the High Speed Test speed steps for those currently specified in UTQG for the Temperature Grading requirement. The agency also requests comment on whether other revisions to the UTQG Temperature Grading requirements are warranted. Please be specific in your response and provide a basis for your answer.

4. Request for Comments on Particular Issues

(1) The agency is participating in the development of a global tire standard as part of a cooperative worldwide effort, through the United Nations Economic Commission for Europe, to establish best safety and environmental practices for motor vehicle regulations. The test methodology contained in the proposed global tire standard was used by the agency in its evaluation of the high speed and endurance tests. However, the agency decided to use the methodology of FMVSS No. 109, with more stringent test parameters. Are there any voluntary consensus standards or requirements of other countries or regions (*e.g.,* ECE R30) which address the issues raised in this NPRM? Do they provide effective ways of accomplishing the purposes of this rulemaking? What opportunities are there to accomplish the purposes of this rulemaking in ways that minimize any unnecessary differences between NHTSA's requirements and those of other countries and regions?

(2) As noted previously in this NPRM, GM stated in its submission to the docket that while it supports both laboratory and real-world testing, it believes that real-world testing is more valuable. GM, however, did not present any specific proposals or data regarding the test procedures, conditions, specifications, or requirements that should comprise their proposed ''real-world'' testing. At this juncture, NHTSA believes that real-world testing is not practicable due to issues such as the selection of an appropriate control vehicle and vehicle and testing variability. The agency seeks comments on whether practicable and repeatable ''real-world'' testing procedures, conditions, and specifications exist and whether they could be utilized as part of a minimum performance standard.

(3) Whereas FMVSS No. 109 specifies requirements for all tires for use on passenger cars manufactured after 1948, the proposal specifies an applicability containing a temporal limitation for vehicles manufactured after 1975. Since the mid–1970s, radial tires have held an increasingly predominate market share (over bias ply tires) in both the original equipment and replacement tire market. The proposed standard will apply to both bias ply and radial tires, however,

[43] In the STL testing, shearography analysis detected initial stages of belt separation in tires that completed the tests.

its testing procedures and requirements result from the testing and analysis of solely radial tires. The agency seeks comments on the appropriateness of specifying the vehicle model year 1975 as a limitation on the applicability of the proposed standard. Please be specific in your response and provide a basis for your answer.

(4) For the purpose of testing tires and vehicles to determine their compliance, the agency specifies a limited number of permissible inflation pressures in both English and metric units. In FMVSS No. 109, the agency lists four inflation pressures, 32, 36, 40, or 60 psi, which were originally selected based on bias ply tires. In its proposed standard, the agency retains these tire inflation pressures in English units. The agency seeks comments on whether these four inflation pressures should be retained in the proposed standard and/or whether these inflation values should be translated into metric units. Please be specific in your response and provide a basis for your answer.

VII. Benefits

For a fuller discussion of the benefits, see the agency's Preliminary Economic Assessment (PEA). A copy of the PEA has been placed in the docket.

The proposed rule would increase the strength, endurance, and heat resistance of tires by raising the stringency of the existing standard on road hazard, bead unseating, endurance, and high speed tests and by requiring a low pressure performance test. Tires that meet the improved tests would, presumably, experience fewer blowouts, tire failures and de-beading problems.

Based on the tires tested by the agency, and on a comparison of their levels of performance in those tests to the level that they would need to achieve to pass the proposed tests, the agency estimates that tires would perform about 7 percent better in the high speed test and about 15 percent better in the endurance test. The agency considers these results additive, such that the total benefit from these two tests would be 22 percent for those tires that currently would not pass the proposed tests. We then assume that these percent improvements of the high speed and endurance tests directly relate to an improvement in safety. The agency cannot currently quantify the benefits of the other proposed tests.

As discussed in the PEA, a target population, 414 fatalities and 10,275 non-fatal injuries annually, can be estimated for tire problems (flat tire/blowout). However, the agency does not know how many of these crashes are influenced by tire design or under-inflation. The agency assumes that under-inflation is involved in 20 percent of flat tire/blowout cases that resulted in a crash. The agency assumes that the influence that under-inflation has on the chances of a blowout is affected by both tire pressure and the properties of the tire. Therefore, the agency assumes that proper inflation would represent 50 percent of these cases and improved tires would represent the other 50 percent of these cases. Consequently, 41 fatalities ($414 \times .2 \times .5$) and 1,028 injuries are being assigned to the TPMS Final Rule. This leaves the target population for this proposal at 373 fatalities and 9,247 injuries.

Assuming that the improvement in performance needed to pass the proposed High Speed and Endurance tests (estimated to be 22 percent) related to a reduction in flat tires/blowouts, the total potential improvement would be 82 lives saved ($373 \times .22$) and 2,034 injuries avoided if only those tires in the target population were those that needed improvements. If the tires having flats and blowouts were a random selection of all tires and only benefits accrued to those tires currently not passing the proposed tests (weighted to be 32.8 percent), then the benefits would be 27 lives saved ($373 \times .22 \times .328$) and 667 injuries reduced when all tires on the road meet the proposed High Speed and Endurance test requirements. Additionally, there could be benefits from the proposed Low Inflation Pressure Performance tests and from the proposed Road Hazard and Bead Unseating tests.

Furthermore, agency tire testing indicated that there is a significant variability in tires. If this variability could be reduced, many of the failed tires could pass the proposed tests. If variability in tires were reduced in the real world, this would alter the benefits that may occur from the proposed tests. The agency requests comments on this issue.

VIII. Costs

The following is a summary of the costs associated with the proposed light vehicle tire standard. It is based on the increased stringency of the proposed high speed and endurance tests. For a more detailed analysis, see the agency's PEA.

A. Original Equipment Tire and Vehicle Costs

The proposed tests will result in tires being designed that are less susceptible to heat build-up. The agency believes that many, if not all, of the P-metric tires rated C for Temperature resistance, some P-metric tires rated B for Temperature resistance and some LT tires will not be able to pass the proposed new tests. The agency has attempted to determine the difference in price between two tires that appear be similar in all characteristics except for temperature resistance where one is a B-rated tire and the other is a C-rated tire. There appears to be very few cases where every notable attribute (comparing tire size, warranty, tread wear, and traction) of two different tires are identical except for temperature resistance.

The agency estimates that the difference in price between a B- or C-rated tire that may fail the proposed standard and a B-rated tire that would pass the proposed standard is $3 per tire (in 2001 dollars). Comments are requested on this estimate. Therefore, the cost differential for a vehicle model equipped with C-rated tires, depending on whether it has a full-size spare, is $12 to $15 per vehicle.

Since only a portion of new vehicles are equipped with tires that would not meet the proposed standard, the agency estimates the average price increase for new vehicles by weighting the vehicles that would receive improvements at $3 per tire with the vehicles whose tires and prices would not change. In the Benefits section of the document, the agency estimated that 33 percent of P-metric and 29 percent of LT tires might not pass the proposed standard. Based on the data presented in this document for all crashes by light truck type, we estimate that 10 percent of light trucks have LT tires. Since future sales are estimated to be evenly split between passenger cars and light trucks, 5 percent of all light vehicles ($10\% \times 0.5$) would be equipped with LT tires. Therefore, the agency estimates that 32.8 percent of all light vehicle tires would not meet the proposed standard ($0.33 \times 95\%$ of sales + $0.29 \times 5\%$ of sales). Thus, the cost of the proposed standard per average new vehicle is $3.94 to $4.92 per vehicle.[44] The agency estimates that approximately 85 percent of the light vehicle fleet (passenger cars, pickups, SUVs, and vans) are sold with a temporary spare tire. Thus, the average cost per vehicle for the new vehicle fleet would be $4.09 ($3.94 \times 0.85 = $4.92 \times .15$).

If this proposal resulted in the lowest priced new tires being taken off the market (tires rated C for Temperature resistance appear to be lowest priced tires), there could be market effects on

[44] This range reflects whether the vehicle comes equipped with a temporary spare or full-sized spare tire.

new vehicle and aftermarket tire sales. One effect could be an increased popularity in alternatives to conventional new tires, such as temporary spare tires for new vehicles, and retreads and used tires in the aftermarket. These impacts are difficult to estimate and the agency seeks comments on this issue. Another effect may result from a tire manufacturer making tradeoffs in tire construction, *e.g.,* in traction, treadwear and rolling resistance, to improve the heat resistance of his tires. To effect such a tradeoff, a tire manufacturer could alter the design construction of the core of the tire or could reduce the amount of tread on the tire. When one lessens the amount of tread on a tire, one lowers the heat build-up that occurs in the tire. This strategy has deleterious implications for treadwear and also serves to reduce the wet traction ability of the tire. The agency seeks comments on the relationship between tread depth and heat build-up.

B. Total Annual Costs

The agency estimates that the lowest price aftermarket tire will increase by the same margin as the lowest priced OE tire, $3, to improve up to the performance levels required in the High Speed and Endurance Tests. If the cost for these improved tires was spread across the entire new light vehicle fleet, the average new vehicle price increase would, we estimate, be $4.09 per vehicle.

The agency anticipates that 32.8 percent of the combined sales of P-metric and LT tires would not pass the High Speed and Endurance Tests. There are an estimated 287 million light vehicle tires sold of which 32.8 percent might increase in price by $3 per tire. The overall annual cost of these two tests for new original equipment and replacement tires is estimated at $282 million (287 million tires × .328 × $3) and the net costs per equivalent life saved would be about $7.2 million.

We do not anticipate an increase in costs for the proposed Road Hazard Impact and Bead Unseatings tests because our testing indicates that most of all of current production tires would pass these tests. The agency has not conducted sufficient testing of the proposed Aging tests to anticipate their potential costs. The agency believes, however, that most manufacturers already perform an aging test. Therefore, it is likely that the incremental cost of adding an aging test would be minimal. With regard to the Low Inflation Pressure Performance tests, one alternative would provide no added costs because agency testing indicates that current production tires pass the test. Tires tested to the other alternative have a higher failure margin. Costs for this test cannot be characterized by the agency at this point.

C. Testing Costs

The proposed light vehicle tire standard contains six tests with which every applicable tire must comply. Based on a time-based comparison between the time required to run the tests in FMVSS No. 109 and the proposed FMVSS No. 139, the agency anticipates that the proposal will increase test time by 6.5 hours (an additional 5 hours for the endurance test and 90 minutes for the high-speed low inflation test). Labor costs associated with this additional time is estimated to be $53 per hour for a test engineer for the 90 minute low inflation pressure performance test and $31 per hour for a technician for the 90 minute low inflation pressure performance test and for the additional final 5 hours of the proposed endurance test. Therefore, incremental tests costs are estimated to be $281 per tire run (1.5 hours × [$53 + $31] + 5 hours × $31).

D. Request for Comments on Costs and Benefits of Individual Tests

As discussed above, the agency has only been able to provide preliminary estimates of the costs and benefits of the proposed high speed and endurance tests. Further, the agency has not been able to quantify the costs and benefits of the other four proposed tests. While our analysis would be made simpler if each proposed test yielded similar costs and benefits, the agency anticipates that each proposed test would produce differing levels of costs and benefits. To the extent that the data will allow, the agency requests that commenters evaluate each proposed test separately and quantify the costs and benefits of each of the six tests individually. The agency wishes to acquire information on which tests would be more costly and which tests would create the most benefits for passenger safety. This information will assist the agency in revising its estimates to provide a more precise and accurate evaluation of the costs and safety benefits of the six proposed tests and will aid the agency in determining which tests would become part of the new standard.

IX. Effective Date

Section 10 of the TREAD Act requires the agency to issue a final rule on this tire upgrade proposal by June 1, 2002. Based on this issuance date, the agency proposes two alternative implementation schedules in section VI.H.1. of this document.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under Executive Order 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined to be economically significant. The proposal is likely to result in an expenditure by automobile manufacturers and/or tire manufacturers of $282 million in annual costs. NHTSA is placing in the public docket a Preliminary Economic Assessment (PEA) describing the costs and benefits of this rulemaking action. The costs and benefits are summarized earlier in this document.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small business, small organizations and small governmental jurisdictions. I hereby certify that the proposed amendment would not have a significant impact on a substantial number of small entities.

The proposed rule would affect motor vehicle manufacturers and tire

manufacturers and/or suppliers. The agency does not believe that any of the tire manufacturers are small businesses. However, there are thousands of small tire retail outlets that will in some small way be impacted by this rule. As mentioned earlier, increasing the price of the less expensive tire could potentially allow used tires and retread tires to make more inroads into the tire retail business. This could impact small businesses. At this time, it is unknown whether the impacts will be insignificant and just an increase in price to consumers, or whether there will be some competitive effects brought about by the price increase.

NHTSA estimates that there are only about four small passenger car and light truck vehicle manufacturers in the United States. These manufacturers serve a niche market. The agency believes that small manufacturers manufacture less than 0.1 percent of total U.S. passenger car and light truck production per year.

NHTSA notes that final stage manufacturers and alterers could also be affected by this proposal. Many final stage manufacturers and alterers install supplier manufactured tires in vehicles they produce. The proposal would not have any significant effect on final stage manufacturers or alterers, however, since the tires they purchase should be tested and certified by the tire manufacturer and the potential cost impacts associated with this proposed action should only slightly affect the price of new motor vehicles and replacement tires.

The agency requests comments concerning the economic impact of the proposed rule on small vehicle manufacturers, tire manufacturers, tire retail outlets, final stage manufacturers and vehicle alterers.

Additional information concerning the potential impacts of the proposed requirements on small entities is presented in the PEA.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments, as it is here.

This proposal is not estimated to result in expenditures by State, local or tribal governments of more than $109 million annually. However, it is likely to result in the expenditure by automobile manufacturers and/or their tire manufacturers of more than $109 million annually. The average costs estimate in this analysis is $3 per tire. Estimating that 32.8 percent of 287 million light vehicle tires sold annually (including new vehicle tire sales and aftermarket tires sales but excluding temporary spare tires) results in $282 million in annual costs. These effects have been discussed in the PEA.

F. Civil Justice Reform

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Certain technical standards developed by the Society of Automotive Engineers (SAE) and other bodies have been incorporated into this proposal but the overall need for safety precludes, in NHTSA's view, the adoption of such voluntary standards as a substitute for this proposal for several reasons. First, no one voluntary standard contains all six of the proposed test procedures and requirements in this proposal. Second, voluntary consensus standards do not exist for several of the test procedures and requirements in the agency's proposal. Third, while the testing conditions and procedures of some voluntary standard have been incorporated by reference into the agency's proposal, the specified performance requirements of the voluntary standards are either different than those specified in our proposal or are non-existent.

H. Paperwork Reduction Act

The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35).

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Phase-In Production Reporting Requirements for new pneumatic tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less.

Type of Request: Routine.

OMB Clearance Number: 2127–[XXXX].

Affected Public: The respondents are manufacturers of tires. The agency estimates that there are about 75 such manufacturers.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual hour burden is 75 hours.

Estimated Costs: NHTSA estimates the total cost annual burden, in dollars to be $0. No additional resources would be expended by manufacturers to gather annual production information because they already compile this data for their own uses.

Summary of the Collection of Information: This collection would require manufacturers of new pneumatic tires to provide tire production data for the year September 1, 2003 to August 31, 2004.

Description of the Need for the Information and Proposed Use of the Information: The purpose of the reporting requirements would be to aid the National Highway Traffic Safety Administration in determining whether a manufacturer of tires has complied with the requirements of Standard No. 139 during the phase-in of those requirements. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. These comments must be received on or before May 6, 2002.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

XI. Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this proposed rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of the proposal you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments.

Accordingly, we recommend that you periodically check the Docket for new material.

XII. Proposed Regulatory Text

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, we propose to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 20111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.109 would be removed.

3. Section 571.110, as proposed to be amended in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be further amended by revising S4.2.1, S4.2.2, and S4.4.1(a), by adding S4.2.1.1, S4.2.1.2, S4.2.2.1, S4.2.2.2, S4.2.2.3, and S4.4.2 and by adding to S3 in alphabetical order, definitions for ''Rim size designation,'' ''Rim diameter,'' ''Rim width,'' ''Rim type designation,'' ''Weather side,'' to read as follows:

§ 571.110 Standard No. 110; Tire selection and rims for motor vehicles with a GVWR of 10,000 pounds or less.

* * * * *

S3. Definitions

* * * * *

Rim diameter means nominal diameter of the bead seat.

Rim size designation means rim diameter and width.

Rim type designation means the industry of manufacturer's designation for a rim by style or code.

Rim width means nominal distance between rim flanges.

* * * * *

Weather side means the surface area of the rim not covered by the inflated tire.

* * * * *

S4.2.1 Tire Load Limits for Passenger Cars

S4.2.1.1 The vehicle maximum load on the tire shall not be greater than the applicable maximum load rating as marked on the sidewall of the tire.

S4.2.1.2. The vehicle normal load on the tire shall not be greater than 85 percent (as specified in the high speed performance test in S6.1 of § 571.139) of the load rating at the vehicle manufacturer's recommended cold inflation pressure for that tire.

S4.2.2 Tire Load Limits for Multipurpose Passenger Vehicles, Trucks, Buses, and Trailers

S4.2.2.1 Except as provided in S4.2.2.2, the sum of the maximum load ratings of the tires fitted to an axle shall not be less than the GAWR of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. If the certification label shows more than one GAWR for the axle system, the sum shall be not less than the GAWR corresponding to the size designation of the tires fitted to the axle. If the size designation of the tires fitted to the axle does not appear on the certification label, the sum shall not be less than the lowest GAWR appearing on the label.

S4.2.2.2 When passenger car (P-metric) tires are installed on an MPV, truck, bus, or trailer, each tire's load rating is reduced by dividing it by 1.10 before determining, under S4.2.2.1, the sum of the maximum load ratings of the tires fitted to an axle.

S4.2.2.3 (a) For vehicles equipped with P-metric tires, the vehicle normal load on the tire shall be no greater than the derated value of 85 percent (as specified in the high speed performance test in S6.1 of § 571.139) of the load rating at the vehicle manufacturer's recommended cold inflation pressure for that tire.

(b) For vehicles equipped with LT tires, the vehicle normal load on the tire shall be no greater than 85 percent (as specified in the high speed performance test in S6.1 of § 571.139) of the load rating at the vehicle manufacturer's recommended cold inflation pressure for that tire.

* * * * *

S4.4.1 * * *

(a) Be constructed to the dimensions of a rim that is listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S4 of § 571.139.

(b) * * *

S4.4.2. *Rim markings for vehicles other than passenger cars.* Each rim or, at the option of the manufacturer in the case of a single-piece wheel, each wheel disc shall be marked with the information listed in paragraphs (a) through (e) of this S4.4.2, in lettering not less than 3 millimeters in height, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeters. The information listed in paragraphs (a) through (c) of this S4.2.2 shall appear on the outward side. In the case of rims of multi piece construction, the information listed in paragraphs (a) through (e) of this S4.2.2 shall appear on the rim base and the information listed in paragraphs (b) and (d) of this S4.2.2 shall also appear on each other part of the rim.

(a) A designation which indicates the source of the rim's published nominal dimensions, as follows:

(1) ''T'' indicates The Tire and Rim Association.

(2) ''E'' indicates The European Tyre and Rim Technical Organization.

(3) ''J'' indicates Japan Automobile Tire Manufacturers'' Association, Inc.

(4) ''D'' indicates Deutsche Industrie Norm.

(5) ''S'' indicates Scandinavian Tire and Rim Organization.

(6) ''A'' indicates The Tyre and Rim Association of Australia.

(7) ''N'' indicates an independent listing pursuant to S4.1 of § 571.139 or S5.1(a) of § 571.119.

(b) The rim size designation, and in case of multipiece rims, the rim type designation. For example: 20 x 5.50, or 20 x 5.5.

(c) The symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable Federal motor vehicle safety standards.

(d) A designation that identifies the manufacturer of the rim by name, trademark, or symbol.

(e) The month, day and year or the month and year of manufacture, expressed either numerically or by use of a symbol, at the option of the manufacturer. For example: ''September 4, 2001'' may be expressed numerically as: ''90401'', ''904, 01'' or ''01, 904''; ''September 2001'' may be expressed as: ''901'', ''9, 01'' or ''01, 9''.

(1) Any manufacturer that elects to express the date of manufacture by means of a symbol shall notify NHTSA in writing of the full names and addresses of all manufacturers and brand name owners utilizing that symbol and the name and address of the trademark owner of that symbol, if any. The notification shall describe in narrative form and in detail how the month, day, and year or the month and year are depicted by the symbol. Such description shall include an actual size graphic depiction of the symbol, showing and/or explaining the interrelationship of the component parts of the symbol as they will appear on the rim or single piece wheel disc, including dimensional specifications, and where the symbol will be located on the rim or single piece wheel disc. The notification shall be received by NHTSA not less than 60 calendar days before the first use of the symbol. The notification

shall be mailed to the Office of Vehicle Safety Compliance (NSA–30), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. All information provided to NHTSA under this paragraph will be placed in the public docket.

(2) Each manufacturer of wheels shall provide an explanation of its date of manufacture symbol to any person upon request.

* * * * *

4. Section 571.117, as proposed to be amended in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be further amended by revising S1, S2, and S3, and by removing the phrase ''§ 571.109'' wherever it appears and adding in its place the phrase ''§ 571.139'' in S4.2, S5.1.1, S5.1.2, and S5.1.4, to read as follows:

§ 571.117 Standard No. 117; Retreaded pneumatic tires.

S1. *Scope.* This standard specifies performance, labeling, and certification requirements for retreaded pneumatic tires for motor vehicles, except for motorcycles, with a GVWR of 10,000 pounds or less.

S2. *Purpose.* The purpose of this standard is to require retreaded pneumatic tires for motor vehicles, except for motorcycles and trailers, with a GVWR of 10,000 pounds or less, to meet safety criteria similar to those for new pneumatic tires for those vehicles.

S3. *Application.* This standard applies to retreaded pneumatic tires for use on motor vehicles, except for motorcycles, with a GVWR of 10,000 pounds or less, manufactured after 1975.

* * * * *

5. Section 571.119 would be amended by revising its heading, S1, S2, and S3, to read as follows:

§ 571.119 Standard No. 119; New pneumatic tires for motor vehicles with a GVWR of more than 10,000 pounds.

S1. *Scope.* This standard establishes performance and marking requirements for tires for use on motor vehicles with a GVWR of more than 10,000 pounds and motorcycles.

S2. *Purpose.* The purpose of this standard is to provide safe operational performance levels for tires used on motor vehicles with a GVWR of more than 10,000 pounds, trailers, and motorcycles, and to place sufficient information on the tires to permit their proper selection and use.

S3. *Application.* This standard applies to new pneumatic tires designed for highway use on motor vehicles with a GVWR of more than 10,000 pounds, trailers, and motorcycles manufactured after 1948.

* * * * *

6. Tables I, II, and III, in the tables at the end of § 571.119, would be revised to read as follows:

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TABLE I—STRENGTH TEST PLUNGER DIAMETER

	Plunger diameter	
	(mm)	(inches)
Tire type:		
Light truck	19.05	3/4
Motorcycle	.....	5/16
Tires for 12-inch or smaller rims, except motorcycle	19.05	3/4
Tires other than above types:		
Tubeless:		
17.5-inch or smaller rims	19.05	3/4
Larger than 17.5-inch rims:		
Load range F	31.75	1 1/4
Load range over F	38.10	1 1/2
Tube type:		
Load range F	31.75	1 1/4
Load range over F	38.10	1 1/2

TABLE II—MINIMUM STATIC BREAKING ENERGY (JOULES (J)) AND INCH-POUNDS (INCH-LBS))

Load Range			All 12 rim diameter code or smaller rim size		Light truck 17.5 rim diameter or smaller rime tubeless		Tube Type		Tubeless		Tube Type		Tubeless	
Tire Characteristic	Motorcycle		19.05 J	¾"	19.05 J	¾"	31.75 J	1 ¼"	J	Inch-lbs	38.10 J	1 ½"	J	Inch-lbs
Plunger diameter (mm and inches)	7.94 J	5/16"												
A	16	150	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
B	33	300	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
C	45	400	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
D	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
E	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
F	.....	.....	406	3,600	644	5,700	1,785	15,800	1,412	12,500	.....	.....	.....	.....
G	.....		.....	.....	711	6,300	.....	.....	.....	.....	2,282	20,200	1,694	15,000
H	.....	.....	.....	.....	768	6,800	.....	.....	.....	.....	2,598	23,000	2,090	18,500
J	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,824	25,000	2,203	19,500
L	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,050	27,000	.....	.....
M	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,220	28,500	.....	.....
N	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,389	30,000	.....	.....

TABLE III—ENDURANCE TEST SCHEDULE

Description	Load Range	Test wheel speed (r/m)	Test load: Percent of maximum load rating			Total Best Revolutions (thousands)
			I-7 hours	II-16 hours	III-24 hours	
Speed restricted service:						
88 km/h (55 mph).....	F,G,H,J, L, M, N ...	125	66	84	101	352.0
80 km/h (50 mph)	F,G,H,J, L.....	100	66	84	101	282.5
56 km/h (35 mph)	All.....	75	66	84	101	211.0
Motorcycle	All.....	250	[1]100	[2]108	117	510.0
All other.....	F.....	200	66	84	101	564.0
	G.....	175	66	84	101	493.5
	H,J,L,N.....	150	66	84	101	423.5

[1] 4 hr. for tire sizes subject to high speed requirements (S6.3).
[2] 6 hr. for tire sizes subject to high speed requirements (S6.3).

BILLING CODE 4910–59–C

7. Section 571.120, as proposed to be amended in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be further amended by revising S5.1.1, and S5.1.2 to read as follows:

§ 571.120 Standard No. 120; Tire selection and rims for motor vehicles with a GVWR of more than 10,000 pounds.

* * * * *

S5.1.1 Except as specified in S5.1.3, each vehicle equipped with pneumatic tires for highway service shall be equipped with tires that meet the requirements of § 571.119, New pneumatic tires for motor vehicles with a GVWR of more than 10,000 pounds, and rims that are listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S5.1 of § 571.119, except that vehicles may be equipped with a non-pneumatic spare tire assembly that meets the requirements of § 571.129, New non-pneumatic tires for passenger cars, and S8 of this standard. Vehicles equipped with such an assembly shall meet the requirements of S5.3.3, S7, and S9 of this standard.

S5.1.2 Except in the case of a vehicle which has a speed attainable in 3.2 kilometers of 80 kilometers per hour or less, the sum of the maximum load ratings of the tires fitted to an axle shall be not less than the gross axle weight rating (GAWR) of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. Except in the case of a vehicle which has a speed attainable in 2 miles of 50 mph or less, the sum of the maximum load ratings of the tires fitted to an axle shall be not less than the gross axle weight rating (GAWR) of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. If the certification label shows more than one GAWR for the axle system, the sum shall be not less than the GAWR corresponding to the size designation of the tires fitted to the axle. If the size designation of the tires fitted to the axle does not appear on the certification label, the sum shall be not less than the lowest GAWR appearing on the label.

* * * * *

8. Section 571.129, as proposed to be amended in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be further amended by revising S2, S4.2.2.4, S4.2.2.5, S4.2.2.6, and by removing S5.3 through S6, to read as follows:

§ 571.129— New non-pneumatic tires for motor vehicles with a GVWR of 10,000 pounds or less.

* * * * *

S2. Application. This standard applies to temporary non-pneumatic tires for use on motor vehicles, except for motorcycles, with a GVWR of 10,000 pounds or less, manufactured after 1975.

* * * * *

S4.2.2.4 Road Hazard Impact. Each new non-pneumatic tire shall comply with the requirements of S6.5 of § 571.139.

S4.2.2.5 Tire Endurance. Each new non-pneumatic tire shall comply with the requirements of S6.3 of § 571.139.

S4.2.2.6 High Speed Performance. Each new non-pneumatic tire shall comply with the requirements of S6.2 of § 571.139.

* * * * *

9. Section 571.139, as proposed to be added in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be amended by adding S3, S5.1 through S5.4, S6 and S7 to read as follows:

§ 571.139 Standard No. 139; New pneumatic tires for motor vehicles with a GVWR of 10,000 pounds or less.

* * * * *

S3. Definitions.

Bead means the part of the tire that is made of steel wires, wrapped or reinforced by ply cords and that is shaped to fit the rim.

Bead separation means a breakdown of the bond between components in the bead.

Bias ply tire means a pneumatic tire in which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

Carcass means the tire structure, except tread and sidewall rubber which, when inflated, bears the load.

Chunking means the breaking away of pieces of the tread or sidewall.

Cord means the strands forming the plies in the tire.

Cord separation means the parting of cords from adjacent rubber compounds.

Cracking means any parting within the tread, sidewall, or inner liner of the tire extending to cord material.

CT means a pneumatic tire with an inverted flange tire and rim system in which the rim is designed with rim flanges pointed radially inward and the tire is designed to fit on the underside of the rim in a manner that encloses the rim flanges inside the air cavity of the tire.

Extra load tire means a tire designed to operate at higher loads and at higher inflation pressures than the corresponding standard tire.

Groove means the space between two adjacent tread ribs.

Innerliner means the layer(s) forming the inside surface of a tubeless tire that contains the inflating medium within the tire.

Innerliner separation means the parting of the innerliner from cord material in the carcass.

Light truck (LT) tire means a tire designated by its manufacturer as primarily intended for use on lightweight trucks or multipurpose passenger vehicles.

Load rating means the maximum load that a tire is rated to carry for a given inflation pressure.

Maximum load rating means the load rating for a tire at the maximum permissible inflation pressure for that tire.

Maximum permissible inflation pressure means the maximum cold inflation pressure to which a tire may be inflated.

Measuring rim means the rim on which a tire is fitted for physical dimension requirements.

Open splice means any parting at any junction of tread, sidewall, or innerliner that extends to cord material.

Outer diameter means the overall diameter of an inflated new tire.

Overall width means the linear distance between the exteriors of the sidewalls of an inflated tire, including elevations due to labeling, decorations, or protective bands or ribs.

Ply means a layer of rubber-coated parallel cords.

Ply separation means a parting of rubber compound between adjacent plies.

Pneumatic tire means a mechanical device made of rubber, chemicals, fabric and steel or other materials, that, when mounted on an automotive wheel, provides the traction and contains the gas or fluid that sustains the load.

Radial ply tire means a pneumatic tire in which the ply cords that extend to the beads are laid at substantially 90 degrees to the centerline of the tread.

Reinforced tire means a tire designed to operate at higher loads and at higher inflation pressures than the corresponding standard tire.

Rim means a metal support for a tire or a tire and tube assembly upon which the tire beads are seated.

Section width means the linear distance between the exteriors of the sidewalls of an inflated tire, excluding elevations due to labeling, decoration, or protective bands.

Sidewall means that portion of a tire between the tread and bead.

Sidewall separation means the parting of the rubber compound from the cord material in the sidewall.

Test rim means the rim on which a tire is fitted for testing, and may be any rim listed as appropriate for use with that tire.

Tread means that portion of a tire that comes into contact with the road.

Tread rib means a tread section running circumferentially around a tire.

Tread separation means pulling away of the tread from the tire carcass.

Treadwear indicators (TWI) means the projections within the principle grooves designed to give a visual indication of the degrees of wear of the tread.

Wheel-holding fixture means the fixture used to hold the wheel and tire assembly securely during testing.

* * * * *

S5. General requirements

S5.1. *Size and construction.* Each tire shall fit each rim specified for its size designation in accordance with S4.1.

S5.2. *Performance requirements.* Each tire shall conform to each of the following:

(a) It shall meet the requirements specified in S6 for its tire size designation, type, and maximum permissible inflation pressure.

(b) It shall meet each of the applicable requirements set forth in paragraphs (c) and (d) of this S5.2, when mounted on a model rim assembly corresponding to any rim designated by the tire manufacturer for use with the tire in accordance with S4.

(c) Except in the case of a CT tire, its maximum permissible inflation pressure shall be either 32, 36, 40, or 60 psi, or 240, 280, 300, 340, or 350 kPa. For a CT tire, the maximum permissible inflation pressure shall be either 290, 330, 350, or 390 kPa.

(d) Its load rating shall be that specified either in a submission made by an individual manufacturer, pursuant to S4, or in one of the publications described in S4 for its size designation, type and each appropriate inflation pressure. If the maximum load rating for a particular tire size is shown in more than one of the publications described in S4, each tire of that size designation shall have a maximum load rating that is not less than the published maximum load rating, or if there are differing maximum load ratings for the same tire size designation, not less then the lowest published maximum load rating.

S5.3. *Test sample.* For the tests specified in S6, use:

(a) One tire for high speed;

(b) Another tire for endurance and high speed low inflation pressure performance;

(c) Another tire for road hazard impact test and bead unseating; and

(d) A fourth tire for aging effects.

S5.4. *Treadwear indicators.* Except in the case of tires with a 12-inch or smaller rim diameter, each tire shall have not less than six treadwear indicators spaced approximately equally around the circumference of the tire that enable a person inspecting the tire to determine visually whether the tire has worn to a tread depth of one sixteenth of an inch. Tires with 12-inch or smaller rim diameter shall have not less than three such treadwear indicators.

* * * * *

S6. *Test procedures, conditions and performance requirements.* Each tire shall meet all of the applicable requirements of this section when tested according to the conditions and procedures set forth in S5 and S6.1 through S6.7.

S6.1. Tire Dimensions

S6.1.1 *Test conditions and procedures.*

S6.1.1.1 *Tire Preparation.*

S6.1.1.1.1 Mount the tire on the measuring rim specified by the tire manufacturer or in one of the publications listed in S4.1.1

S6.1.1.1.2 In the case of a P-metric tire, inflate it to the pressure specified in the following table:

Radial and bias-belted inflation pressure (kPa)		Diagonal (bias-ply) inflation pressure (kPa)			T-type temporary use spare inflation pressure (kPa)	CT tires (kPa)	
Standard	Reinforced	Ply rating				Standard	Reinforced
		4	6	8			
180	220	170	190	220	420	230	270

S6.1.1.1.3 In the case of a LT tire, inflate it to the pressure index given by the manufacturer.

S6.1.1.1.4 Condition the assembly at 25 ±5°C for not less than 24 hours.

S6.1.1.1.5 Readjust the tire pressure to that specified in S6.1.1.2.

S6.1.1.2 Test Procedure

S6.1.1.2.1 Measure the section width and overall width by caliper at six points approximately equally spaced around the circumference of the tire, avoiding measurement of the additional thickness of the special protective ribs or bands. The average of the measurements so obtained are taken as the section width and overall width, respectively.

S6.1.1.2.2 Determine the outer diameter by measuring the maximum circumference of the tire and dividing the figure so obtained by Pi (3.14).

S6.1.2 *Performance Requirements.* The actual section width and overall width for each tire measured in accordance with S6.1.1.2, shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.1.1(a) or in one of the publications described in S4.1.1(b) for its size designation and type by more than:

(a) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(b) (For tires with a maximum permissible inflation pressure of 240, 280, 290, 300, 330, 350 or 390 kPa, or 60 psi) 7 percent or 10 mm (0.4 inches), whichever is larger.

S6.2 High Speed.

S6.2.1 *Test conditions and procedures.*

S6.2.1.1 *Preparation of tire.*

S6.2.1.1.1 Mount the tire on a test rim and inflate it to the pressure specified for the tire in the following table:

Tire application	Test pressure (kPa)
P-metric:	
Standard load	220
Extra load	260
Load Range C	320
Load Range D	410
Load Range E	500
CT:	
Standard load	270
Extra load	310

S6.2.1.1.2. Condition the assembly at 35 ± 5°C for not less than three hours.

S6.2.1.1.3 Before or after mounting the assembly on a test axle, readjust the tire pressure to that specified in S6.2.1.1.1.

S6.2.1.2. *Test procedure.*

S6.2.1.2.1 Press the assembly against the outer face of a test drum with a diameter of 1.70 m ± 1%.

S6.2.1.2.2 Apply to the test axle a load equal to 85% of the tire's maximum load carrying capacity.

S6.2.1.2.3 Break-in the tire by running it for 15 minutes at 80 km/h.

S6.2.1.2.4 Allow tire to cool to 40°C and readjust inflation pressure to applicable pressure in 6.2.1.1.1 immediately before the test.

S6.2.1.2.5 Throughout the test, the inflation pressure is not corrected and the test load is maintained at the value applied in S6.2.1.2.2.

S6.2.1.2.6 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, shall be maintained at not less than 40° C.

S6.2.1.2.7 The test is conducted, continuously and uninterrupted, for ninety minutes through three thirty minute consecutive test stages at the following speeds: 140, 150, and 160 km/h.

S6.2.1.2.8 Not more than 15 minutes after running the tire for the specified time, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.2.2 *Performance requirements.* When the tire is tested in accordance with S6.2.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, innerliner, belt or bead separation, chunking, open splices, cracking, or broken cords.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.2.1.

S6.3 *Tire Endurance.*

S6.3.1 *Test conditions and procedures.*

S6.3.1.1 *Preparation of Tire.*

S6.3.1.1.1 Mount the tire on a test rim and inflate it to the pressure specified for the tire in the following table:

Tire application	Test pressure (kPa)
P-metric:	
Standard load	180
Extra load	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410
CT:	
Standard load	230
Extra load	270

S6.3.1.1.2 Condition the assembly at 35 ± 5° C for not less than three hours.

S6.3.1.1.3 Readjust the pressure to the value specified in S6.3.1.1.1 immediately before testing.

S6.3.1.2. *Test Procedure.*

S6.3.1.2.1 Mount the assembly on a test axle and press it against the outer face of a smooth wheel having a diameter of 1.70 m ± 1%.

S6.3.1.2.2 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, shall not be less than 40° C.

S6.3.1.2.3 Conduct the test, without interruptions, at not less than 120 km/h test speed with loads and test periods not less than those shown in the following table:

Test period	Duration (hours)	Load as a percentage of tire maximum load rating (percent)
1	8	90
2	10	100
3	22	110

S6.3.1.2.4 Throughout the test, the inflation pressure is not corrected and the test loads are maintained at the value corresponding to each test period, as shown in the table in S6.3.1.2.3.

S6.3.1.2.5 Not more than 15 minutes after running the tire for the time specified in the table in S6.3.1.2.3, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.3.2 *Performance requirements.* When the tire is tested in accordance with S6.3.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, innerliner, belt or bead separation, chunking, open splices, cracking or broken cords.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.1.1.

S6.4 *Low Inflation Pressure Performance.*

S6.4.1 *Test conditions and procedures.*

S6.4.1.1 *Preparation of tire.*

S6.4.1.1.1 Mount the same tire tested in accordance with 6.3 on a test rim and inflate it to the following appropriate pressure:

Tire application	Test pressure (kPa)
P-metric:	
Standard load	140
Extra load	160
LT:	
Load Range C	200
Load Range D	260
Load Range E	320
CT:	
Standard load	170
Extra load	180

S6.4.1.1.2 Condition the assembly at 35 ± 5° C for not less than three hours.

S6.4.1.1.3 Before or after mounting the assembly on a test axle, readjust the tire pressure to that specified in S6.3.1.1.1.

[Proposed S6.4.1.2 through S6.4.1.2.6—Alternative 1]

S6.4.1.2 *Test procedure.*

S6.4.1.2.1 The test is conducted for ninety minutes at the end of the test specified in S6.3, continuous and uninterrupted, at a speed of 120 km/h.

S6.4.1.2.2 Press the assembly against the outer face of a test drum with a diameter of 1.70 m ± 1%.

S6.4.1.2.3 Apply to the test axle a load equal to 100% of the tire's maximum load carrying capacity.

S6.4.1.2.4 Throughout the test, the inflation pressure is not corrected and the test load is maintained at the initial level.

S6.4.1.2.5 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is maintained at not less than 40° C.

S6.4.1.2.6 Not more than 15 minutes after running the tire for the specified time, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

[Proposed S6.4.1.2 through S6.4.1.2.6—Alternative 2]

S6.4.1.2 *Test procedure.*

S6.4.1.2.1 Press the assembly against the outer face of the test drum.

S6.4.1.2.2. Apply to the test axle a load equal to 67% of the tire's maximum load carrying capacity.

S6.4.1.2.3 Throughout the test, the inflation pressure is not corrected and the test load is maintained at the original level.

S6.4.1.2.4 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is maintained at not less than 40° C.

S6.4.1.2.5 The test is conducted, continuously and uninterrupted, for ninety minutes through three consecutive test stages of 30 minutes each at the following speeds: 140, 150, and 160 km/h.

S6.4.1.2.6 Allow the tire to cool for one hour. Then deflate the tire and remove it from the test rim.

S6.4.2 *Performance requirements.* When the tire is tested in accordance with S6.4.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, innerliner, belt or bead separation, chunking, open splices, cracking, or broken cords. For tires tested at a speed of 300 km/h or above, superficial blistering in the tire tread due to localized heat build-up in the test drum is acceptable.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.4.1.1.1.

S6.5 Road Hazard Impact.

S6.5.1 *Test conditions and procedures.*

S6.5.1.1 *Test conditions.*

S6.5.1.1.1 The tire is prepared and mounted on the equipment in accordance with section 3.2 of SAE Recommended Practice J1981 (JUN94), Road Hazard Impact Test for Wheel and Tire Assemblies (Passenger Car, Light Truck, and Multipurpose Vehicles).

S6.5.1.1.2 The test pressure shall be inflated to the appropriate test pressure:

Tire application	Test pressure (kPa)
P-metric:	.....
Standard load	180
Extra load	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410

S6.5.1.2 *Test procedures.* The test is conducted in accordance with the test procedures described in section 3.3 of SAE Recommended Practice J1981 (JUN94). Initiate the test by raising the pendulum to a drop height based on a pendulum centerline angle of 80 degrees to the vertical. Repeat the test so that the impact occurs at five test points equally spaced around the circumference of the tire.

S6.5.2 *Performance requirements.*

S6.5.2.1 When the tire has been tested in accordance with S6.5.1.2 using a test rim that undergoes no permanent deformation, the test pressure shall not be less than the initial test pressures specified in S6.5.1.1.

S6.5.2.2 There shall be no visible evidence of tread, sidewall, ply, cord, inner liner, belt or bead separation, chunking, open splices, cracking, or broken cords.

S6.6 Bead Unseating.

S6.6.1 *Test conditions and procedures.*

S6.6.1.1 *Test conditions.*

S6.6.1.1.1 *Tire inclination angle.* The tire inclination angle is 5° to the vertical axis.

S6.6.1.1.2 *Simulated road surface inclination angle.* The simulated road surface inclination angle is 10° to the horizontal. The road surface shall be free from rubber and other substances.

S6.6.1.1.3 *Tire mounting.* No lubricant, such as soapy water, is used when mounting tire. The tire inflation pressure, after mounting, is set at the appropriate test pressure:

Tire Application	Test pressure (kPa)
P-metric:	
Standard load	180
Extra load	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410

S6.6.1.2 *Test procedure.* Apply a lateral force of 2.0 times the maximum tire load labeled on the tire sidewall at a rate of 220 millimeters per second (mm/s) to the tire, and maintain the lateral force for 20 seconds. Repeat the test at no less than four points equally spaced around the tire circumference.

S6.6.2 *Performance requirements.* When a tire is tested in accordance with S6.6.1.2., no air loss shall occur.

S6.7 Aging Effects.

[Proposed S6.7.1 through S6.7.2—Alternative 1]

S6.7.1. *Test conditions and procedures.*

S6.7.1.1 Preparation of Tire.

S6.7.1.1.2 Mount the tire on a test rim and inflate it to the pressure specified in the following table:

Tire application	Test pressure (kPa)
P-metric:	
Standard load	180
Extra load	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410

S6.7.1.1.3 Condition the assembly at 35 ± 5° C for not less than three hours.

S6.7.1.1.4 Readjust the pressure to the value specified in S6.6.1.1.2 immediately before testing.

S6.7.1.2 *Test Procedure.*

S6.7.1.2.1 Mount the assembly on a test axle and press it against the outer face of a smooth wheel having a diameter of 1.70 m ± 1%.

S6.7.1.2.2 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is not less than 40° C.

S6.7.1.2.3 Conduct the test, without interruptions, at not less than 120 km/h (75 mph) test speed for 24 hours with loads not less than those shown in the following table:

Test period	Duration (hours)	Load as a percentage of tire maximum load rating (percent)
1	8	90
2	8	100
3	8	100

S6.7.1.2.4 Throughout the test, the inflation pressure is not corrected and the test loads are kept constant at the value corresponding to each test period.

S6.7.1.2.5 Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.7.2 *Performance requirements.* The tire, after being tested in accordance with S6.7.1.2, exhibits a peel strength of not less than 30 pounds per inch in accordance with American Society for Testing and Materials Method D 413–98 (Machine Method).

[Proposed S6.7.1 through S6.7.2—Alternative 2]

S6.7.1 Test conditions and procedures.

S6.7.1.1 *Preparation of tire.*

S6.7.1.1.2 Mount the tire on a test rim and inflate it, with a gas blend of 50% O_2 (oxygen) and 50% N_2 (nitrogen), to

the pressure specified in the following table:

Tire application	Test pressure (kPa)
P-metric	275
LT:	
Load Range C	390
Load Range D	450
Load Range E	550

S6.7.1.1.3 Condition the assembly at 35 ± 5° C for not less than three hours.

S6.7.1.1.4 Readjust the pressure to the value specified in S6.6.1.1.2 immediately before testing.

S6.7.1.2. *Test Procedure.*

S6.7.1.2.1 Mount the assembly on a test axle and press it against the outer face of a smooth wheel having a diameter of 1.70 m ± 1%.

S6.7.1.2.2 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is not less than 40° C.

S6.7.1.2.3 Conduct the test, without interruptions, at not less than 96 km/h (60 mph) for 250 hours with loads not less than those shown in the following table:

Tire application	Load as a percentage of tire maximum load rating (perecent)
P-metric	111
LT:	
Load Range C	112
Load Range D	98
Load Range E	92

S6.7.1.2.4 Throughout the test, the inflation pressure is not corrected and the test loads are maintained at the original level.

S6.7.1.2.5 Not more than 15 minutes after running the tire the specified time, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.7.2 *Performance requirements.* When the tire is tested in accordance with S6.7.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, inner liner, belt or bead separation, chunking, open splices, cracking or broken cords.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.1.1.

[Proposed S6.7.1 through S6.7.2—Alternative 3]

S6.7.1. *Test conditions and procedures.*

S6.7.1.1. *Preparation of Tire.*

S6.7.1.1.2 Condition tire in an oven at 75°C (167°F), continuously and uninterrupted for 14 days.

S6.7.1.1.2. Mount the tire on a test rim and inflate it to the pressure specified in the following table:

Tire application	Test pressure (kPa)
P-metric:	
Standard	180
Reinforced	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410

S6.7.1.1.3. Condition the assembly at 35 ± 5° C for not less than three hours.

S6.7.1.1.4. Readjust the pressure to the value specified in S6.3.1.1.2 immediately before testing.

S6.7.1.2. *Test Procedure.*

S6.7.1.2.1. Mount the assembly on a test axle and press it against the outer face of a smooth wheel having a diameter of 1.70 m ± 1%.

S6.7.1.2.2. During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is not less than 40° C.

S6.7.1.2.3. Conduct the test, without interruptions, at not less than 120 km/h test speed with loads and test period not less than those shown in the following table:

Test period	Duration (hours)	Load as a percentage of tire maximum load rating (percent)
1	8	90
2	8	100
3	8	110

S6.7.1.2.4. Throughout the test the inflation pressure is not corrected and the test loads are maintained at the value corresponding to each test period.

S6.7.1.2.5. Not more than 15 minutes after running the tire the specified time, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.7.2. *Performance requirements.* When the tire is tested in accordance with S6.7.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, inner liner, belt or bead separation, chunking, open splices, cracking or broken cords.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.1.1.

[Proposed S7 through S7.3—Alternative 1]

S7. Phase-In Schedule

S7.1 *P-metric tires manufactured on or after September 1, 2003 and before September 1, 2004.* For tires manufactured by a manufacturer on or after September 1, 2003 and before September 1, 2004, the amount of tires complying with S4 through S6 must be 50 percent of the manufacturers production of P-metric tires during that period.

S7.2 *P-metric tires manufactured on or after September 1, 2004.* Each P-metric tire manufactured on or after September 1, 2004 must comply with S4 through S6 of this standard.

S7.3 *LT tires manufactured on or after September 1, 2005.* Each LT tire manufactured on or after September 1, 2005 must comply with S4 through S6 of this standard.

[Proposed S7 through S7.3—Alternative 2]

S7. Phase-In Schedule

S7.1 *P-metric tire manufactured on or after September 1, 2003.* Each P-metric tire manufactured on or after September 1, 2003 must comply with S4 through S6 of this standard.

S7.2 *LT tires manufactured on or after September 1, 2004.* Each LT tire manufactured on or after September 1,

2004 must comply with S4 through S6 of this standard.

10. Part 597 would be added to read as follows:

PART 597—TIRES FOR MOTOR VEHICLES WITH A GVWR OF 10,000 POUNDS OR LESS PHASE-IN REPORTING REQUIREMENTS

Sec.
597.1 Scope.
597.2 Purpose.
597.3 Applicability.
597.4 Definitions.
597.5 Response to inquiries.
597.6 Reporting requirements.
597.7 Records.
597.8 Petition to extend period to file report.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 597.1 Scope.

This part establishes requirements for manufacturers of new pneumatic tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less to submit a report, and maintain records related to the report, concerning the number of such tires the meet the requirements of Standard No. 139 (49 CFR 571.139).

§ 597.2 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 139 (49 CFR 571.139).

§ 597.3 Applicability.

This part applies to manufacturers of tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.

§ 597.4 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) Motor vehicle and gross vehicle weight rating are used as defined in 49 CFR 571.3.

(c) Production year means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 597.5 Response to inquiries.

At anytime beginning September 1, 2003, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the tires (by make, model, brand and tire identification number) that have been certified as complying with Standard No. 139 (49 CFR 571.139). The manufacturer's designation of a tire as a certified tire is irrevocable.

§ 597.6 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 2004, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 139 (49 CFR 571.139) for its P-metric tires produced in that year for motor vehicles with a GVWR of 10,000 pounds or less. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with Standard No. 139 (49 CFR 571.139) for the period covered by the report and the basis for that statement;

(5) Provide the information specified in paragraph (b) of this section;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report Content.* (1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of new pneumatic tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States shall report the number of such vehicles manufactured during the current production year.

(2) *Production.* Each manufacturer shall report for the production year for which the report is filed: the number of new pneumatic tires for motor vehicles with a GVWR of 10,000 pounds or less that meet Standard No. 139 (49 CFR 571.139).

§ 597.7 Records.

Each manufacturer must maintain records of the tire identification number for each tire for which information is reported under § 590.6(b)(2) until December 31, 2006.

§ 597.8 Petition to extend period to file report.

A manufacturer may petition for extension of time to submit a report under this part. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. The petition must be received not later than 15 days before expiration of the time stated in § 597.6(a). The filing of a petition does not automatically extend the time for filing a report. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

Issued: February 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–5151 Filed 2–28–02; 10:44 am]

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Tuesday,
March 5, 2002

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Tires; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–00–8011]

RIN 2127–AI54

Federal Motor Vehicle Safety Standards; Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 mandates a rulemaking proceeding to revise and update our safety performance requirements for tires. In response, this document proposes to establish new and more stringent tire performance requirements in a new Federal motor vehicle safety standard that would apply to all new tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less. The agency recently proposed to establish a new tire standard, Standard No. 139, in a December 2001 NPRM on tire safety information. Today's document proposes to include the new tire performance requirements in that standard.

This document seeks comments on the proposed new standard, including its applicability and test procedures, modifications to related existing standards, and lead time provided for manufacturers to achieve compliance. It also seeks comments on the possible future specification of shearography analysis, a technique which evaluates the condition of a tire using laser technology. Finally, it seeks comments on NHTSA's research plans.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than May 6, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Mr. George Soodoo or Mr. Joseph Scott, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

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(4) On the next page (''Docket Summary Information''), which contains docket summary information for the materials in the docket you selected, scroll down to ''search results'' and click on the desired materials. You may download the materials.

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I. Executive Summary and Overview

Section 10 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act mandates that the agency issue a final rule to revise and update its tire performance standards. However, the Act gives the agency substantial discretion over the substance of the final rule. The Act does not specify what revisions or updatings should be made. For example, it does not specify which particular existing tests should be improved or how much they should be improved. Likewise, it does not specify which particular new tests should be added or how stringent they should be. However, the legislative history does contain specific references to some tests like aging tests.

In response to section 10, the agency comprehensively examined possible ways of revising and updating its tire standards. In doing so, it placed particular emphasis on improving the ability of tires to withstand the effects of factors mentioned during the consideration and enactment of the TREAD Act such as tire heat build up, low inflation, and aging. The agency has examined the value of modifying the existing tests in its tire standards. In addition, it has examined the value of adopting several new tests.

As a result of these efforts, the agency has identified an array of amendments for revising and updating its tire standards and thereby improving tire performance. Some would upgrade existing tests, while the others would add new ones.

The agency recently proposed to establish a new tire standard, Standard No. 139, in a December 2001 NPRM on tire safety information (Docket No. NHTSA–01–11157, 66 FR 65536, December 19, 2001). Today's document proposes to include the new tire performance requirements in that standard. The standard would apply to light vehicle tires. As used in the December 2001 proposal, ''light vehicles'' are vehicles (except motorcycles) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

Under today's proposal, the new standard would contain requirements and test procedures addressing the following aspects of tire performance: Tire Dimension, High Speed, Endurance, Road Hazard Impact, Bead Unseating, Low Inflation Pressure, and Aging Effects.[1]

The proposed High Speed and Endurance tests would replace the current High Speed and Endurance tests in FMVSS No. 109, New Pneumatic Tires—Passenger Cars, 49 CFR 571.109, with a more stringent combination of testing parameters (ambient temperature, load, inflation pressure, speed, and duration.) Most significantly, the proposed High Speed test specifies test speeds (140, 150 and 160 km/h (88, 94, and 100 mph)) that are substantially higher than those currently specified in FMVSS No. 109 (120, 128, 136 km/h (75, 80, 85 mph)). Likewise, the proposed Endurance Test specifies a test speed 50 percent faster (120 km/h (75 mph)) than that currently specified in FMVSS No. 109 (80 km/h (50 mph)), as well as a duration 6 hours longer (40 hours total) than that currently specified in FMVSS No. 109 (34 hours total). At the specified test speed (120 km/h), the Proposed Endurance Test distance (4800 km) is almost double the distance accumulated than under the current Endurance Test (2720 km at 80 km/h). These new testing parameters are based on NHTSA's activities undertaken in response to the TREAD Act, including extensive agency testing, data gathering and analyses as well as agency review of other existing international, industry and National standards and proposals, and submissions by the public.

The proposed Road Hazard Impact Test and the Bead Unseating Test are modeled on SAE Recommended Practice J1981, Road Hazard Impact Test for Wheel and Tire Assemblies (Passenger Car, Light Truck, and Multipurpose Vehicles), and the Toyota Air Loss Test, respectively. These new tests would replace the Strength and Bead Unseating Resistance tests in the current FMVSS No. 109 with tests that are more dynamic as opposed to quasi-static.

In addition to the tests cited above, the proposed standard contains tests for two new aspects of performance: Low Inflation Pressure Performance and Aging Effects. By creating tests for these aspects of performance, the agency is attempting to address concerns raised by members of Congress in hearings that preceded the enactment of the TREAD Act that NHTSA's current test requirements do not evaluate how well tires perform when significantly underinflated or after being subjected to environmental variables, such as heat, which accelerate aging. In particular, underinflation and heat were factors highlighted as contributing to failure of the Firestone ATX and Wilderness tires in the TREAD hearings, and in the agency's Firestone investigation (NHTSA Office of Defects Investigation (ODI) investigation number EA00–023).

To test Low Inflation Pressure Performance, the agency is proposing two alternative tests based on agency testing and data analyses. Both tests utilize tires significantly under-inflated, for instance 20 psi for P-metric tires (the low inflation pressure threshold requirement for warning lamp activation in the proposed Tire Pressure Monitoring System (TPMS) standard, Docket No. NHTSA–00–8572 (66 FR 38982, July 26, 2001)), as the ''inflation pressure'' testing parameter for standard load P-metric tires. To test for resistance to Aging Effects, the agency proposes three alternative tests that would evaluate a tire's long term durability through methods different than and/or beyond those required by both the current and the proposed Endurance Test parameters. The three tests use peel strength testing, long-term durability endurance requirements, and oven aging, respectively. The agency solicits comments on which of the two proposed tests for addressing Low Inflation Pressure Performance, and which of the three tests proposed for addressing Aging Effects, should be chosen for the new standard.

In addition to proposing test procedures for the new standard, the agency also discusses in this document its ongoing and future research plans on tire safety, and seeks comments on the future use of shearography analysis (a method of analysis using laser technology) for evaluating the condition of tires subjected to the proposed testing procedures and the plans for revising the Uniform Tire Quality Grading Temperature Grading Requirement testing speeds so that they are consistent with the test speeds in the proposed High Speed tests.

Finally, the agency discusses revising FMVSS Nos. 110, Tire selection and rims, for passenger cars, 49 CFR 571.110, and 120, Tire selection and rims for motor vehicles other than passenger cars, 49 CFR 571.120, to reflect the applicability of the proposed light vehicle tire standard to vehicles up to 10,000 pounds GVWR, and revising FMVSS Nos. 117, Retreaded pneumatic tires, 49 CFR 571.117, and 129, New non-pneumatic tires for passenger cars, 49 CFR 571.129, to replace the performance tests which reference or mirror those in FMVSS No. 109 with

[1] See 66 FR 65536 for the proposed tire information requirements. For the convenience of the reader, we have placed in the docket for today's NPRM a document that shows how the tire safety information and performance requirements may appear together in Standard No. 139.

those specified in the proposed new light vehicle tire standard.

Wishing to adopt only those amendments that contribute to improved safety, and mindful of the principles for regulatory decisionmaking set forth in Executive Order 12866, Regulatory Planning and Review, NHTSA has examined the benefits and costs of these amendments. Its efforts to do so, however, have been limited by several factors. Two factors stand out. One is the limited time allowed by the schedule specified in the TREAD Act for completing this rulemaking. That has limited the amount and variety of information that the agency could obtain and testing that the agency could conduct to examine the effects of different versions of the amendments under consideration. The other is the difficulty inherent in crash avoidance rulemakings, stemming from the multiplicity of the factors contributing to the occurrence of any crash and the difficulty of ascertaining the relative contribution of each factor, in linking specific improvements in safety requirements with specific reductions in crashes and resulting deaths and injuries. Together, these limitations have made it difficult to assess and compare the benefits and costs of this rulemaking.

At this time, the agency believes that improving tires will be beneficial in reducing tire failures and crashes resulting from tire failures. However, we do not have a good estimate of the extent to which the improvements will improve safety. We have made an estimate of the target population—373 fatalities and 9,247 injuries in the target population. If the improvements needed to pass the high-speed and endurance tests (estimated to be 22 percent) related directly to an improvement in safety, the total potential improvement would be 82 lives saved (373* .22) and 2,034 injuries avoided. Since 32.8 percent of the tires currently do not pass the proposed requirements, the benefits would be 27 lives saved (373 * 0.22 * 0.328) and 667 injuries reduced.

The agency emphasizes that not all benefits could be quantified. Specifically, the agency believes that there will be other, currently non-quantifiable, benefits from the proposed Aging test and aspects of the proposal that address the overloading of vehicles. Additionally, there could be benefits from the proposed Low Inflation Pressure Performance tests and from the proposed Road Hazard and Bead Unseating tests.

The agency's estimate of the price increase to improve tires up to the performance levels required in the High Speed and Endurance tests is $3 per affected tire. Based on testing, we estimate that about one-third (32.8 percent) of all tires would need improvements to pass those two tests. If the cost for these improved tires were spread across the entire new light vehicle fleet, the average new vehicle price increase would, we estimate, be $4.09 per vehicle. The overall annual cost of these tests for new original equipment (64 million tires) and replacement tires (223 million tires) is estimated at $282 million for a total of 287 million tires sold annually and the net costs per equivalent life saved would be about $7.2 million.

We do not anticipate an increase in costs for the proposed Road Hazard Impact and Bead Unseating tests because our testing indicates that most of current production tires would pass these tests. The agency has not conducted sufficient testing of the proposed Aging tests to anticipate their potential costs. The agency believes, however, that most manufacturers already perform an aging test. Therefore, it is likely that the incremental cost of adding an aging test would be minimal.

With regard to the Low Inflation Pressure Performance tests, one alternative would provide no added costs because agency testing indicates that current production tires pass the test. Tires tested to the other alternative have a higher failure margin. Costs for this test cannot be characterized by the agency at this point.

The agency is concerned about the overall costs of this rulemaking and the net costs per equivalent life saved. While the agency believes that its proposed amendments represent a reasoned proposal that is based on best currently available information and that would improve tire safety, it is concerned about the apparent overall costs of those amendments. The agency is particularly concerned that the cost per equivalent life saved is significantly higher than that in most NHTSA vehicle safety rulemakings.

Because of the broad mandate from Congress and the uncertainty associated with the analysis of benefits and costs, the agency believes that the most appropriate course of action is for it to seek public comment on the full array of potential amendments that it has identified. As a result of this NPRM, the agency anticipates receiving cost data and other information that will enable it to refine its assessment of benefits and costs. The agency will then be in a better position to pick and choose among the proposed amendments. Its intention is to use that information to fashion a final rule consistent with the principles of Executive Order 12866.

II. Background

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414, signed into law on November 1, 2000, requires the agency to address numerous vehicle safety matters through rulemaking. Section 10 of the Act directs the Secretary of Transportation to conduct a rulemaking to revise and update the tire safety standards published at 49 CFR 571.109 and 571.119, and to complete the rulemaking, i.e., issue a final rule, by June 1, 2002.[2]

III. Existing Tire Standards—Performance Requirements

The following discussion summarizes current provisions relating to tires.

FMVSS No. 109, New pneumatic tires, 49 CFR 571.109, specifies the requirements for all tires manufactured for use on passenger cars manufactured after 1948. This standard, which was issued in 1967 under the National Traffic and Motor Vehicle Safety Act (Safety Act), specifies dimensions for tires used on passenger cars and requires that the tires meet specified strength, resistance to bead unseating, endurance, and high speed requirements, and be labeled with certain safety information. FMVSS No. 109 applies to passenger car (P-metric) tires produced for use on passenger cars, multipurpose passenger vehicles (MPV), and light trucks (sport utility vehicles (SUV), vans, minivans, and pickup trucks). The standard was adopted from the Society of Automotive Engineers (SAE) recommended practice J918c, Passenger Car Tire Performance Requirements and Test Procedures, which was first issued by the SAE in June 1965.[3] The current FMVSS No. 109 includes four performance requirements for tires:

- A strength test, which evaluates the strength of the reinforcing materials in the tire;
- A resistance-to-bead unseating test, which evaluates how well the tire bead

[2] The title of section 10 is ''Endurance and resistance standards for tires.'' The section reads in full as follows:

The Secretary of Transportation shall conduct a rulemaking to revise and update the tire standards published at 49 CFR 571.109 and 49 CFR 571.119. The Secretary shall complete the rulemaking under this section not later than June 1, 2002.

[3] SAE is an organization which develops voluntary standards for aerospace, automotive and other industries. Many of SAE's recommended practices are developed using technical information supplied by vehicle manufacturers and automotive test laboratories.

is seated on the rim (regulating the tire-rim interface guards against sudden loss of tire air pressure when a tire is subjected to lateral forces such as during severe turning maneuvers);

• An endurance test, which evaluates resistance to heat buildup when the tire is run at its rated load nonstop for a total of 34 hours, and

• A high speed test, which evaluates resistance to heat buildup when the tire is run at 88 percent of its maximum load at speeds of 75 mph, 80 mph, and 85 mph for 30 minutes at each speed.

For the purposes of testing tires to determine their compliance with these requirements, the standard specifies values for several factors, such as tire inflation pressure, the load [4] on the tire, and the rim on which a tire is mounted. The standard specifies permissible inflation pressures (or wheel sizes, in the case of bead unseating test) to facilitate compliance testing. The standard requires that each passenger car tire must have a maximum permissible inflation pressure labeled on its sidewall (S4.3). Section 4.2.1(b) lists the permissible maximum pressures: 32, 36, 40, or 60 pounds per square inch (psi) or 240, 280, 290, 300, 330, 340, 350, or 390 kiloPascals (kPa). A manufacturer's selection of a maximum pressure has the effect of determining the pressures at which its tire is tested. For each permissible maximum pressure, Table II of the standard specifies pressures at which the standard's tests must be conducted. The intent of this provision is to limit the number of possible maximum inflation pressures and thereby reduce the likelihood of having tires of the same size on the same vehicle with one maximum load value, but with different maximum permissible inflation pressures.

Closely related to FMVSS No. 109 is FMVSS No. 110, Tire selection and rims, 49 CFR 571.110. FMVSS No. 110 requires that each passenger car be equipped with tires that comply with FMVSS No. 109, that tires on the cars be capable of carrying the GVWR of that vehicle, that the rims on the car be appropriate for use with the tires, and that certain information about the car and its tires appear on a placard in the passenger car. FMVSS No. 110 also specifies rim dimension requirements and further specifies that, in the event of a sudden loss of inflation pressure at a speed of 97 km/h (60 mph), rims must retain a deflated tire until the vehicle can be stopped with a controlled braking application. FMVSS No. 110 initially became effective in April 1968.

FMVSS No. 117, Retreaded pneumatic tires, 49 CFR 571.117, establishes performance, labeling, and certification requirements for retreaded pneumatic passenger car tires. Among other things, the standard requires retreaded passenger car tires to comply with the tubeless tire resistance to bead unseating and the tire strength requirements of FMVSS No. 109. FMVSS No. 117 also specifies requirements for casings to be used for retreading, and certification and labeling requirements.

FMVSS No. 119, New pneumatic tires for vehicles other than passenger cars, 49 CFR 571.119, specifies performance and labeling requirements for new pneumatic tires designed for highway use on multipurpose passenger vehicles, trucks, buses, trailers and motorcycles manufactured after 1948, and which requires treadwear indicators in tires, and rim matching information concerning those tires. Under this standard, each tire has to meet requirements that are qualitatively similar to those in FMVSS No. 109 for passenger car tires. The high speed performance test in this standard only applies to motorcycle tires and to non-speed-restricted tires of 14.5-inch nominal rim diameter or less marked load range A, B, C, or D. In addition, FMVSS No. 119 does not contain a resistance-to-bead unseating test.

A tire under FMVSS No. 119 is generally required to meet the performance requirements when mounted on any rim listed as suitable for its size designation in the publications, current at the time of the tire's manufacture, of the tire and rim associations that are listed in the standard. Further, the tire is required to meet the dimensional requirements when mounted on any such rim of the width listed in the load-inflation tables of this standard. In addition to the permanent marking for any non-matching listed rims, each tire manufacturer is required to attach to the tire, for the information of distributors, dealers and users, a label listing the designations of rims appropriate for use with the tire.

FMVSS No. 120, Tire Selection and rims for motor vehicles other than passenger cars, 49 CFR 571.120, requires that vehicles other than passenger cars equipped with pneumatic tires be equipped with rims that are listed by the tire manufacturer as suitable for use with those tires and that rims be labeled with certain information. It also requires that these vehicles shall be equipped with tires and rims that are adequate to support the fully-loaded vehicle under contemplated operating conditions.

The primary effect of Standard No. 120 is to specify the minimum load-carrying characteristics of tires not already subject to the passenger car tire and rim selection requirements of FMVSS No. 110.

Tire selection under FMVSS No. 120 consists of two elements. With one exception, each vehicle must be equipped with tires that comply with FMVSS No. 119 and the load rating of those tires on each axle of the vehicle must together at least equal the gross axle weight rating (GAWR) for that axle. If the certification label lists more than one GAWR-tire combination for the axle, the sum of the tire's maximum load ratings must meet or exceed the GAWR that corresponds to the tire's size designation. If more than one combination is listed, but the size designation of the actual tires on the vehicle is not among those listed, then the sum of the load ratings must simply meet or exceed the lowest GAWR that does appear.

FMVSS No. 120 also contains a requirement related to the use of passenger car tires on vehicles other than passenger cars. The requirement states that when a tire that is subject to FMVSS No. 109 is installed on a multipurpose passenger vehicle, truck, bus, or trailer, the tire's load rating must be reduced by a factor of 1.10 by dividing by 1.10 before determining whether the tires on an axle are adequate for the GAWR. This 10 percent de-rating of P-metric tires provides a greater load reserve when these tires are installed on vehicles other than passenger cars. The reduction in the load rating is intended to provide a safety margin for the generally harsher treatment, such as heavier loading and possible off-road use, that passenger car tires receive when installed on a MPV, truck, bus or trailer, instead of on a passenger car.

FMVSS No. 129, New non-pneumatic tires for passenger cars, 49 CFR 571.129, includes definitions relevant to non-pneumatic tires and specifies performance requirements, testing procedures, and labeling requirements for these tires. To regulate performance, the standard contains performance requirements and tests related to physical dimensions, lateral strength, strength (in vertical loading), tire endurance, and high speed performance. The performance requirements and tests in FMVSS No. 129 were based upon those contained in FMVSS No. 109.

The FMVSS No. 129 labeling requirements are similar to those set

[4] Load percentages stated throughout this document, unless otherwise specified, are based on the sidewall maximum rated load.

forth in section S4.3 of FMVSS No. 109 for size, designation, load, rating, rim size and type designation, manufacturer or brand name, certification, and tire identification number. The standard also includes temporary use and maximum speed labeling requirements and allows methods of permanent marking other than ''molding'' in anticipation of the difficulty of molding required information on non-pneumatic designs. FMVSS No. 129 initially became effective in August 1990.

IV. Current Safety Problem—Outdated Performance Requirements

A. Transition From Bias Ply to Radial Tires

When FMVSS No. 109 was issued in 1967, nearly all (more than 99 percent) of passenger car tires in the U.S. were of bias, or bias belt construction. The test procedures that appear in FMVSS No. 109 were developed in a bias tire environment. Today, bias tires have been almost completely replaced by radial tires on passenger cars. The use of radial tires has grown to the extent that they represent more than 95 percent of passenger tires in both the U.S. and Europe and are used on most new light vehicles sold in the U.S.[5] NHTSA does not require radial tires, but regulates their performance through FMVSS Nos. 109 and 119.

Radial tires are less susceptible than bias ply tires to most types of failures. Also, radial tire design resulted in significant improvements in tire performance compared with bias ply tires, thus making it easier for radial tires to comply with the requirements of FMVSS No. 109 than for bias tires.

A bias passenger car tire carcass is typically made up of two or four plies of cord material that run from bead to bead at an angle of approximately 35 degrees to the centerline of the tire. Alternating plies are applied at alternating angles during tire manufacture so that the cord paths of alternating plies criss-cross. This type of construction provides a very strong, durable carcass for the tire. However, it has drawbacks. Because the ply cords criss-cross and all the cords are anchored to the beads, the carcass is stiff and relatively inflexible. This type of construction prevents different parts of the tire from acting independently of one another when forces are applied to the tire. As a result, a bias construction is susceptible to impact breaks because it does not easily absorb road irregularities.

By comparison, a radial passenger car tire carcass is typically made up of one or two plies of cord material that run from bead to bead at an angle of approximately 90 degrees to the centerline of the tire. As a result, the cords do not criss-cross. Because the cords do not criss-cross and because the opposite ends of each cord are anchored to the beads at points that are directly opposite to each other, the radial tire carcass is very flexible. The radial tire is reinforced and stabilized by a belt that runs circumferentially around the tire under the tread. This construction allows the sidewalls to act independently of the belt and tread area when forces are applied to the tire. This ''independent'' action is what allows the sidewalls to readily absorb road irregularities without overstressing the cords. Impact breaks caused by cord rupture do not occur in radial-ply passenger car tires. This ''independent'' action also allows two important things to happen during cornering: (1) The tread of a radial tire remains fully in contact with the road over the entire tread width, and (2) the ply cords and sidewall are able to absorb the cornering forces without exerting the twisting force on the beads that are exerted by bias constructions.

These characteristics of a radial tire construction are what make the existing high speed test, endurance test, strength test[6], and bead-unseating test appear to be ineffective in differentiating among today's radial tires with respect to these aspects of performance.

B. Safety Problems Associated With Tires

Tire under-inflation, high ambient temperatures, and vehicle load are among the factors being considered in the ongoing evaluation of the radial tire failures that have occurred in recent years. Data concerning tire failure, blowouts, and rollovers are discussed below.

1. Population of Tire Related Crashes

Several crash files contain information on ''general'' tire related problems that precipitate crashes. These files are the National Automotive Sampling System—Crashworthiness Data System (NASS–CDS)[7] and the Fatality Analysis Reporting System (FARS).[8]

[5] Statistics relating to the increase in use of radial tires since 1968, as reported in the Rubber Manufacturers Association's *(RMA's) Factbook 2000—U.S. Tire Shipment Activity Report for Statistical Year 1999 (RMA 2000 Yearbook),* are as follows:

- OE Passenger Tires Shipments: (included are all P-metric tires even if destined for light truck usage) In 1970 radial tires comprised 0.5 percent of the market and bias/bias ply tires comprised 99.5 percent. In 1999 radial tires comprised 93.7 percent of the market and bias/bias ply tires comprised 6.3 percent.
- Replacement Market Passenger Tire Shipments: (Replacement shipments include all domestically produced and imported tires sent to the U.S. replacement market. Figures include all sizes and types of tires designed for standard highway passenger car service, including P-Metric tires destined for light trucks.) In 1970 radials comprised 2.1 percent of market and in 1999 radials comprised 99.8 percent of market.
- Production of Passenger Tires: (Passenger tire production covers all tires produced in the United States whether for domestic consumption or for export. Figures represent the production for all sizes and types of tires designed for standard highway passenger car service and include P-Metric tires destined for use on light trucks.) In 1970 radial tires comprised 0.0 percent of tires produced. In 1999 radial tires comprised 99.1 percent of tires produced.
- OE Light Truck Tires Shipments: (Light truck tire original equipment shipments covers all tires sent to manufacturers or original equipment vehicles in the U.S. and includes all sizes/types of tires designed by the participants for fitment to light truck.) In 1980 radial tires comprised 14.8 percent of shipments and in 1999 radial tires comprised 98.3 percent of shipments.
- Replacement Light Truck Tires Shipments: (Light truck tire replacement shipments designates all tire shipments sent for replacement purposes to the domestic tire market in the U.S. and includes all sizes/types of tires designed by the participants for fitment to light truck.) In 1980 radials comprised 9.9 percent of shipments and in 1999 radials comprised 94.5 percent of shipments.
- Production of Light Truck Tires: (Tires produced in US whether for domestic consumption or for export outside the United States—does not include P-metric tires). In 1980 radials comprised 7.1 percent of production and in 1999 radials comprised 98.7 percent of production.

[6] The FMVSS 109 plunger energy or strength test was designed to evaluate the strength of the reinforcing materials in bias ply tires, typically rayon, nylon or polyester, and it continues to serve a purpose for these tires. However, a radial tire is not susceptible to the kind of failure for which this test was designed to prevent. The flexible sidewalls of radial tires easily absorb the shock of road irregularities.

Because of the belt package, radial tires far exceed the strength requirements of the test and many times the plunger bottoms out on the rim instead of breaking the reinforcing materials in the radial tire. During the years 1996 through 1998 RMA members reported conducting nearly 19,000 plunger energy (strength) tests on radial tires. There were no reported failures.

[7] For the NASS–CDS system, trained investigators collect data on a sample of tow-away crashes around the country. These data can be ''weighted up'' to national estimates. A NASS–CDS General Vehicle Form contains the following information: A critical pre-crash event, such as vehicle loss of control due to a blowout or flat tire. This category includes only part of the tire-related problems which cause crashes. This coding would only be used when the tire went flat or there was a blowout that caused a loss of control of the vehicle, resulting in a crash.

[8] In FARS, tire problems are noted after the crash, if they are noted at all. The FARS file does not indicate whether the tire problem caused the crash, influenced the severity of the crash, or just occurred during the crash. For example, some crashes may have been caused by a tire blowout, while in others the vehicle may have slid sideways and struck a curb, causing a flat tire which may or may not have influenced whether the vehicle experienced rollover. Thus, while an indication of a tire problem in the FARS file give some indication as to the

NASS–CDS data for 1995 through 1998 indicate that there are an estimated 23,464 tow-away crashes per year caused by blowouts or flat tires.

ESTIMATED ANNUAL AVERAGE NUMBER (1995–98 NASS) AND RATES OF BLOWOUTS OR FLAT TIRES CAUSING TOW-AWAY CRASHES

	Tire related cases	Percent tire related
Passenger Cars Total	10,169	0.31
Rollover	1,837 (18%)	1.87
Non-rollover	8,332 (82%)	0.26
Light Trucks Total	13,294	0.99
Rollover	9,577 (72%)	6.88
Non-rollover	3,717 (28%)	0.31
Light Vehicles Total	23,463	0.51
Rollover	11,414 (49%)	4.81
Non-rollover	12,049 (51%)	0.28

Therefore, about one half of one percent of all crashes are caused by these tire problems. The rate of blowout-caused crashes for light trucks (0.99 percent) is more than three times the rate of those crashes for passenger cars (0.31 percent). Blowouts cause a much higher proportion of rollover crashes (4.81) than non-rollover crashes (0.28); and again more than three times the rate in light trucks (6.88 percent) than in passenger cars (1.87 percent).

FARS data for 1995 through 1998 show that 1.10 percent of all light vehicles in fatal crashes were coded with tire problems. Light trucks had slightly higher rates of tire problems (1.20 percent) than passenger cars (1.04 percent). The annual average number of vehicles with tire problems in FARS was 535 (313 passenger cars and 222 light trucks).

2. Geographical and Seasonal Effects

The agency further examined the FARS data to determine whether heat is a factor in tire problems. We examined two surrogates for heat: (1) The region of the U.S. in which the crash occurred, and (2) the season in which the crash occurred. The highest rates of tire problems occurred in light trucks in southern states in the summertime, followed by light trucks in northern states in the summertime, and then by passenger cars in southern states in the summertime. The lowest rates occurred in winter and fall.

GEOGRAPHICAL AND SEASONAL ANALYSIS OF TIRE PROBLEMS (PERCENT OF VEHICLES) IN FARS WITH TIRE PROBLEMS

	Passenger cars (percent)	Light trucks (percent)	All light vehicles (percent)
Northern States:			
Winter	1.01	0.80	0.94
Spring	1.12	1.01	1.08
Summer	0.98	1.46	1.15
Fall	1.04	0.93	1.00
Southern States:			
Winter	0.87	0.99	0.92
Spring	1.09	1.27	1.16
Summer	1.31	1.99	1.59
Fall	0.89	1.07	1.00

Winter = December, January, February; Spring = March, April, May; Summer = June, July, August; Fall = September, October, November. Southern States = AZ, NM, OK, TX, AR, LA, KY, TN, NC, SC, GA, AL, MS, and FL; Northern States = all others.

Based on these data, tires on light trucks appear to be more affected by higher ambient temperatures than tires on passenger cars.

3. Tire Problems by Tire Type and Light Truck Type

The agency also examined tire problems in the NASS–CDS from 1992 to 1999 by types of light trucks and vehicle size to determine whether LT tires used on light trucks exhibited more problems than P-metric tires. LT tires are used on vehicle classes identified for this analysis as Van Large B and Pickup Large B groups of vehicles. These groups of vehicles typically represent the 3/4 ton and 1-ton vans and pick-ups. P-metric tires are used on most of the other light trucks. The data indicate that the average percentage of light trucks in the NASS–CDS having a LT tire problem is 0.84 (10/1,186), while the average percent of light trucks having a P-metric tire problem is 0.47 percent (53/11,226).

potential magnitude of the tire problem in fatal crashes, it can neither be considered the lowest possible number because the tire might not have caused the crash, nor the highest number of cases because not all crashes with tire problems might have been coded by the police.

TIRE PROBLEMS BY LIGHT TRUCK VEHICLE TYPE 1992 TO 1999 NASS–CDS UNWEIGHTED DATA [9]

Light truck type	No. of cases with a tire problem	Total No. of cases	Percent of cases with a tire problem
Van—Compact	11	2,125	0.52
Van—Large A	3	431	0.70
Van—Large B	4	501	0.80
Pickup—Compact	13	3,155	0.41
Pickup—Large A	7	1,849	0.38
Pickup—Large B	6	685	0.88
SUV—Compact	16	3,147	0.51
SUV—Large	3	519	0.58
Total	63	12,412	0.51

The Van—Large A group includes vehicles such as the Ford Econoline 150.
The Van—Large B group includes vehicles such as the Ford Econoline 250/350.
The Pickup—Large A group includes vehicles such as the Ford F 150.
The Pickup—Large B group includes vehicles such as the Ford F 250/350.

These larger Pickups and vans, however, are also vehicles that carry heavier loads and are more likely to be more overloaded than lighter trucks. In addition, these heavier vehicles are often used at construction sites and may be more apt to encounter nail punctures and experience flat tires. Thus, there may be usage issues that increase the percentage of tire problems for these larger trucks, rather than exclusively a qualitative difference between P-metric and LT tires.

4. Crashes Indirectly Caused by Tire Problems

While the agency has not attempted to estimate the extent to which improved tires would reduce the chance of having a flat tire it has looked at crashes indirectly caused by or involved with tire problems.

The agency has identified several types of such crashes. For instance, if a driver stops his vehicle on the side of the road due to a flat tire, curious passing drivers often slow down to view the incident. This can cause congestion, potentially resulting in a rear impact involving two or more of the passing vehicles toward the rear of the congested traffic. Another crash type indirectly caused by tire problems involves tire repair on the shoulder of the road. Sometimes drivers repairing tires or seeking assistance due to tire problems are struck, as pedestrians, by other vehicles. These phenomena are not captured in NHTSA's data files. However, Pennsylvania, Washington, and Ohio have data files that allow for combining and search for codes for this phenomena; for instance, searching simultaneously for ''Flat tire or blowout'' and ''Playing or working on a vehicle'' and ''Pedestrians.'' Our examination of these files for calendar year 1999 for Ohio and Pennsylvania and 1996 for Washington showed the following information:

STATE DATA ON TIRE PROBLEMS AND PEDESTRIANS

	Ohio	Washington	Pennsylvania
Pedestrians Injured	3,685	2,068	5,226
Pedestrians Injured While Playing or Working on Vehicle	50 (1.4%)	27 (1.3%)	56 (1.1%)
Pedestrians Injured While Working on Vehicle with Tire Problem	0	2	0
Total crashes	385,704	140,215	144,169

The combined percentage of total crashes with tire problems in these three states (3,100/670,088 = 0.46) is consistent with the NASS–CDS data percentage of 0.51 percent. The portion of pedestrians coded as being injured while working on a vehicle with tire problems is 2/10,979 = 0.018 percent. Applying this to the estimated number of pedestrians injured annually across the U.S. (85,000 from NASS–GES) results in an estimated 15 pedestrians injured per year. The agency, however, does not have data to estimate how many pedestrian injuries could be reduced by having better tires.

C. Implications of Changes in U.S. Light Vehicle Market

Sales of light trucks have risen steadily for over the past 20 years and now account for almost half of the U.S. light vehicle market—more than twice their market share as recently as 1983. (*Industries in Transition*, 1/01/00; *Journal of Transportation and Statistics*, December 2000.) While 9.0 million passenger cars were sold in 2000, the consumer preference for light truck vehicles continued to grow, with sales reaching approximately 8.4 million units, just short of parity with passenger car sales. (*Automotive News 2001 Market Data Book*). According to analysts and manufacturers, sales of light trucks are expected to surpass sales of cars by approximately 100,000 units this year and the light truck segment is likely to reach ''around 60%'' before stabilizing. (*Auto & Truck Manufacturers Industry Report*, 5/15/00).

In addition to purchasing more SUVs, Americans have shifted toward a significantly higher use of minivans, pickup trucks, and SUVs for personal travel. (*Journal of Transportation and Statistics*, December 2000). The 1995 Nationwide Personal Transportation Survey (NPTS) data set suggests that the average light duty truck (LDT) (pickup trucks, SUVs, and minivans) is used over longer distances and with more

people aboard than passenger cars.[10] Additionally, SUVs are popular for long distance weekend travel.

Approximately 90 percent of these light trucks use passenger car (P-metric) tires. The other 10 percent use load range C, D, or E tires which are LT tires and are typically used on heavier light trucks with a gross vehicle weight rating (GVWR) between 6,000 and 10,000 pounds.[11] Sales growth of heavier light trucks, those that have GVWRs above 6,000 pounds, increased at a much faster rate than their lighter counterparts, with larger SUVs (6,000–10,000 pounds GVWR) showing an average increase of 38 percent annually between 1990 and 1998.

V. Agency Response to Safety Problem

A. Relationship Between TREAD Act and Tire Harmonization (Work in UN/ECE's World Forum for Harmonization of Vehicle Regulations (WP.29))

Prior to this rulemaking, NHTSA embarked on a program of global harmonization for light vehicle tire standards under the auspices of the United Nations/Economic Commission for Europe's (UN/ECE) World Forum for Harmonization of Vehicle Regulations (WP.29).[12] NHTSA, within the WP.29's Working Party on Brakes and Running Gear (GRRF),[13] has been working cooperatively with other countries to develop a global tire standard that could better assess the safety performance of modern tires.

In July 1999, NHTSA participated in a GRRF meeting in London, England which initiated deliberations to develop a global technical regulation for tires with other countries. An industry developed standard, Global Tire Standard 2000 for New Pneumatic Car Tires (GTS–2000),[14] was used as a basis for initial discussions on harmonization at that meeting. GTS–2000 would substitute a single high-speed test for the four performance tests in FMVSS No. 109 for most radial tires.[15] More specifically, GTS–2000 would replace the current FMVSS No. 109 high speed test with the high-speed test required by ECE–R30 (the European tire regulation for tires used on light passenger vehicles), including temporary spares. It would also limit the application of the other three tests currently required by FMVSS No. 109, namely the strength test, the bead unseating test, and the endurance test, to bias tires and low speed rated radial tires because industry believes that these three tests have relevance to bias and bias-belted tires, but little, if any, relevance to radial tires, with the single exception of the endurance test for low speed (160 km/h/99 mph, or less) radial tires.

Since the July 1999 meeting, the GRRF has been considering a draft global technical regulation (GTR). Prior to the enactment of the TREAD Act, tentative consensus within an ad hoc tire harmonization working group of the GRRF concerning the draft GTR had been reached on the following issues: (1) To adopt the ECE R30 high speed test methodology[16] in place of the FMVSS 109 high speed test, (2) to keep the current FMVSS 109 resistance-to-bead unseating test until NHTSA develops an alternative that is more appropriate for radial tires, and (3) to develop an optional requirement for testing wet grip. Other issues also under discussion in the ad hoc group prior to the TREAD Act included: (a) the U.S.'s suggestion to lower the inflation pressures in and increase the duration of the high speed test (current ECE R30 test), (b) the U.S.'s suggestion to agree on the need for tire labeling requirements that are unique to the U.S., such as maximum inflation pressure, and UTQG consumer information, (c) the U.S.'s suggestion to identify requirements that should be included as optional requirements, (d) assigning to the UN the responsibility for tire plant code registration for a global standard, and (e) the U.S.'s suggestion to increase the ambient temperature for the high speed test.

In a February 2001 submission to the docket (Docket No. NHTSA–2000–8011), the Chairman of the GRRF Tire Harmonization Working Group recommended on behalf of the GRRF that NHTSA adopt a draft text that reflects the current state of deliberations for developing a harmonized tire standard.

B. Submissions to NHTSA Tire Upgrade Docket (Docket No. NHTSA–2000–8011)

In September 2000, NHTSA opened a docket, NHTSA–2000–8011, entitled ''Tire Testing—Federal Motor Vehicle Safety Standard (FMVSS 109).'' The purpose of this docket was to collect tire test data and receive feedback on its high speed and endurance performance testing matrices.

As of the issuance of this document, comments and recommendations from 7 entities have been received in the docket. Substantive comments and recommendations in response to NHTSA's testing matrices are discussed below. Additionally, Toyota Motor Company (Toyota) submitted a copy of its Air Loss Test Procedure.

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[10] Passenger cars average 12,258 miles per year during the first 6 years after purchase, while light trucks average 12,683 miles per year during the same time period. NPTS data also indicates that minivans make the most person-trips per day, followed by SUVs, passenger cars, and finally pickups. SUVs are estimated to make, on average, 4.6% more person-trips per day than passenger cars.

[11] The net impact on original equipment passenger car tire shipments in 1999 reflects an increase of 3.9 million units for a record total of 61 million units, or a 6.8 percent growth over 1998's figure of 57.1 million units. Continued growth in the sales and production of light truck vehicles also drove the number of original equipment light truck (LT) tires to a record high of approximately 8.4 million units or a 25.2 percent increase over 1998's figures. (*RMA 2000 Yearbook*)

[12] Formerly, ''Working Party on the Construction of Vehicles (WP.29).'' The Forum's website is http://www.unece.org/trans/main/welcwp29.htm

[13] The GRRF is a Working Party within WP.29 which is responsible for developing draft global technical regulations on brakes, tires, wheels, and other chassis components of motor vehicles.

[14] On January 25, 1999, the Rubber Manufacturers Association (RMA), along with five other petitioners, submitted a petition requesting the agency to begin a rulemaking proceeding to amend FMVSS No. 109 by adopting a new standard. According to the petitioners, GTS–2000 is a suggestion for a harmonized standard that the tire industry believes incorporates the best safety practices, including those from the U.S., Europe, Japan, China, and Australia. On June 8, 1999, NHTSA granted this petition.

[15] As described by RMA, GTS–2000 lists the following test criteria: (1) Physical dimensions for overall width and outer diameter; (2) strength test (plunger energy) for bias ply and bias-belted tires; (3) bead unseating resistance tests for bias-ply and bias-belted tires; (4) low speed (not less than 50 mph) endurance tests for bias-ply and bias belted tires plus all radial tires with a speed symbol of Q or below; and (5) high speed endurance tests for all tires (bias-ply, bias-belted, and radial). In addition, it contains labeling requirements covering tire pressure, load rating and tire construction.

[16] The ECE Regulation 30 includes a single performance requirement, the high speed test, which is conducted at a speed close to and up to the rated speed of the tire. The methodology used in ECE R30 and suggested by the tire industry in GTS–2000 for tire harmonization determines the test speed based on the tire's speed symbol rated speed. The following chart illustrates the rated speed in km/h for each speed symbol.

Speed symbol and Rated Speed—km/h:

F—80
G—90
J—100
K—110
L—120
M—130
N—140
P—150
Q—160
R—170
S—180
T—190
U—200
H—210
V—240
W—270
Y—300
ZR—>300

These speeds range from a minimum of 140 km/h (88 mph) to 300 km/h (188 mph) for W, Y categories. The total test time is 50 minutes. The inflation pressures for the ECE R30 high speed test are typically much higher than those recommended by vehicle manufacturers for vehicle operation.

1. RMA December 2000 Testing Protocol

In December 2000, RMA presented to NHTSA a test protocol (RMA 2000) that was designed and administered with the participation of the following tire companies: Bridgestone/Firestone, Continental/General, Cooper Tire and Rubber, Michelin, Goodyear, Pirelli, Yokohama. The test protocol is divided into the following principal parts: Passenger Car Tire High Speed, Passenger Car Tire Endurance, Light Truck High Speed, and Light Truck Tire Endurance. One hundred thirty-two tests on approximately 900 tires were included in this protocol. A brief summary of RMA 2000's conclusions and recommendations are discussed below.

a. Passenger Tires—High Speed Test

RMA 2000 concluded that

[t]he SAE test [J1561] conditions were found to be the most consistent discriminators required for completion of the rated speed within the customary one-hour duration.[17] Test inflation pressure had the greatest effect in determining completion of the rated speed. Maximum load was also shown to have an effect on performance, although not as great as inflation.

RMA 2000 recommended that the agency revise the High Speed Performance test in FMVSS No. 109 to reflect the conditions found in SAE J1561:

(1) Test speed and duration: (Initial Test Speed (ITS) = Tire's rated speed minus 40 km/h), 6 speed steps, each 10 min in duration: (1) 0 to ITS, (2) ITS, (3) ITS + 10 km/h, (4) ITS + 20 km/h, (5) ITS + 30 km/h, (6) ITS + 40 km/h.[18]

(2) Inflation pressures (kPa): 240 for speed rating through N, 260 for P, Q, R, & S, 280 for T, U, & H, 300 for V & Z, 320 for W & Y.

(3) Load and ambient temperature: 80 percent of maximum rated load, 38°C ± 3°C.

b. Passenger Tires—Endurance Test

RMA concluded that ''the results seem to indicate that speed, followed closely by inflation pressure, are key determinants affecting the number of hours to failure.''

RMA recommended revising the Endurance test in FMVSS No. 109 to include the following parameters:

(1) Inflation pressure: 180 kPa.

(2) Test speed: constant at 120 Km/h.

(3) Duration and load: 8 hours at 85 percent of maximum rated load, 8 hours at 90 percent of maximum rated load, 8 hours at 100 percent of maximum rated load.

(4) Ambient temperature: 38°C ± 3°C.

c. Light Truck Tires—High Speed Test

RMA concluded that

[f]or load range C tires an analysis of the results shows the maximum load conditions of 90 percent to be more realistic than the 80 percent. Also, it appears that the inflation pressure of 350 kPa is the most suitable for this test. For load range E tires the data showed that conditions of 90 percent maximum load and 550 kPa pressure, while not particularly discerning for the Q speed rated tires did become much more rigorous for the R speed rated tires (no S rated tires were included in the load range E tests).

RMA recommended that NHTSA incorporate a test similar to SAE J1633 or ISO 10454 into its light truck tire standard, using maximum inflation pressure, limited to tires marked ''LT'' or ''C'' and load range A–E or Load Index 124 or below. The parameters are as follows:

(1) Speed and duration (ITS = Tire's rated speed − 20 km/h): 3-speed steps: 0 to ITS for 10 min, ITS for 10 min, ITS + 10 km/h for 10 min, ITS + 20 km/h for 30 min.

(2) Inflation pressure corresponding to maximum load.

(3) Load: 90 percent of maximum.

(4) Ambient temperature: 38°C +/− 3°C.

d. Light Truck Tires—Endurance Test

RMA 2000 concluded that

[a]s with passenger car endurance tests, speed is deemed to be the greatest determinate of tire failure, followed closely by inflation pressure * * * In the FMVSS 119 test it wasn't until load limits became unrealistically high that tires begin to fail. However, in the four test protocols using combinations of the test conditions cited above, average hours to failure were more realistically demonstrated when testing at 120 km/h using the inflation pressures corresponding to the maximum load rating marked on the tire (350 kPa for load range C, and 550 kPa for load range E).

RMA 2000 recommended revising the light truck tire standard to include the following test parameters:

(1) Inflation pressure: at pressure corresponding to the maximum load rating marked on the tire.

(2) Speed: constant at 120 Km/h.

(3) Duration and load: Load range A, B, C, & D for 8 hours at 75 percent of maximum rated load, 8 hours at 97 percent of maximum rated load, and 8 hours at 114 percent of maximum rated load. Load Range E for 8 hours at 70 percent of maximum rated load, 8 hours at 88 percent of maximum rated load, and 8 hours at 106 percent of maximum rated load.

(4) Ambient Temperature: 38°C +/− 3°C.

2. Other Substantive Submissions

In February 2001, Michelin presented its suggested Endurance Certification Test to NHTSA. This is an endurance test for long term durability, which evaluates the following factors: belt edge stress, long-term cyclic fatigue and compound evolution. The following table illustrates the parameters of this test:

	Metric passenger car		Light truck			
			Load range			
	Standard load	Extra load	B	C	D	E
Test Temperature (°F)	100+/−5		100+/−5			

[17] The SAE J1561 Test parameters, which are also consistent with International Standards Organization (ISO) 10191 testing conditions, are as follows:

(1) Test speed and duration: (ITS = Tire's rated speed minus 40 km/h), 6 speed steps, each 10 min in duration: (1) 0 to ITS, (2) ITS, (3) ITS + 10 km/h, (4) ITS + 20 km/h, (5) ITS + 30 km/h, (6) ITS + 40 km/h.

(2) Inflation pressure: 240, 260, 280, 300, or 320 kPa based on speed rating.

(3) Load: 80 percent.

(4) Ambient Temperature: 38° C.

[18] The following chart illustrates the rated speed in km/h for each speed symbol. ''ZR'' is an open ended speed category for tires with a maximum speed capability above 240 km/h, but is also used specifically for tires having a maximum speed capability above 300 km/h.

Speed symbol and rated speed—km/h:

F—80
G—90
J—100
K—110
L—120
M—130
N—140
P—150
Q—160
R—170
S—180
T—190
U—200
H—210
V—240
W—270
Y—300
ZR—> 300

	Metric passenger car		Light truck			
			Load range			
	Standard load	Extra load	B	C	D	E
Speed (mph)	60		60			
Filling Gas	$50\%O_2/50\%N_2$		$50\%O_2/50\%N_2$			
Load (lbs)—% Max Single	111		142	112	98	92
Initial Pressure (psi)—Regulated	40	46	57	57	65	80
Regulated						

In May 2001, Michelin supplemented its requested endurance test with a discussion of the influence of its long term durability endurance test variables on tire endurance and crack propagation.

Michelin has also recommended replacing the current high speed test with ISO 10191. ISO 10191 contains test variables substantially similar to those in SAE J1561 and those recommended by RMA 2000 for the high speed test for passenger tires.

In a November 2000 submission to the docket, GM provided the following general comments on the first phase of NHTSA's tire testing matrix: (1) Increased high speed capability will result directly in compromises with mass, fuel economy (rolling resistance) and ride comfort, (2) correlation of laboratory tests with performance of tires in the field environment is necessary and tires with known acceptable field performance should serve as reference to acceptable performance on such laboratory tests, (3) tests that take the tire to failure can always be developed but may not indicate poor performance and tire failures on these tests should not be interpreted as an indication of unacceptable performance, (4) the definition of failure for these tests should be clarified, and (5) it is recommended that temperature monitoring be included in the testing.

GM also submitted a number of comments on NHTSA's test matrices. These comments, specific to NHTSA's preliminary test parameters, are not discussed in detail here, but are available for review in the docket.

C. NHTSA Tire Testing at Standards Testing Lab (STL)

Shortly after the enactment of the TREAD Act, the agency initiated tire testing at Standards Testing Labs (STL) in November 2000 to evaluate the high-speed performance, endurance performance, and low inflation pressure performance of a limited number of current production tires. The agency developed a test matrix which focused on the five main parameters currently used in tire testing under FMVSS Nos. 109 and 119: load, inflation pressure, speed, duration, and ambient temperature. Copies of the test matrix and testing results for P-metric tires and for LT tires is available in the docket (see the Tire Test Matrix in NHTSA Docket No. 2000–8011–1).

1. High Speed Testing

The high speed tests included a wide range of values for the test parameters to facilitate evaluation of the performance of a variety of tires used on light vehicles. A baseline high speed test was performed on each of the tire brands using the GTS–2000 high speed test for P-metric tires and FMVSS No. 109 for the LT tires.[19]

The Phase I test matrix included loads of 80, 90, and 100 percent[20]; inflation pressures of 180 kPa, 210 kPa and 240 kPa; durations at each speed step of 10 minutes, 20 minutes and 30 minutes; and four speeds steps beginning at an initial test speed (ITS) 30 km/h below the rated speed of the tire, and increasing in 10-km/h increments up to the rated speed (ITS + 30km/h). Some tests were conducted to failure, beyond the rated speed of the tires, to assess the performance margin for the tires. In this phase of testing, nine P-metric tire brands and three LT tire brands were tested using 28 tires per brand, one tire for each of the 28 high speed tests performed. The total number of tires tested to the high speed test in this phase was 336 tires.

The test results from the Phase I tests show that all but one of the tires completed the baseline high speed tests up to their rated speed without failure. The results of the matrix tests indicate that all the parameters have an impact on tire failure in the high-speed test; however, a decrease in inflation pressure appeared to have the greatest impact on time to failure in the high-speed test. For example, at an inflation pressure of 180 kPa using 20-minute speed intervals, the results of the P-metric tire tests indicate 3 of 9 tire failures, while at 240 kPa, under similar test conditions, all 9 tires completed the high speed test. The data also indicate that RMA 2000's suggested 10-minute test duration at each speed appears to be too short to properly evaluate the high speed performance of a tire. In the agency's testing, few failures occurred at the 10-minute steps, and all tires tested were able to complete many of the tests conducted using 10-minute speed intervals. In general, the most stringent mix of parameters was 100 percent load, low inflation pressure of 180 kPa, combined with the longest test duration for each speed step, 30 minutes. This test condition resulted in only one of nine P-metric tires completing the high speed test. A similar test condition for the test on three LT tires resulted in one tire completing the high speed test. The agency notes that these severe test conditions enabled us to evaluate the high speed performance limits of some current production tires.

The agency conducted additional high speed testing using a Phase II matrix. This second phase of the high-speed testing included 12 tire brands (8 P-metric and 4 LT tires) with a sample of five tires per test per brand. The test parameters included loads at 80 and 85 percent; inflation pressures at 210 kPa and 220 kPa; duration of 20 minutes; and speeds similar to the ITS plus 10, 20, 30 km/h method used in Phase I, and also three fixed speeds of 160, 170, and 180 km/h for 30 minutes at each speed step. For the LT tires tested to the high-speed test, the parameters were similar as those used for P-metric tires, except that the inflation pressures were changed to reflect the higher maximum inflation pressures on those tires.

The test results from the second phase testing demonstrated that there is variability in the manufacturing quality of tires since a mix of passes and failures occurred within the 5 samples tested for each brand.

2. Endurance Testing

The endurance testing was also comprised of two phases of matrix testing. The baseline endurance test used for the P-metric tires was the one

[19] LT tires were not included in GTS–2000 nor are they required to comply with the high speed test in FMVSS No. 119.

[20] As stated earlier in this document, load percentages, unless otherwise specified, are based on the sidewall maximum rated load.

in GTS–2000 for radial tires rated ''Q'' or below. For LT tires, the FMVSS No. 119 endurance test was used as the baseline. The agency also conducted endurance testing with load combinations of 100/115/125 percent load, test speeds of 120 and 140 km/h, inflation pressures of 160 kPa and 200 kPa for P-metric tires, and for a duration of 50 hours. Similar parameters were used for LT tires, except with different inflation pressures since these tires have higher maximum inflation pressures than P-metric tires.

All the tires completed the baseline endurance tests without any failures. The results of the matrix tests for endurance indicate that the higher test speed, 140 km/h, had a large impact on the time to failure, even at the higher inflation pressure of 200 kPa. The high load percentages also contributed significantly to the short time to failure, especially for some of the LT tires.

The second phase of the endurance testing included test parameters closer to those that the agency is proposing in this NPRM. The parameters were as follows: lower loads of 100/110/115 percent combined with a test speed of 120 km/h at 180 kPa inflation pressure for a duration of 50 hours; higher loads of 100/115/125 percent combined with a lower test speed of 100 km/h at 180 kPa inflation pressure for 50 hours.

The results of the second phase of endurance testing indicate that fewer failures occurred in Phase II testing with the combination of high load (100/115/125 percent) and lower speed (100 km/h) than under the parameters of Phase 1 testing. In Phase 2, 7 of the 8 P-metric tires completed the test without any failures in any of the 5 samples of each brand tested. The 4 LT tires tested also performed well with one failure in the five samples in 3 of the 4 brands tested. One brand completed the test with all 5 tires completing the 50-hour test. The test conditions that produced the most failures in the P-metric tires were the higher load combinations at 120 km/h. These conditions, surprisingly, did not produce many failures in the LT tires tested.

3. Low Inflation Pressure Testing

The agency also conducted a test at low inflation pressures (140 kPa (20 psi) inflation pressure for P-metric tires), at a speed of 120 km/h (75 mph) for a duration of 90 minutes, on the same tires (2 samples of each of the 12 brands) that successfully completed the endurance test. The purpose of this test was to evaluate tire performance at a low inflation pressure threshold level, 20 psi, being proposed for tire pressure monitoring systems for light vehicles.[21] Similar tests were performed using the LT tires, but at low inflation pressures values commensurate with 58 percent of their maximum inflation pressure. These low threshold values were selected based on the lowest inflation pressure at which a tire load is provided by the tire industry standardizing bodies. The test results indicate that all 24 tires tested completed the 90 minute test low inflation pressure test without failure.

4. Conclusions From Testing Results

In summary, the results of the high speed and endurance tests indicated that the agency can develop and propose test requirements that are realistic in terms of the test parameters, yet more stringent than the current FMVSS No. 109, FMVSS No. 119 requirements, European Regulation ECE R 30, GTS 2000, and RMA 2000. The proposed test requirements differentiate tires with better high speed and endurance performance from those with lesser performance. The low pressure validation tests indicate that tires that were able to successfully complete the endurance testing can also complete an additional 90-minute test at a low inflation pressure, 140 kPa for P-metric tires, thus providing an adequate safeguard for consumers to take corrective action when the low pressure warning lamp proposed under the tire pressure monitoring system rulemaking is activated at a ''significantly'' under-inflated level.

VI. Agency Proposal

A. Summary of Proposal

The agency is proposing a single standard for light vehicle tires, FMVSS No. 139, New Pneumatic Tires for Light Vehicles, which would require light vehicle tires to meet a high-speed test, an endurance test, a low inflation pressure performance test, a resistance-to-bead unseating test, a road hazard impact/strength test, and an accelerated aging test. This standard would require tires for passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, manufactured on or after November 1, 2003, to comply with the test requirements. Therefore, this proposal is applicable to LT tires up to load range E.[22] The following chart compares the types of test requirements that currently exist, those that have been suggested by third parties, and those are being proposed by this agency:

TABLE 1.—COMPARISON OF TYPES OF TIRE PERFORMANCE REQUIREMENTS IN VARIOUS EXISTING AND DRAFT TIRE STANDARDS

Tests	FMVSS 109	FMVSS 119	GRRF Draft GTR	GTS–2000	RMA 2000	ECE R30	Proposed FMVSS 139
High Speed	X		X*	X†	X	X	X
Endurance	X	X	X*	X**	X		X
Low pressure performance							X
Strength; or Road Hazard Impact	X	X					X
Bead Unseating	X		X***				X
Accelerated Aging							X

* Endurance test for radial tires rated ''Q'' and below. Identical testing parameters as FMVSS No. 109 Endurance Test.
** Endurance test for radial tires rated ''Q'' and below.
*** Identical testing parameters as FMVSS No. 109 Bead Unseating Test.
† Testing parameters have not been agreed upon by the ad hoc working group.

[21] In its recent TPMS NPRM, Docket No. NHTSA–2000–8572, the agency proposed two options for activation of the warning lamp: 1) 20 percent below the recommended cold inflation pressure or 140 kPa (20 psi) whichever is higher; and 2) 25 percent below the recommended cold inflation pressure or 140 kPa (20psi), whichever is higher.

[22] This load range is typically used on large SUVs, vans, and trucks.

Both the proposed High Speed Test and the Endurance test contain testing parameters (ambient temperature, load, inflation pressure, speed, and duration) that make the tests more stringent than those tests currently found in FMVSS Nos. 109 and 119, as well as the tests suggested by industry. Most significantly, the proposed High Speed test specifies test speeds (140, 150 and 160 km/h (88, 94, and 100 mph)) substantially higher than those specified in FMVSS No. 109 (120, 128, 136 km/h (75, 80, 85 mph)). Likewise, the proposed Endurance Test specifies a test speed 50% faster (120 km/h (75 mph)) than that currently specified in FMVSS 109 (80km/h (50 mph)), as well as a duration 6 hours longer (40 hours total) than that currently specified in FMVSS 109 (34 hours total). At the specified test speed (120 km/h), the Proposed Endurance Test mileage (3,000) is almost double the mileage that a tire endures under the current Endurance Test (1,700 miles at 80 km/h).

The proposal also contains two alternative Low Inflation Pressure tests which seek to ensure a minimum level of performance safety in tires when they are underinflated to 140 kPa. The agency requests comments on which test is more appropriate to be included in the new standard.

In place of the current strength test in FMVSS No. 109, the agency proposes that the new standard contain a Road Hazard Impact test which is modeled after a SAE recommended practice. This test, which simulates a tire impacting a road hazard, such a pothole or curb, provides both a more stringent and more real world test than the FMVSS No. 109 ''plunger test.''

The proposal would also replace the current FMVSS No. 109 Bead Unseating Test with a new Bead Unseating test which is based on a test currently used by Toyota. Industry has previously recommended to the agency that the current bead unseating test be deleted from the standard because radial tires are easily able to satisfy the test. Results from the agency's 1997–1998 rollover testing, however, provide a strong rationale for upgrading, rather than deleting, the bead unseating requirement in FMVSS No. 109. The Toyota test uses test forces more stringent than those in current FMVSS No. 109 which were developed for bias ply tires and are typically not stringent enough for radial tires.

To address the deterioration of tire performance caused by aging, the proposal contains three alternatives for an Aging Effects Tests. These tests, the Adhesion (Peel) Test, Michelin's Long-term Durability Endurance test, and Oven Aging all seek to expose tires to the type of failures experienced by consumers at 40,000 kilometers or beyond. The agency requests comments on which test is most appropriate to be included in the new standard.

The proposal would also revise FMVSS Nos. 110 and 120 to reflect the applicability of the new standard and would revise certain of the tests in FMVSS Nos. 117 and 129 to ensure that all light vehicle tires are required to comply with the identical minimum performance requirements. Lastly, the proposal discusses NHTSA's ongoing and future Road Hazard Impact Test and Bead Unseating Test research plans, the lead time for implementation of the new tire standard, the use of shearography analysis, and the revision of the requirements for the test speeds in UTQG Temperature Grading Requirement to mirror those in the proposed High Speed Test.

NHTSA believes that the proposed upgraded standard would specify more stringent and real-world, yet practicable, tests that would provide a higher level of operation safety and performance for tires on today's light vehicles.

B. Applicability

FMVSS No. 139 would apply to new pneumatic tires for use on motor vehicles with a GVWR of 10,000 pounds or less, manufactured after 1975, except for motorcycles. Given the increasing consumer preference for light truck use for passenger purposes, the agency is proposing that the safety requirements for passenger car tires also be made applicable to LT tires (load range C, D, and E) used on light trucks.

Currently, the performance requirements for LT tires in FMVSS No. 119 are less stringent than the requirements for P-metric tires in FMVSS No. 109. LT tires are required to comply with a strength test and a low speed endurance test, but are not required to be tested to a high speed performance test or a resistance-to-bead unseating test as required under FMVSS No. 109. However, LT tires are increasingly used in the same type of on-road service as P-metric tires on light vehicles. Further, recent sales data for heavier light trucks indicate that the use of these tires on passenger vehicles will continue to increase in the near future.

NHTSA is not proposing to require that FMVSS No. 139 apply to motorcycle tires because motorcycle tires are of a design and construction unlike the types of vehicle tires that would be subject to the proposed standard (*e.g.,* tread, load carrying capacity) and motorcycle tires still often use inner tubes. Further, the agency is not currently aware of any safety problems associated with motorcycle tires.

NHTSA is also not proposing to require that the new standard be applicable to tires beyond load range E, which are typically used on medium (10,001–26,000 lbs. GVWR) and heavy (greater than 26,001 lbs. GVWR) vehicles, and temporary spare tires,[23] for two reasons. This rulemaking is required by the TREAD Act, and must be completed by June 2002. To meet this statutory deadline, the agency has limited its tire upgrade research and analysis to conventional tires for light vehicles. The issues associated with upgrading performance standards for tires on medium and heavy vehicles and temporary spare tires are different from the issues associated with upgrading performance standards for conventional tires on light vehicles. For example, medium and heavy vehicles are equipped with tires that are much larger and have higher pressure levels than the tires used on light vehicles. Temporary spare tires are smaller, have higher inflation pressures, and are intended for shorter distance and lower speed driving than conventional light vehicle tires. Given the TREAD Act deadline on this rulemaking, the agency does not have the time to study and analyze sufficiently the different issues presented by medium and heavy vehicle tires and temporary spare tires. NHTSA will examine these types of tires after we have completed this rulemaking.

C. Proposed Test Procedures

1. High Speed Test

NHTSA proposes that the High Speed test be conducted using the following five parameters:

(1) *Ambient Temperature:* 40°C (104°F).

(2) *Load:* 85 percent.

(3) *Inflation Pressure:* 220 kPa (32 psi) for standard P-metric tires; 320 kPa (46 psi), 410 kPa (60 psi), 500 kPa (73 psi), for LT tires load range C, D and E, respectively.

(4) *Speed:* 140, 150, 160 km/h (88, 94, 100 mph).

(5) *Duration:* 30 minutes for each speed.

A tire complies with the proposed requirements if, at the end of the high speed test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the

[23] For the purposes of this notice, a temporary spare tire is a compact tire intended for temporary use. It is typically labeled for limited durations and speeds.

tire pressure is not less than the initial test pressure.

The agency proposes a high speed test with three pre-selected speeds. This testing methodology is different from that in two alternatives which were considered by the agency: (1) GTS–2000, and (2) a high speed test using identical parameters to those proposed above, except that the test speeds are based on the rated speed of the tire (initial test speed (ITS), ITS + 10, ITS + 20, ITS + 30) for durations of 20 minutes at each speed step with a 10-minute warm-up from 0 km/h-ITS.[24]

The methodology suggested by the tire industry in GTS–2000 for tire harmonization and the second alternative determines the test speed based on the tire's speed symbol rated speed. The following chart illustrates the rated speed in km/h for each speed symbol.

Speed symbol	Rated speed—km/h
F	80
G	90
J	100
K	110
L	120
M	130
N	140
P	150
Q	160
R	170
S	180
T	190
U	200
H	210
V	240
W	270
Y	300
ZR	> 300

The initial test speed (ITS) in GTS–2000 is the rated speed of the tire minus 40 km/h. The test is conducted at the following speed steps: ITS, ITS+10 km/h, ITS+20 km/h, ITS+30 km/h and ITS+40 km/h. The final speed step, ITS+40 km/h, is identical to the rated speed of the tire. Similarly, the ITS in the second alternative is the rated speed of the tire minus 30 km/h. The test is conducted at the following speed steps: ITS, ITS+10 km/h, ITS+20 km/h, and ITS+30 km/h, with the final speed step being identical to the rate speed of the tire. Therefore, under both alternatives, each tire with a different speed rating is tested at different speeds during the high speed test.

Historically, the agency establishes uniform minimum performance requirements for its safety standards for the item of motor vehicle equipment. Testing for compliance using the tire's rated speed differs from that philosophy since it does not establish a single absolute minimum requirement for all tires, but establishes a relative requirement based on each tire's maximum design capabilities.

The agency's proposal, based on pre-selected test speeds and independent of the rated speed of the tire, establishes the same minimum requirement for all tires, regardless of the designed level of performance. We believe that such a methodology is equitable for all tire manufacturers and does not impose higher safety standard requirements on a tire with a higher level of performance.

The following table illustrates an at-a-glance comparison of the other standards and suggestions discussed in this document.[25]

TABLE 2.—HIGH SPEED TEST COMPARISON

Test parameters	FMVSS 109	GTS 2000	RMA 2000	ECE 30	Proposed FMVSS 139
Ambient (°C)	38	25	38	25±5	40
Load (%):					
P-metric	88	80	80	80	85
LT			90		
Inflation Pressure (kPa):					
Standard load P-metric	220				220
Extra load P-metric	260				260
LT load range C/D/E			sidewall max		320/410/500
SpeedRating (Std/Extra):					
L,M,N		240/280	240/280		
P,Q,R,S		260/300	260/300	260/300	
T,U,H		280/320	280/320	280/320	
V		300/340	300/340	300/340	
W,Y		320/360	320/360	320/360	
Test speed* (km/h)	120, 128, 136	0–ITS, ITS, +10, +20, +30.	0–ITS, ITS, +10, +20, +30 +40.	ITS, +10, +20, +30	140, 150, 160
Duration (mins)	90	60	60	60	90

*For GTS–2000, RMA 2000, and ECE 30, initial test speed (ITS) is defined as the tire's rated speed minus 40 km/h.

An explanation of the proposed parameters is provided below.

a. Ambient Temperature

The proposed ambient temperature is 40°C. This temperature is a slight increase over the temperature, 38°C, currently specified in FMVSS No. 109. This temperature reflects the typical daytime temperatures in the South and Southwestern regions of the U.S. during the Summer. As discussed earlier, the highest rates of tire problems occurred in the southern states in the summertime.

b. Load

The load proposed for the high-speed test is 85 percent. The load percent currently specified in FMVSS No. 109 is 88 percent. As discussed in greater detail below, decreasing the load from 88 percent to 85 percent increases the tire reserve needed by a vehicle under normal loading conditions from 12 percent to 15 percent, resulting in a larger margin of safety when a vehicle is loaded to its GVWR or its tires are underinflated.

[24] Analysis of the results of the NHTSA's high speed testing at STL indicate that less than 25 percent of the p-metric tires would have failed the second alternative (3 of 8 p-metric brands had at least one failure in the five samples tested and for LT tires there was a 5% failure rate in the 5 tire brands tested).

[25] FMVSS No. 119 does not currently include a high speed test for LT tires with a rim diameter above 14.5 inches.

Changing the load from 88 percent to 85 percent in the high speed test would affect the current requirement in S4.2.2 of FMVSS No. 110 which states that the vehicle normal load on the tire is to be no greater than the applicable load used in the high speed performance test. ''Tire reserve load'' refers to a tire's remaining load-carrying capability when the tire is inflated to the vehicle manufacturer's recommended inflation pressure and the vehicle is loaded to its gross vehicle weight rating (GVWR).[26] When a tire is loaded to 88 percent of the maximum load labeled on the tire sidewall, the unused 12 percent is considered the reserve load of the tire under normal loading conditions (curb weight of the vehicle plus three occupants in a vehicle with a designated seating capacity of five or more.) A change from 88 percent to 85 percent load on the tire for the high speed test would, in essence, require a vehicle manufacturer to increase the reserve load under normal loading from 12 percent to 15 percent. This requirement may, in turn, necessitate the use of a larger tire size on some vehicles since the load limit on existing tires may not be sufficiently high to provide a load reserve of 15 percent of the tire's maximum rated load.

In addition, the requirement for a 12 percent tire reserve under normal loading conditions currently applies only to passenger cars. This notice proposes to require light trucks for the first time to have a specified tire reserve under normal loading conditions. Light trucks would have to provide the same 15 percent reserve proposed for passenger cars.

The agency also proposes revised language in FMVSS No. 110 to clarify that the test load that is compared with the vehicle normal load must be determined at the vehicle manufacturer's recommended cold tire inflation pressure, and not at the maximum tire load limit on the sidewall. The agency believes that since the vehicle normal load defines loading during normal operation of the vehicle, it is appropriate to require the load to be determined at the vehicle's recommended cold tire inflation pressure.[27]

Although 85 percent loading for the high speed testing of tires represents a slight decrease from the current 88 percent specification in FMVSS No. 109, test data from the agency's testing and from RMA testing indicate that tire failure is more sensitive to speed and inflation pressure than to loading variations in the 80 to 90 percent range.[28] The agency believes that a speed increase from 75, 80 and 85 mph to speeds up to 160 km/h (100 mph) would contribute to a more stringent test which would more than offset a small decrease in test load requirements. In Phase I of the agency's testing, 5 of 9 P-metric tires failed at 90 percent load and 2 of 9 failed at 80 percent. Phase II of the testing included testing of 8 P-metric tire brands, 5 samples each, at 80 and 85 percent loads, and with all other test parameters remaining constant (inflation pressure-220 kPa, 20-minute steps, speeds ITS to ITS + 30 km/h). In these tests, fewer tire failures occurred at 85 percent load than at 80 percent load.[29] At 85 percent load, 5 of 8 tire brands had no tire failures in their 5 samples and the other three brands had at least one failure in the five samples. One brand experienced failures in all 5 samples tested to the high speed test. Four brands of LT tires were also tested and all samples for each of the brands completed the high speed test at 85 percent load without any failures. This testing appears to confirm that small increases in tire load have less of an impact on time to failure as compared with changes in inflation pressure and test speed.

c. Inflation Pressure

The agency proposes a test inflation pressure of 220 kPa (32 psi) for all unrated and speed rated P-metric tires and 260 kPa for extra load tires. The proposed P-metric tire pressure is the same as that specified in FMVSS No. 109. The agency proposes the following inflation pressures for LT tires based upon their higher maximum inflation pressures: 320 kPa for load range C, 410 kPa for load range D, and 500 kPa for load range E tires. During its testing, the agency incorrectly used 600 kPa as the maximum load rate inflation pressure for LT tires with load range ''E'', and calculated test pressures utilizing 600 kPa. Based on the Tire and Rim Association (T&RA) Yearbook, load range E tires have an inflation pressure of 550 kPa at its maximum load rating. Therefore, the test inflation pressures are revised accordingly.

The proposed inflation pressures are based on surveys showing that tires are typically operated at some level of underinflation.[30] Given the tire pressure survey data, the agency selected the proposed test pressures based on the level of underinflation experienced during normal vehicle operation. The 220 kPa value represents an under-inflation of 20 kPa (3 psi) or 8 percent from the 240 kPa maximum inflation pressure, and 260 kPa represents an under-inflation of 20 kPa (3 psi) or 7 percent from the 280 kPa maximum inflation pressure.

Although 220 kPa is the same test pressure specified in FMVSS No. 109, this test pressure, in conjunction with the new proposed test speeds, represents a more stringent test than that contained in FMVSS No. 109. Agency testing results indicate that 220 kPa is a test inflation pressure that would be appropriate for the high speed test given the parameters of speed, load and test duration.

RMA suggested basing the test inflation pressure on the rated speed of the tire. Tires rated P, Q, R, and S would be tested at 260 kPa; tires rated T, U, and H are tested at 280 kPa; tires rated V are tested at 300 kPa; and tires rated W, Y, and Z are tested at 320 kPa.[31] The agency believes that these inflation pressure values are too high for high speed testing because (1) they do not reflect values that are similar to the cold inflation pressures recommended by vehicle manufacturers, and (2) they do not correspond well with the real-world inflation pressures recently obtained

[26] A reserve load margin is provided by manufacturers to account for overloading of the vehicle, under-inflation of the tires, or both.

[27] Vehicle normal load on the tire means that load on an individual tire that is determined by distributing to each axle its share of the curb weight, accessory weight, and normal occupant weight and dividing by 2.

[28] RMA's test data indicate that the time to failure for P235/75R15 tires decreased by 4 minutes when the load was increased from 80 percent to 90 percent. However, time to failure on the same type (brand, model, and size) tires decreased by 16 minutes when the inflation pressure was reduced by 9 psi.

[29] The agency reviewed the production dates for the tires tested to the above loads at 80 percent and 85 percent loads to determine whether the production dates of the tires may have affected the failure rates. No correlation between production date and failure at the lower load percentages is concluded because all of the tires were produced during 2000 and 2001. The agency concludes that a combination of minor quality differences in the tires, test procedures, and the relatively small (5 percent) load change may account for the fewer tire failures at the higher load factor.

[30] A tire pressure survey conducted by Viergutz, et al., on 8,900 tires in 1978 reported that almost 80 percent of all tires were under-inflated with approximately 50 percent under-inflated by 4 psi (28 kPa) or more below the recommended pressure. The average amount of under-inflation recorded in this survey was approximately 3.2 psi (22kPa) below the recommended amount. More recently, data from the 2001 NASS Tire Pressure Study, conducted on over 11,000 vehicles, indicate that about 60 percent of P-metric tires used on passenger cars were under-inflated with about 40 percent being under-inflated by 3 psi or more below the recommended inflation pressure. For P-metric tires used on light trucks, about 70 percent were under-inflated, with about 50 percent under-inflated by 3 psi or more below the recommended inflation pressure.

[31] In some cases, RMA's proposed test inflation pressures are higher than those labeled on the tire sidewall.

from the vehicles measured during a recent NHTSA sponsored consumer tire pressure survey.[32] Further, the agency has stated in previous rulemakings that standard load tires with higher maximum inflation pressures (300 and 350 kPa) are not capable of carrying additional load at higher inflation pressures beyond 240 kPa. They should be tested at an inflation pressure similar to that of the 240 kPa maximum inflation pressure tires. (53 FR 17950, 5/19/88; 53 FR 936, 1/18/88)

d. Speed

The proposed test speeds, 140, 150 and 160 km/h (88, 94, and 100 mph) represent a substantially increased stringency from the test speeds currently used in FMVSS No. 109 and 119 for which tires are tested at 75, 80, and 85 mph for 30 minutes at each speed. This approach would more closely mirror the upper limit of real world operational speeds beyond which drivers have few opportunities to operate their vehicles and eliminate from production any tires whose production just achieved the lowest rung of Temperature resistance rating in our Uniform Tire Quality Grading System (UTQGS), ''C'' rated tires.

The agency considered proposing a higher threshold test speed of 180 km/h so that speed rated tires with a speed rating lower than ''S'' (180 km/h) would not have been able to comply with the high speed test. In the U.S., light vehicles are typically equipped with tires speed rated no lower than Q (160 km/h). GM suggested that the agency consider basing our test speed on the speed rating of the tire since many of their light trucks are equipped with LT tires rated Q and R, 160 km/h (100 mph) and 170 km/h (106 mph), respectively. NHTSA, however, believes that an upper test speed threshold of 160 km/h (100 mph) ensures a minimum level of safe operation that is 25–30 mph beyond typical speed limits on interstate highways in the U.S.

Under the UTQG test procedure, a tire is rated C if it fails to complete the test at 100 mph for 30 minutes. The test is initiated at 75 mph for 30 minutes and then successively increased in 5 mph increments for 30 minutes each until the tire has run at 115 mph for 30 minutes. Therefore, tires with a temperature rating of C would be able to complete 30 minutes at speeds of 75, 80, 85, 90, and 95 mph (120, 128, 136, 144, and 152 km/h), but not complete the 100-mph (160 km/h) step. NHTSA, as mentioned above, believes that testing at an upper test speed threshold of 160 km/h (100 mph) ensures a minimum level of safe operation.

As discussed above, NHTSA used test speeds based on the speed rating of the tires for its high speed testing at STL (see the Tire Test Matrix in Docket No, NHTSA–00–8011–1). While representing a departure from the methodology of utilizing three predetermined test speeds (as proposed above and currently used in the FMVSS Nos. 109 and 119 high speed tests), this approach is identical to that contained in ECE R 30, GTS–2000, RMA 2000, and in SAE Recommended Practice J15161, Laboratory Speed Test Procedure for Passenger Car Tires. NHTSA seeks comment on whether test speeds based on speed ratings would be more appropriate, than those proposed above, for the High Speed Test and, more specifically, whether the method for determining test speeds contained in NHTSA's high speed testing matrix or the two alternatives mentioned above would be appropriate for the High Speed Test in the final rule.

e. Duration

NHTSA proposes a 30-minute test duration for each of the 3 speed steps, 140, 150, and 160 km/h. The total test time equals 90 minutes. The 30-minute duration allows the tire to attain and maintain its operating temperature at each speed step so that the tire's performance could be evaluated during a steady rate of speed for a duration longer than 10 minutes.

Based on its testing, the agency believes that RMA 2000's 10 minute duration at each speed step (10 minute speed build-up from 0 km/h to ITS, then five 10 minute speed steps) is too short to provide a proper evaluation of high-speed performance. Very few failures occurred in the agency's testing using the 10-minute duration for speed steps. Additionally, RMA's recommendation reduces the duration currently specified in FMVSS No. 109 by almost 50 percent.

3. Endurance Test

NHTSA proposes that the Endurance test be conducted using the following five parameters:

(1) *Ambient temperature:* 40°C.

(2) *Load:* 90 percent, 100 percent, 110 percent.

(3) Inflation Pressure—180 kPa (26 psi) for P-metric, 260 kPa (38 psi), 340 kPa (50 psi), and 410 kPa (59 psi), for LT load range C, D and E, respectively.

(4) Speed—120 km/h (75 mph).

(5) Duration (hrs): 8, 10, 22 (total 40) at the corresponding loads listed above.

A tire complies with the proposed requirements if, at the end of the endurance test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

This combination of these parameters for P-metric tires represents a more real-world test and an increase in stringency over FMVSS No. 109's endurance test with an 18 percent increase in the duration, a 10 percent increase in the load, and a 50 percent increase in speed.

Two alternatives to the proposed test parameters were considered by the agency: (1) RMA 2000, and (2) an endurance test using identical parameters to those proposed above except for test loads at 100/110/115 percent for durations of 8, 10, 32 (total 50).

RMA 2000 includes no change in the load combination of 85/90/100 percent and a 10-hour (almost 30%) decrease in duration from the current standard, FMVSS No. 109. The load and duration increase of the second alternative to a load combination of 100/110/115 and a 16-hour (almost 50%) increase in duration from FMVSS No. 109 would fail over 40 percent of P-metric tires and 20 percent of LT tires tested.[33]

The agency proposes an endurance test that has parameters different from the two alternatives in load and duration. The agency believes that, given the change in the composition of the light vehicle market in the U.S. over the past 10 years towards a greater proportion of light trucks and vans being used for passenger purposes, the load values for an endurance tire test should be increased up to 110 percent to reflect the greater likelihood of vehicle overloading that is more likely to occur with light trucks and vans than with passenger cars. Further, the agency believes that an increase in duration for the test is warranted reflecting the increased life of today's tires. The increase in duration from 34 hours to 40 hours combined with the proposed test speed of 120 km/h represents an increase in the total test distance from

[32] In Spring 2001, the National Center for Statistics and Analysis (NCSA) conducted the 2001 National Automotive Sampling System (NASS) Tire Pressure Special Study (NASS Study) in response to the TREAD Act. The Preliminary Analysis of Findings, 2001 NASS Tire Pressure Special Study, dated May 4, 2001, has been placed in Docket No. NHTSA–00–8572. Data obtained as part of this study indicate that about 36 percent of passenger cars and 40 percent of light trucks had at least one tire that was at least 20 percent below the vehicle manufacturer's recommended cold inflation pressure. About 26 percent of passenger cars and 29 percent of light trucks had at least one tire that was least 25 percent below the vehicle manufacturer's recommended cold inflation pressure.

[33] These results, based on NHTSA's endurance testing at STL, are discussed in more detail below.

2720 km (1700 miles) to 4800 km (3000 miles).

The following chart illustrates an ''at-a-glance comparison'' of the proposed standard to the other standards and suggestions discussed in this document.[34]

TABLE 3.—ENDURANCE TEST

Test parameters	FMVSS 109	FMVSS 119	GTS-2000*	RMA 2000	ECE R30	New FMVSS 139
Ambient (°C)	38	38	38	38	N/A	40
Load (%):						
P-metric	85/90/100	.....	100/110/115	80/90/100	N/A	90/100/110
LT-load C/D	.....	75/97/114	.....	75/97/114	N/A	90/100/110
LT-load E	.....	66/84/101	.....	70/88/106	N/A	90/100/110
Inflation Pressure (kPa):						
Standard load P-metric	180	.....	180	180	N/A	180
Extra load P-metric	220	.....	220	220	N/A	220
LT-Load C/D	.....	(**)	.....	(**)	N/A	260/340
LT-load E	.....	(**)	.....	(**)	N/A	410
Speed (km/h)	80	80	80	120	N/A	120
Duration (hrs)	34	34	34	24	N/A	40

* Endurance test recommended for GTS–2000 is only for radial tires rated ''Q'' and below.
** Sidewall max.

The endurance testing conducted in Phase 1 of the agency's testing was performed at 120 km/h and 140 km/h, with loads of 100 percent, 115 percent, and 125 percent for a total of 50 hours, and at inflation pressures of 160 kPa and 200 kPa. Many failures occurred at the combination of low inflation pressure (160 kPa) and high speed (140 km/h). At a test speed of 120 km/h with an inflation pressure of 200 kPa, 2 of the 9 P-metric tires failed to complete the 50 hour test.

In Phase 2 of the testing, the agency tested with loading conditions of 100/110/115 percent, (identical to the load recommended by the tire industry for the endurance test in GTS–2000), 180 kPa inflation pressure, 120 km/h for 50 hours. For P-metric tires, 2 of the 8 tire brands completed the test without any failures in their 5 samples; the remaining tire brands experienced at least one failure in the five samples used during the test.

Although neither phase of the endurance testing tested tires at exactly the same conditions as those proposed above, analysis conducted by the agency indicates that 19 of the 24 tires tested would pass the proposed endurance test. This analysis is contained in the PEA. NHTSA seeks comment on this analysis and whether the two alternatives mentioned above would be appropriate for the Endurance Test in the final rule.

A more detailed explanation of the proposed parameters is discussed below.

a. Ambient Temperature

The proposed ambient temperature is 40°C. This temperature is a slight increase over the temperature, 38°C, currently specified in FMVSS No.109, and reflects typical daytime temperatures in the South and Southwestern regions of the U.S. during the Summer months. As discussed earlier, the highest rates of tire problems occurred in the southern states in the summertime.

b. Load

The proposed loads for the endurance test are 90, 100, and 110 percent. These load percentages represent an approximate 10 percent increase over the load percentages specified for the endurance test in FMVSS No. 109 (85, 90, and 100 percent) and an increase over those recommended by RMA 2000.

The load levels originally proposed by the tire industry in GTS–2000 for P-metric tires rated Q or below were 100/110/115 percent at a test speed of 80 km/h. Given the increased use of light trucks and vans by the general public and the larger cargo volumes available in these vehicles, the agency believes that they are more likely to be operated in an overloaded condition than passenger cars. Our proposal for loads in the endurance test, 90/100/110 percent, reflects the need to increase the loads beyond the loads currently required in FMVSS No. 109 but not to the levels proposed by industry in the original GTS–2000 proposal. The RMA now supports a load combination of 85/90/100 percent for P-metric tires, which is identical to the test loads currently required for the endurance test in FMVSS No. 109, but at the higher speeds of 120 km/h, as proposed by the agency. The load combination proposed by RMA for LT tires with load C or D is 75/97/114 percent, and for load range E tires is 70/88/106 percent. The industry's endurance test proposal for P-metric and LT tires is based on a 24-hour test, which represents a 10-hour reduction in the endurance test time from FMVSS No. 109.

c. Inflation Pressure

The inflation pressure of 180 kPa represents a 25 percent under-inflation for 240 kPa maximum inflation pressure tires and is the same inflation pressure currently required for the endurance test in FMVSS No. 109. Tires tested to more severe levels of underinflation, e.g., 160 kPa, failed much sooner into the 50-hour endurance test than those tested at 180 kPa.

d. Speed

The proposed test is conducted at 120 km/h (75 mph). The current endurance test in FMVSS 109 is conducted at 80 km/h (50 mph). A 80 km/h test speed

[34] For global harmonization, the tire industry recommended an endurance test for radial tires rated Q and below. The test parameters included a load of 100/110/115 percent at a speed of 80 km/h. The agency's testing indicates that all the P-metric tires tested completed the industry's recommended test without any failures.

may have been an appropriate test speed in 1968 when initially proposed for bias ply tires. However, today, it is too low a speed for evaluating the endurance of today's tires given current vehicle performance capabilities and speed limits.[35] In addition, speed limits on interstate highways across the U.S. have reached as high as 75 mph, with actual vehicle traffic speeds typically at least several miles per hour above the posted speed limit.

e. Duration

NHTSA is proposing a 40-hour test at 120 km/h. The total test distance is 4800 km (3000 miles), which is almost double the distance for the current endurance test in FMVSS No. 109 (1700 miles at 80 km/h). The proposed test duration represents a slight increase from the current 34-hour test in FMVSS No. 109.

3. Low Inflation Pressure Tests

The TREAD Act requires that light vehicles be equipped with a tire pressure monitoring system, effective November 1, 2003, to indicate to the driver when any of the tires on his vehicle is significantly underinflated. NHTSA has proposed to establish 20 psi as a low pressure threshold at or above which the low pressure lamp must be activated.[36]

NHTSA proposes to include in the new light vehicle tire standard a low inflation pressure test to ensure a minimum level of endurance and/or high speed performance/safety when operated at a significant level of under-inflation. To aid the agency in choosing an appropriate test, NHTSA seeks comments on the following alternative tests: (1) The Low Pressure—TPMS test, (2) or the Low Pressure High Speed test. Both proposed tests are described and detail below.

a. Low Pressure—TPMS

The Low Pressure—TPMS test includes a linkage between the proposed requirements of the tire pressure monitoring system standard and the proposed endurance test for the tire standard upgrade proposed requirements. The former test is predicated upon the notion that a low pressure test would be most appropriate on tires that have completed the endurance test because a significantly underinflated condition for a tire is more likely to occur in a tire after several weeks of natural air pressure loss or due to a slow leak. The parameters for this test, which the tire must complete without failure, are as follows:

(1) Load: 100 percent.

(2) Inflation pressure: 140 kPa (20 psi).

(3) Test speed: 120 km/h (75 mph).

(4) Duration: 90 minutes at the end of the 40-hour endurance test.

(5) Ambient temperature: 40°C.

A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

As discussed, *supra*, the agency also conducted a test at 140 kPa (20 psi) inflation pressure, at a speed of 120 km/h (75 mph) for a duration of 90 minutes, on the same tires (2 samples of each of the 12 brands) that successfully completed the endurance test to evaluate tire performance at the low inflation threshold level being proposed for tire pressure monitoring systems for light vehicles. Similar tests were performed using the LT tires, but at low inflation values commensurate with about 58 percent of their maximum inflation pressure. The test results indicated that all 24 tires tested completed the 90-minute low inflation test without failure.

The agency believes that this test provides an extra safeguard to ensure that tires which were able to successfully complete the endurance testing can also complete an additional 90-minute test at low inflation pressures.

b. Low Pressure—High Speed Test

This proposed test provides a linkage between the proposed TPMS requirements and the proposed high speed test. While it would evaluate tires at a lower load than that specified in the Low Pressure—TPMS test, the Low Pressure—High Speed test would ensure that a manufacturer designs a tire so that its high speed performance would comply with the test requirements not only at recommended inflation pressure, but also at a low inflation pressure. The parameters for this test are as follows:

(1) *Test speed:* 140, 150, and 160 km/h (88, 94, 100 mph).

(2) *Inflation pressure:* 140 kPa (20 psi).

(3) *Load:* 67 percent.

(4) *Duration:* 30 minutes at each speed.

(5) *Ambient Temperature:* 40°C.

A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

The above conditions place the test point slightly below the T&RA load curves. The T&RA load curves establish the load capacity a tire is designed to carry at a specific inflation pressure. A tire is considered to have passed the test if it completes the 30 minute step at 160 km/h (100 mph).

NHTSA recently conducted testing of the above parameters on 8 tire brands. The results of this testing are contained in a report which has been added to the docket for this rulemaking. The results indicate that 30 percent of tires with an ''S'' speed rating, 63 percent of tires with an ''R'' speed rating, and 75 percent of tires with a ''Q'' speed rating would not pass this test. However, 70 percent of tires with an ''S'' speed rating, and all ''T'' and ''H'' rated tires would have completed the test. The following bullets summarize key conclusions derived from the results:

- Effect of test pressure on tire performance—Inflation pressure has a significant effect on speed-at-failure. An inflation pressure of 180 kPa (26 psi) produces a substantial number (32 out of 168, or 19 percent) of failures at speeds less than the rated speed of the tire.
- Combined effect of load and pressure on tire performance—The combination of NHTSA and RMA data supports the hypothesis that the performance of a tire is the same for a test condition anywhere on the T&RA load curve except for inflation pressure below 180 kPa (26 psi). At these lower pressures, specifically at 140 kPa (20 psi), failure rates are higher for tires with lower speed ratings than would be predicted from the results of tests run at higher pressures and loads that correspond to points on the T&RA load curve, i.e., the proposed high-speed test condition.

[35] According to Automotive News (5/14/01), ''since 1981, average horsepower has risen 79 percent and vehicle weight has grown 21 percent.'' The power to weight ratio has increased over the past 10 years based on data on selected mid-priced Ford, Chevrolet, Pontiac, Toyota, and Honda vehicles ranged from about 70 to 90 horsepower (HP) per ton. (Ward's Automotive Yearbooks, 1990 and 2000). In 1995, the federally-mandated 55 mph speed limit was repealed. Since that time, numerous States have increased speed limits up to 75 mph.

[36] The proposed requirements of the tire pressure monitoring system standard would allow each vehicle manufacturer to establish the level of under-inflation at which the low inflation pressure warning lamp will be illuminated, subject to a low inflation pressure threshold requirement for the warning lamp activation. In its recent TPMS NPRM, Docket No. NHTSA–00–8572, the agency proposed two options for activation: (1) 20 percent below the recommended cold inflation pressure or 140 kPa (20 psi) whichever is higher; and (2) 25 percent below the recommended cold inflation pressure or 140 kPa (20psi), whichever is higher.

• Effect of length of time at a speed on tire performance—For high-speed tests of tires at the maximum sidewall pressure (240 kPa (35 psi) for the tires tested), it may be necessary to test with durations greater than 10 minutes to fully judge failure rates. For tests at lower pressures, the results do not provide a consistent picture. For example, the RMA data at 180 kPa (26 psi) suggests that it probably is not necessary to test for more than 10 durations. However, the NHTSA data at 140 kPa (20 psi) suggests that 10 minutes may not be a sufficiently long duration.

4. Road Hazard Impact Test

The agency proposes that a road hazard impact test replace the strength (plunger) test in the new standard. A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

A road hazard impact test simulates a tire impacting a road hazard, such as a pothole or curb, and is a more realistic test for radial tires than the current strength test in FMVSS No. 109. For this test, NHTSA is utilizing the existing SAE Recommended Practice J1981, Road Hazard Impact Test for Wheel and Tire Assemblies (Passenger Car, Light Truck, and Multipurpose Vehicles) (''J1981'').

J1981 was developed to provide a uniform test procedure for evaluating the effect, on wheel and tire assemblies, of impacting a road hazard such as a pothole or curb. J1981 does not attempt to simulate the exact conditions encountered when the wheel and tire assembly strikes such a hazard. The equipment developed for this test does, however, attempt to reproduce under controlled conditions the wheel and tire deformations that may be experienced with a road hazard impact. The test equipment can also be used to determine, with a high degree of accuracy, the threshold condition at which tire damage first occurs.

In the preparation of J1981, laboratory and road tests carried out by a number of manufacturers were studied. The pendulum test specified in J1981 was designed to provide equivalent damage with low cost equipment that would give accurate and reproducible results. The test is designed for testing of wheel and tire assemblies used with passenger cars, light trucks, and multipurpose vehicles. The test is limited to a front (radial) impact with both wheel rim flanges being impacted simultaneously.

The following bullets summarize the key components of a Road Hazard Impact Test Machine (used by STL) and the test procedure for the Road Hazard Impact Test as specified by SAE J1981:

• The basic machine consists of a framework designed to guide the Pendulum Weight System so that, when released, it will free fall and impact the wheel tire assembly. The wheel/tire assembly is adjustable so that it can be aligned with the Pendulum Weight Assembly.

• The equipment must be calibrated to ensure that the impact force is correct since the impact force on the wheel and tire assembly depends on the length of the pendulum, the shape of the striker, and the friction at the fulcrum.

• The tire and wheel assembly, inflated to the required test pressure, is installed on the test fixture. The inflation pressure proposed for P-metric tires is 180 kPa, and for LT tires load ranges C, D, and E, it is 260 kPa, 340 kPa, and 410 kPa, respectively.

• The 54 kg striker is raised to the predetermined drop height based on the pendulum centerline angle of 80 degrees to the vertical. The striker is allowed to fall freely from this predetermined height to impact the test tire and wheel assembly.

• The test is repeated for a total of five equally spaced points around the circumference of the tire.

• The tire pressure at the end of the test shall not be less than the initial test pressure, and there must be no visual evidence of tire failure.

5. Bead Unseating

The current resistance-to-bead unseating test is designed to evaluate how well the tire bead remains on the rim during turning maneuvers. The test forces currently used in FMVSS No. 109 are based on bias ply tires and are typically not stringent enough for radial tires. For this reason, the industry, in GTS–2000, recommended that the test be deleted from the standard because radial tires are able to satisfy the test easily. Results from the agency's 1997–1998 dynamic rollover testing, however, provide a strong rationale for seeking to upgrade, rather than delete, the bead unseating requirement in FMVSS No. 109. In this NHTSA test program, vehicles experienced bead unseating on three of twelve test vehicles. This bead unseating occurred during severe maneuvers, but on level surfaces without any external impact to the tire. Such bead unseating in the real world would pose serious safety concerns. Therefore, NHTSA proposes to replace the current bead unseating test in FMVSS No. 109 with the Toyota Air Loss Test.

The Toyota Air Loss Test was developed by Toyota to evaluate tubeless tire performance. While the current FMVSS No. 109 bead unseating test applies force in the middle of the sidewall, the Toyota Air Loss Test applies force at the tire tread surface edge. The tire tread surface edge is the actual location at which force occurs due to tire/road interface during severe vehicle maneuvers. There are two general methods for conducting the Toyota test:

1. *Air Loss Bench Test Method:* A tire that receives a lateral force from the ground is deformed and may be deflated as its tire bead is separated from the rim bead. The air loss test is intended to measure the tire inflation pressure at which a tire is deflated under the above condition. The test may be conducted with an actual vehicle or with a tire assembly on a test bench.

2. *On-Vehicle Air Loss Test Method:* When an actual vehicle is used for the air loss test, the vehicle is driven at 60 km/h along a straight course, then makes a curve with a radius of 25 meters, so that a lateral force is applied to the tire. This so-called J-turn test method is recommended because the fluctuation in input load is relatively small.

NHTSA proposes to adopt the Air Loss Bench Test Method because the test is independent of vehicle type, although the agency seeks comments on both methods. This test method uses a force of 2.1 times the maximum load labeled on the tire sidewall, which is applied at the tread surface. The wedge-shaped device applies a force on the tire, laterally, at the tread surface. This force simulates the lateral force at the tread surface, which a tire experiences during severe maneuvers that could produce bead unseating of the tire.

Toyota has provided a brief description of the test apparatus and the test method used for the bench test. The apparatus includes a tire mounting hub that positions the tire vertically at an angle 5 degrees to the vertical axis, a hydraulic-powered sliding wedge-shaped block that applies force to the tire tread surface, and a control panel that includes controls for monitoring and regulating the tire's inflation pressure and a load indicator. The test procedure recommends inflating the tire to an initial inflation pressure of maximum (design) inflation pressure plus 50 kPa. Therefore, the initial inflation pressure for a P205/65R15 standard load tire (rated at a load limit of 635 kg (1400 lbs.) at an inflation

pressure of 240 kPa) is 290 kPa. Force, using the wedge-shaped block, is applied at a rate of 200 millimeters per second (mm/s) to a properly mounted tire and is maintained for a duration of 20 seconds. A tire successfully completes the test if the test pressure is not less than the initial test pressure.

The agency has recently conducted research using the Toyota test apparatus and test to verify that the recommended force levels are appropriate for a minimum safety requirement. Based on the agency's evaluation of this bead unseating method, it proposes 180 kPa for an inflation pressure in P-metric tires and 2.0 times the maximum tire load labeled on the tire sidewall for an application load appropriate for a minimum safety standard. The test inflation pressure for other tires are identical to the inflation pressures used in the proposed endurance test, which specifies 260 kPa, 340 kPa, and 410 kPa for LT tires load range C, D, and E, respectively.

The preliminary test results for the bead unseating testing have been placed in the docket. The agency requests comment on the data.

6. Aging Effects

During the Firestone hearings and the passage of the TREAD Act, some members of Congress expressed the view that there is a need for an aging test to be conducted on light vehicle tires. The agency tentatively concludes that we agree there is a need for an aging test in the proposed light vehicle tire standard because most tire failures occur at mileages well beyond 2,720 kilometers (1,700 miles) to which tires are exposed in the current FMVSS No. 109 Endurance Test.[37] The proposed endurance test, while accumulating 4,800 kilometers (3,000 miles) on a tire, still will not expose the tire to the type of environmental factors experienced on vehicles at 40,000 kilometers or beyond.

Currently, no industry-wide recommended practice for accelerating the aging of tires exists.[38] The agency, therefore, proposes the following three tests for consideration and comment: (1) Adhesion Test, (2) Michelin's Long-term Durability Endurance Test, and (3) Oven Aging. NHTSA plans to adopt one of these tests. These tests are discussed in detail below.

a. Adhesion (Peel) Test

The Adhesion (peel) test is based on the American Society for Testing and Materials (ASTM) 413–98, Standard Test Methods for Rubber Property—Adhesion to Flexible Substrate. The Adhesion (peel) test evaluates a tire's resistance to belt separation by determining the adhesion strength, measure by force per unit width, required to separate a rubber layer from a flexible substrate such as fabric, fibre, wire, or sheet metal. The adhesion levels of a tire will vary based on rubber formulations, the different materials used to construct a tire, and the curing process.

The test methods in ASTM D 413–98 cover the determination of adhesion strength between plies of fabric bonded with rubber or adhesion of the rubber layer in article made from rubber attached to other material. They are applicable only when the adhered surfaces (adjacent tire belts) are approximately plane or uniformly circular in belting, hose, tire carcasses, or rubber covered sheet metal.

The test methods described in this ASTM standard determine the force per unit (pounds per inch) width required to separate a rubber layer from a flexible substrate such as fabric. There are two general methods for this test:

(1) *Static-Mass Method:* The force required to cause separation between adhered surfaces is applied by means of gravity acting on a mass.

(2) *Machine Method:* The force required to cause separation between adhered surfaces is applied by means of a tension machine.

Due to the greater accuracy of the tension testing machine, the agency proposes to utilize the Machine Method to apply a peel strength requirement for new tires after they complete a 24-hour test with parameters similar to the proposed 40-hour endurance test. The parameters for this 24-hour test are as follows:

(1) Ambient temperature—40°C.
(2) Load—90/100/110 percent.
(3) Inflation pressure—180 kPa.
(4) Test speed—120km/h.
(5) Duration—24 hours with three 8-hour periods at each load.

For a tire to satisfy the proposed test, it must exhibit a minimum peel strength of 30 pounds per inch at the end of the 24-hour test period. This value was tentatively chosen based on data made available to NHTSA from Ford and Firestone.[39]

b. Michelin's Long-Term Durability Endurance Test

The second accelerated aging method being considered by the agency is based on a method utilized by Michelin. This method uses a road wheel endurance test with the following controlled parameters to simulate testing the tire to tread wear-out: load, inflation pressure, speed, and duration. The test tire is inflated with a 50/50 blend of O_2/N_2 and run for between 250–350 hours. Michelin has estimated that 100 hours of this testing correlates with approximately one year of real-world tire usage. For example, a 250-hour test correlates with approximately 2½ years of real world field operation.

The Michelin long-term durability endurance test research findings were initially published at a 1985 International Rubber Conference.[40] The research pointed toward four factors as comprising the best balance to achieve good/accurate correlation with field data—(1) filling gas; (2) test speed; (3) test temperature; and (4) tire load. Michelin discovered that if any one or several of these factors was disproportionately altered in an attempt to make the test more stringent or to complete the test faster, the result was a test failure condition that displayed an abnormal failure mode and did not reflect actual field conditions. Therefore, temperature and mechanical stress must be controlled to avoid failures that are not representative of real-world conditions.

The following test parameter values have been developed, through a multi-year research program at Michelin, to minimize variance from field test end conditions and minimize test hours:

(1) *Filling gas blend:* 50 percent O_2 (oxygen) and 50 percent N_2 (nitrogen).
(2) *Test speed:* 97 km/h (60 mph).
(3) *Test temperature:* 38°C (100°F).
(4) *Load:* 111 percent for standard load P-metric tires; 112 percent, 98 percent and 92 percent for LT tires load range C, D, and E, respectively.
(5) *Inflation pressure:* 40 psi (275 kPa) for standard load P-metric tires; 57, 65, and 80 psi (390, 450, 550 kPa) for LT tires load range C, D, and E, respectively.
(6) *Test duration:* 250 hours.

These values were chosen to make each test parameter proportionally

[37] Based on a review of a sample of complaints received by the agency's Office of Defects Investigation, complaint dates for tires are typically two to three years later than the model year of the vehicle on which they are equipped. This indicates, based on available data, that tire mileage may have been in the 20,000 to 30,000-mileage range when the complaint was submitted.

[38] The American Society for Testing and Materials (ASTM) has recently established a working group to develop a long-term durability endurance test standard.

[39] In light of the Firestone recall, NHTSA has obtained sufficient information in this area to assist in specifying the appropriate peel strength parameters. This information, however, has not been made public and, therefore, will not be discussed in this document.

[40] In the late 1980s and early 1990s, the test was used by Uniroyal and BF Goodrich for test validation and implementation in new tire development. The test was also used by General Motors as an internal indicator for GM's accelerated tire endurance test.

severe without exceeding a critical temperature which, in turn, would lead to failure conditions unrepresentative of real-world conditions/actual field conditions.

A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

c. Oven Aging

The agency also proposes a two-step test combining oven aging and a 24-hour test that is similar in method to the proposed 40-hour endurance test. The parameters for this test are as follows:

(1) Oven aging
(a) Oven temperature: 75°C (167°F).
(b) Duration: 14 days.
(2) 24-hour endurance test
(a) Ambient temperature: 40°C.
(b) Load: 90/100/110 percent.
(c) Inflation pressure: 180 kPa.
(d) Test speed: 120 km/h.
(e) Duration: 24 hours with three 8-hour periods at each load.

A tire complies with the proposed requirements if, at the end of the test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, broken cords, cracking, or open splices, and the tire pressure is not less than the initial test pressure.

One tire manufacturer, Michelin, commented during discussions with NHTSA that oven aging a tire does not create a representative heat differential (*e.g.,* a higher belt edge temperature than sidewall temperature) that a tire experiences in various areas of the tire in real world/field testing conditions. Also, Michelin asserted that the oxidative reaction that takes place in tires at increased strain levels does not occur in oven aging because no load is applied to the tire. According to Michelin, the presence of excess oxygen in a tire under simulated road conditions, with proportional increased in load and inflation pressure, accelerates the oxidation process while not exceeding the critical temperature. Oxidation at the belt edges is critical to testing as it leads to belt separation.

D. Deletion of FMVSS No. 109

The requirements of the proposed new standard, FMVSS No. 139, would supercede the current requirements of FMVSS No. 109. Therefore, the agency proposes the deletion of FMVSS No. 109 from its standards. FMVSS No. 109 is applicable to tires for vehicles manufactured after 1948. The proposed standard is would be applicable to tires for vehicles manufactured after 1975. While deletion of FMVSS No. 109 would theoretically preclude application of any requirements to tires produced for vehicles manufactured 1975 and before, the agency has no data showing that these vehicles are overrepresented in crashes involving tire failures. Additionally, the number of these vehicles operated today is very limited and this limited number makes them less likely to be involved in a crash caused by tire failure. Finally, the GRRF committee has tentatively agreed on 1975 as the date of applicability for a globally harmonized tire standard. The agency solicits comments on the deletion of FMVSS No. 109 and the issues discussed above.

E. FMVSS Nos. 110 and 120

The purpose of FMVSS Nos. 110 and 120 is to provide safe operational performance by ensuring that vehicles to which they apply are equipped with tires of adequate load rating and rims of appropriate size and type designation. FMVSS No. 110 currently applies to passenger cars and FMVSS No. 120 currently applies to vehicles other than passenger cars including motorcycles and trailers.

The agency proposed in the Tire Safety Information NPRM (Docket No. NHTSA–01–11157) that FMVSS Nos. 110 and 120 be revised to correspond with the applicability of the new light vehicle tire standard. FMVSS No. 110 would include passenger cars and other light vehicles with a GVWR of 10,000 pounds or less. Therefore, most SUVs, vans, trailers, and pickup trucks would be required to comply with the same tire selection and rim requirements as passenger cars. FMVSS No. 120 will continue to apply to vehicles over 10,000 pounds GVWR and motorcycles.

All requirements of FMVSS No. 110 would be retained including S4.2.2 which establishes a linkage between the vehicle normal load [41] and the load specified for the high speed test in FMVSS No. 109.[42] This requirement will be extended to SUVs, vans, trailers, and pickup trucks, which means that P-metric and LT tires used on these vehicles will have a load reserve similar to P-metric tires used on passenger cars. Since the load proposed for the high speed test is 85 percent of the maximum load rating of the tire, these tires will be required to have at least a 15 percent load reserve for a vehicle normal loading condition. The agency believes that, combined with the de-rating of P-metric tires when used on SUVs, vans, trailers, and pickup trucks, the reserve load requirements of FMVSS No. 110 should provide a sufficient safety margin for P-metric tires used on these vehicles.

The proposal also retains S4.4.1(b) of FMVSS No. 110 which requires that each rim shall retain a deflated tire in the event of a rapid loss of inflation pressure from a vehicle speed of 97 km/h until the vehicle is stopped with a controlled braking operation.

F. FMVSS Nos. 117 and 129

FMVSS No. 117, which specifies performance requirements for retreaded pneumatic passenger car tires and FMVSS No. 129, which specifies performance requirements for new non-pneumatic tires for passenger cars, contain test requirements and test procedures which either reference or are modeled after those in the current FMVSS No. 109. More specifically, FMVSS No. 117 specifies that each retreaded tire shall comply with FMVSS No. 109 strength and resistance-to-bead unseating tests and the FMVSS No. 129 tire strength and high speed tests specifications mirror those in FMVSS No. 109. In order to maintain consistent testing procedures and requirements for all tires for use on light vehicles, the strength and resistance-to-bead unseating test procedures and requirements in FMVSS No. 117 would be replaced with the proposed road hazard impact test and bead unseating tests. Similarly, the strength and high speed test procedures and requirements in FMVSS No. 129 would be revised to include the proposed road hazard impact test and high speed test. Additionally, the applicability of FMVSS Nos. 117 and 129 would be revised to include retreaded and non-pneumatic tires, respectively, for use on motor vehicles with a GVWR of 10,000 pounds or less, manufactured after 1975, except for motorcycles.

G. De-Rating of P-Metric Tires

FMVSS No. 120 requires that the load rating of a tire subject to FMVSS No. 109 must be reduced by a factor of 1.10 when installed on a MPV, truck, bus or trailer. This factor equals a 10 percent ''de-rating'' and provides a greater load reserve when passenger car tires are installed on SUVs, vans, trailers, and pickup trucks. The rationale for the de-rating requirement is that SUVs, vans,

[41] Vehicle normal load on the tire means that load on an individual tire that is determined by distributing to each axle its share of the curb weight, accessory weight, and normal occupant weight and dividing by 2.

[42] This, under the proposed high speed test, would ensure at least a 15 percent load reserve (high speed test load proposed is 85 percent) when the vehicle is operated at normal load.

trailers, and pickup trucks are generally easier to overload than passenger cars because SUVs, vans, trailers, and pickup trucks have greater cargo-carrying volumes than passenger cars. The reduction in the load rating is intended to provide a safety margin for generally harsher treatment, such as heavier loading and possible off-road use, which passenger car tires receive when installed on a MPV, truck, bus, or trailer.

Tire manufacturers have recommended that the agency retain the de-rating provision in the revised standard for tire selection and rims for light vehicles. The agency, for the reasons cited above, agrees with the tire manufacturers' suggestion and has inserted this provision in the proposed regulatory text for the revised FMVSS No. 110.

H. Other NHTSA Research Plans

As discussed above, NHTSA is currently conducting Bead Unseating and Road Hazard Impact Test (SAE J1981) research. The purpose of this research is to establish and to determine force levels for the Bead Unseating Test and to establish a minimum force requirement and test values for the Road Hazard Impact Test. The specific aspects of testing in these two areas are discussed below.

1. Bead Unseating Research

This research will be conducted in two testing phases. In Phase 1, potential bead unseat tests will be evaluated using a limited sample of tire types and sizes. In the first segment of Phase 1 testing (Phase 1a), an initial series of tests will be performed to evaluate basic aspects of the test procedures, such as the effect of test parameter variation and repeatability. These tests will consist of the following:

(1) FMVSS No. 109/110 Bead Unseat Test—tests completed when bead unseating or rim contact occurs.

(2) Toyota Air Loss Bench Test—tests using wedge-shaped loading fixture, two variations for each of vertical load and load rate application (four combinations total).

The Phase 1a testing will be conducted using five different brands of a single tire size. Four samples of each tire will be tested using each of the five tests and testing variations described above. A total of 100 bead unseat tests will be performed in Phase 1a.

Based on the findings from Phase 1a, a second segment of Phase 1 testing (Phase 1b) will be initiated within which promising test procedures will be further explored in an expanded matrix of tests. This testing will include utilizing a larger variety of tire types and sizes and/or additional variations in the selected test procedure(s).

Based on the findings of Phase 1, a final test procedure will be selected for use in Phase 2. In Phase 2, a series of tests will be performed to evaluate the performance of the current tire fleet when subjected to the bead unseat test identified in Phase 1. The agency anticipates that approximately 50 different tire brands and sizes will be tested. A subset of 10 of these tires will be further selected for repeatability testing. Preliminary test results have been placed in the docket. NHTSA requests comments on the data.

2. Road Hazard Impact Test (SAE J1981) Research

This testing will also be conducted in two phases. In Phase 1, potential tire strength tests will be evaluated, as well as potential methods for evaluating tire damage (i.e., pass/fail criteria). In the first segment of Phase 1 testing (Phase 1a), an initial series of tests will be performed to evaluate basic aspects of the test and evaluation procedures, such as the effect of test parameter variations, repeatability, and objectivity. This series of tests consist of the following:

(1) FMVSS No. 109/119 plunger test—test completion when current pass/fail energy level is obtained.

(2) Modified FMVSS No. 109 plunger tests—test completion when an increased energy level is reached. (The contractor will assist in the selection of the higher energy limit.)

(3) SAE J1981 Road Hazard Impact Test—tests conducted with wedge-shaped striker.

(4) SAE J1981 Road Hazard Impact Test—tests conducted with plunger-shaped striker. The Phase 1a tests will be conducted using 10 different types of tires, including different aspect ratios, brands, and models. One sample of each tire will be tested using the two FMVSS No. 109-type tests, and two samples of each will be tested using the SAE J1981-type tests. A total of 60 tire strength tests will be performed in Phase 1a. Prior to testing, all tires will be visually inspected for damage. After the strength tests are performed, all 60 tires will be inspected for damage visually, using x-ray, and shearography.

After the initial series of tests, 20 of the tested tires will be selected for high speed dynamometer testing. These tires are inspected using visual inspection, x-ray, and shearography.

Based on the findings from Phase 1a, a second segment of Phase 1 testing (Phase 1b) will be initiated where promising test procedures and evaluation methods will be further explored in an expanded matrix of tests. This testing will include utilizing a larger variety of tire types and sizes and/or additional variations in the selected test procedure(s) and evaluation method(s) than in the Phase 1a testing.

Based on the findings of Phase 1, a final test procedure and damage evaluation method(s) will be selected for use in Phase 2. In Phase 2, a series of tests will be performed to evaluate the performance of the current tire fleet when subjected to the strength tests and evaluation method(s) identified in Phase 1. The agency anticipates that approximately 50 different tire models and sizes will be tested. A subset of these tires will be selected for further repeatability testing. Preliminary test results have been placed in the docket. NHTSA requests comments on the data.

I. Additional Considerations

1. Lead Time for Implementation of New Tire Standard

Congress did not set a lead time by which all applicable tires would be required to meet the upgraded standard. The agency proposes two alternative implementation schedules: a two-year phase-in whereby all applicable tires must comply with the final rule by September 1, 2004, and a three-year phase-in whereby all applicable tires must comply with the final rule by September 1, 2005.

As mentioned above, the proposed new tire standard would apply to radial and non-radial tires for use on passenger cars, SUVs, vans, trailers, and pickup trucks, but not tires for motorcycles or heavy trucks. The applicability of this standard would consolidate the current FMVSS No. 109 and part of FMVSS No. 119. The agency anticipates that many P-metric tires rated C for UTQG Temperature Resistance will either have to be taken off the market or redesigned to pass the proposed tests. Similarly, the agency anticipates that a larger percentage of LT tires, than P-metric tires, will need to be redesigned to pass the proposed standard.

Given the number of additional test requirements and possible design changes that may be required for some tires, particularly LT tires, the agency proposes a phase-in period that allows for up to three years for manufacturers to comply with the requirements of the new standard. The agency believes that a three-year phase-in period would give tire manufacturers sufficient time to make necessary design changes to their tires so that they will comply with the new requirements. A three-year phase-in period would also quickly provide the American public with tires that are

certified to a higher standard than presently exists. As an alternative, NHTSA also proposes a 2-year phase-in period. The details of both plans are discussed below.

For the three-year phase-in, the agency proposes that beginning on September 1, 2003, approximately one year after issuance of the final rule, 50 percent of P-metric tires would be required to comply with the new standard. As of September 1, 2004, two years after the final rule is published, 100 percent of P-metric tires would be required to comply with the new standard. As for LT tires, 100 percent must comply with the new standard beginning on September 1, 2005, three years after issuance of the final rule. Under this implementation scheme, tire manufacturers would be required to provide the agency with tire production data for the year September 1, 2003 to August 31, 2004. This requirement would enable the agency to verify that tires certified to the new standard constitute 50 percent of a manufacturer's production of P-metric tires for that period of time. No production data would be required for subsequent years because all P-metric tires would be required to be certified to the new standard beginning on September 1, 2004. Similarly, no production data would be required for LT tires because all LT tires would be required to be certified to the new standard beginning on September 1, 2005.

As an alternative to the three-year implementation scheme, the agency proposes a two-year phase-in period. Beginning September 1, 2003, 100 percent of P-metric tires would be required to be certified to the requirements of the new standard. Beginning September 1, 2004, 100 percent of LT tires would be required to be certified to the requirements of the new standard. This implementation plan does not require manufacturers to provide production data because it does not contain provisions for partial compliance. Optional early compliance would be permitted by the agency for both alternatives.

2. Shearography Analysis

Shearography analysis evaluates the condition of a tire using laser technology. This technology provides information on impending tread or belt separations that cannot be detected through visual inspection. While currently used in the tire industry, shearography analysis requires a technician to exercise his judgement in determining whether an indication of the size and prospective rate of growth of a belt or tread failure could lead to failure. This analysis has proven to be a valuable tool in analyzing tire failures during the agency's high speed and endurance testing program.[43]

For the aforementioned reasons, the agency solicits comments on the appropriateness of specifying shearography analysis for inspection purposes, in addition to the visual inspection now required, to determine tire failure at the end of the high speed test, the endurance test, the low pressure performance test, and the road hazard impact test. In particular, the agency seeks comments on whether the physical indications of possible future tire failure can be described with sufficient specificity to fulfill the statutory requirement that FMVSSs be stated in objective terms.

3. Revised Testing Speeds in UTQG Temperature Grading Requirement

The agency, in a future rulemaking, may propose to revise the testing speeds specified in the Uniform Tire Quality Grading (''UTQG'') temperature grading requirement in Part 575.104, Uniform Tire Quality Grading Standards, by allowing manufacturers to substitute the High Speed Test speed steps for those currently specified in UTQG, up to 100 mph.

The current temperature resistance test assigns a grade of A, B, C to a tire based on whether it completes or fails to complete a road wheel test for 30 minutes at a given speed. A tire is rated C if it fails to complete the test at 100 mph for 30 minutes, B if it completes the test at 100 mph for 30 minutes, and A if it completes the test at 115 mph for 30 minutes. Under the UTQG test procedure, the test is initiated at 75 mph for 30 minutes and then successively increased in 5 mph increments for 30 minutes each until the tire has run to 115 mph for 30 minutes. Therefore, tires with a temperature rating of C would be able to complete 30 minutes at speeds of 75, 80, 85, 90, and 95 mph (120, 128, 136, 144, and 152 km/h), but not complete the 100-mph (160 km/h) step.

Utilizing the proposed High Speed Test test speeds, a tire could simultaneously complete the High Speed Test speed steps of 140, 150, and 160 km/h (88, 94, 100 mph) and the first 6 speed steps of the UTQG testing procedure. NHTSA requests comments on whether manufacturers should be permitted to substitute, up to 100 mph, the High Speed Test speed steps for those currently specified in UTQG for the Temperature Grading requirement. The agency also requests comment on whether other revisions to the UTQG Temperature Grading requirements are warranted. Please be specific in your response and provide a basis for your answer.

4. Request for Comments on Particular Issues

(1) The agency is participating in the development of a global tire standard as part of a cooperative worldwide effort, through the United Nations Economic Commission for Europe, to establish best safety and environmental practices for motor vehicle regulations. The test methodology contained in the proposed global tire standard was used by the agency in its evaluation of the high speed and endurance tests. However, the agency decided to use the methodology of FMVSS No. 109, with more stringent test parameters. Are there any voluntary consensus standards or requirements of other countries or regions (*e.g.,* ECE R30) which address the issues raised in this NPRM? Do they provide effective ways of accomplishing the purposes of this rulemaking? What opportunities are there to accomplish the purposes of this rulemaking in ways that minimize any unnecessary differences between NHTSA's requirements and those of other countries and regions?

(2) As noted previously in this NPRM, GM stated in its submission to the docket that while it supports both laboratory and real-world testing, it believes that real-world testing is more valuable. GM, however, did not present any specific proposals or data regarding the test procedures, conditions, specifications, or requirements that should comprise their proposed ''real-world'' testing. At this juncture, NHTSA believes that real-world testing is not practicable due to issues such as the selection of an appropriate control vehicle and vehicle and testing variability. The agency seeks comments on whether practicable and repeatable ''real-world'' testing procedures, conditions, and specifications exist and whether they could be utilized as part of a minimum performance standard.

(3) Whereas FMVSS No. 109 specifies requirements for all tires for use on passenger cars manufactured after 1948, the proposal specifies an applicability containing a temporal limitation for vehicles manufactured after 1975. Since the mid–1970s, radial tires have held an increasingly predominate market share (over bias ply tires) in both the original equipment and replacement tire market. The proposed standard will apply to both bias ply and radial tires, however,

[43] In the STL testing, shearography analysis detected initial stages of belt separation in tires that completed the tests.

its testing procedures and requirements result from the testing and analysis of solely radial tires. The agency seeks comments on the appropriateness of specifying the vehicle model year 1975 as a limitation on the applicability of the proposed standard. Please be specific in your response and provide a basis for your answer.

(4) For the purpose of testing tires and vehicles to determine their compliance, the agency specifies a limited number of permissible inflation pressures in both English and metric units. In FMVSS No. 109, the agency lists four inflation pressures, 32, 36, 40, or 60 psi, which were originally selected based on bias ply tires. In its proposed standard, the agency retains these tire inflation pressures in English units. The agency seeks comments on whether these four inflation pressures should be retained in the proposed standard and/or whether these inflation values should be translated into metric units. Please be specific in your response and provide a basis for your answer.

VII. Benefits

For a fuller discussion of the benefits, see the agency's Preliminary Economic Assessment (PEA). A copy of the PEA has been placed in the docket.

The proposed rule would increase the strength, endurance, and heat resistance of tires by raising the stringency of the existing standard on road hazard, bead unseating, endurance, and high speed tests and by requiring a low pressure performance test. Tires that meet the improved tests would, presumably, experience fewer blowouts, tire failures and de-beading problems.

Based on the tires tested by the agency, and on a comparison of their levels of performance in those tests to the level that they would need to achieve to pass the proposed tests, the agency estimates that tires would perform about 7 percent better in the high speed test and about 15 percent better in the endurance test. The agency considers these results additive, such that the total benefit from these two tests would be 22 percent for those tires that currently would not pass the proposed tests. We then assume that these percent improvements of the high speed and endurance tests directly relate to an improvement in safety. The agency cannot currently quantify the benefits of the other proposed tests.

As discussed in the PEA, a target population, 414 fatalities and 10,275 non-fatal injuries annually, can be estimated for tire problems (flat tire/blowout). However, the agency does not know how many of these crashes are influenced by tire design or under-inflation. The agency assumes that under-inflation is involved in 20 percent of flat tire/blowout cases that resulted in a crash. The agency assumes that the influence that under-inflation has on the chances of a blowout is affected by both tire pressure and the properties of the tire. Therefore, the agency assumes that proper inflation would represent 50 percent of these cases and improved tires would represent the other 50 percent of these cases. Consequently, 41 fatalities ($414 \times .2 \times .5$) and 1,028 injuries are being assigned to the TPMS Final Rule. This leaves the target population for this proposal at 373 fatalities and 9,247 injuries.

Assuming that the improvement in performance needed to pass the proposed High Speed and Endurance tests (estimated to be 22 percent) related to a reduction in flat tires/blowouts, the total potential improvement would be 82 lives saved ($373 \times .22$) and 2,034 injuries avoided if only those tires in the target population were those that needed improvements. If the tires having flats and blowouts were a random selection of all tires and only benefits accrued to those tires currently not passing the proposed tests (weighted to be 32.8 percent), then the benefits would be 27 lives saved ($373 \times .22 \times .328$) and 667 injuries reduced when all tires on the road meet the proposed High Speed and Endurance test requirements. Additionally, there could be benefits from the proposed Low Inflation Pressure Performance tests and from the proposed Road Hazard and Bead Unseating tests.

Furthermore, agency tire testing indicated that there is a significant variability in tires. If this variability could be reduced, many of the failed tires could pass the proposed tests. If variability in tires were reduced in the real world, this would alter the benefits that may occur from the proposed tests. The agency requests comments on this issue.

VIII. Costs

The following is a summary of the costs associated with the proposed light vehicle tire standard. It is based on the increased stringency of the proposed high speed and endurance tests. For a more detailed analysis, see the agency's PEA.

A. Original Equipment Tire and Vehicle Costs

The proposed tests will result in tires being designed that are less susceptible to heat build-up. The agency believes that many, if not all, of the P-metric tires rated C for Temperature resistance, some P-metric tires rated B for Temperature resistance and some LT tires will not be able to pass the proposed new tests. The agency has attempted to determine the difference in price between two tires that appear be similar in all characteristics except for temperature resistance where one is a B-rated tire and the other is a C-rated tire. There appears to be very few cases where every notable attribute (comparing tire size, warranty, tread wear, and traction) of two different tires are identical except for temperature resistance.

The agency estimates that the difference in price between a B- or C-rated tire that may fail the proposed standard and a B-rated tire that would pass the proposed standard is $3 per tire (in 2001 dollars). Comments are requested on this estimate. Therefore, the cost differential for a vehicle model equipped with C-rated tires, depending on whether it has a full-size spare, is $12 to $15 per vehicle.

Since only a portion of new vehicles are equipped with tires that would not meet the proposed standard, the agency estimates the average price increase for new vehicles by weighting the vehicles that would receive improvements at $3 per tire with the vehicles whose tires and prices would not change. In the Benefits section of the document, the agency estimated that 33 percent of P-metric and 29 percent of LT tires might not pass the proposed standard. Based on the data presented in this document for all crashes by light truck type, we estimate that 10 percent of light trucks have LT tires. Since future sales are estimated to be evenly split between passenger cars and light trucks, 5 percent of all light vehicles ($10\% \times 0.5$) would be equipped with LT tires. Therefore, the agency estimates that 32.8 percent of all light vehicle tires would not meet the proposed standard ($0.33 \times 95\%$ of sales + $0.29 \times 5\%$ of sales). Thus, the cost of the proposed standard per average new vehicle is $3.94 to $4.92 per vehicle.[44] The agency estimates that approximately 85 percent of the light vehicle fleet (passenger cars, pickups, SUVs, and vans) are sold with a temporary spare tire. Thus, the average cost per vehicle for the new vehicle fleet would be $4.09 ($3.94 \times 0.85 = $4.92 \times .15$).

If this proposal resulted in the lowest priced new tires being taken off the market (tires rated C for Temperature resistance appear to be lowest priced tires), there could be market effects on

[44] This range reflects whether the vehicle comes equipped with a temporary spare or full-sized spare tire.

new vehicle and aftermarket tire sales. One effect could be an increased popularity in alternatives to conventional new tires, such as temporary spare tires for new vehicles, and retreads and used tires in the aftermarket. These impacts are difficult to estimate and the agency seeks comments on this issue. Another effect may result from a tire manufacturer making tradeoffs in tire construction, *e.g.,* in traction, treadwear and rolling resistance, to improve the heat resistance of his tires. To effect such a tradeoff, a tire manufacturer could alter the design construction of the core of the tire or could reduce the amount of tread on the tire. When one lessens the amount of tread on a tire, one lowers the heat build-up that occurs in the tire. This strategy has deleterious implications for treadwear and also serves to reduce the wet traction ability of the tire. The agency seeks comments on the relationship between tread depth and heat build-up.

B. Total Annual Costs

The agency estimates that the lowest price aftermarket tire will increase by the same margin as the lowest priced OE tire, $3, to improve up to the performance levels required in the High Speed and Endurance Tests. If the cost for these improved tires was spread across the entire new light vehicle fleet, the average new vehicle price increase would, we estimate, be $4.09 per vehicle.

The agency anticipates that 32.8 percent of the combined sales of P-metric and LT tires would not pass the High Speed and Endurance Tests. There are an estimated 287 million light vehicle tires sold of which 32.8 percent might increase in price by $3 per tire. The overall annual cost of these two tests for new original equipment and replacement tires is estimated at $282 million (287 million tires × .328 × $3) and the net costs per equivalent life saved would be about $7.2 million.

We do not anticipate an increase in costs for the proposed Road Hazard Impact and Bead Unseatings tests because our testing indicates that most of all of current production tires would pass these tests. The agency has not conducted sufficient testing of the proposed Aging tests to anticipate their potential costs. The agency believes, however, that most manufacturers already perform an aging test. Therefore, it is likely that the incremental cost of adding an aging test would be minimal. With regard to the Low Inflation Pressure Performance tests, one alternative would provide no added costs because agency testing indicates that current production tires pass the test. Tires tested to the other alternative have a higher failure margin. Costs for this test cannot be characterized by the agency at this point.

C. Testing Costs

The proposed light vehicle tire standard contains six tests with which every applicable tire must comply. Based on a time-based comparison between the time required to run the tests in FMVSS No. 109 and the proposed FMVSS No. 139, the agency anticipates that the proposal will increase test time by 6.5 hours (an additional 5 hours for the endurance test and 90 minutes for the high-speed low inflation test). Labor costs associated with this additional time is estimated to be $53 per hour for a test engineer for the 90 minute low inflation pressure performance test and $31 per hour for a technician for the 90 minute low inflation pressure performance test and for the additional final 5 hours of the proposed endurance test. Therefore, incremental tests costs are estimated to be $281 per tire run (1.5 hours × [$53 + $31] + 5 hours × $31).

D. Request for Comments on Costs and Benefits of Individual Tests

As discussed above, the agency has only been able to provide preliminary estimates of the costs and benefits of the proposed high speed and endurance tests. Further, the agency has not been able to quantify the costs and benefits of the other four proposed tests. While our analysis would be made simpler if each proposed test yielded similar costs and benefits, the agency anticipates that each proposed test would produce differing levels of costs and benefits. To the extent that the data will allow, the agency requests that commenters evaluate each proposed test separately and quantify the costs and benefits of each of the six tests individually. The agency wishes to acquire information on which tests would be more costly and which tests would create the most benefits for passenger safety. This information will assist the agency in revising its estimates to provide a more precise and accurate evaluation of the costs and safety benefits of the six proposed tests and will aid the agency in determining which tests would become part of the new standard.

IX. Effective Date

Section 10 of the TREAD Act requires the agency to issue a final rule on this tire upgrade proposal by June 1, 2002. Based on this issuance date, the agency proposes two alternative implementation schedules in section VI.H.1. of this document.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under Executive Order 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined to be economically significant. The proposal is likely to result in an expenditure by automobile manufacturers and/or tire manufacturers of $282 million in annual costs. NHTSA is placing in the public docket a Preliminary Economic Assessment (PEA) describing the costs and benefits of this rulemaking action. The costs and benefits are summarized earlier in this document.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small business, small organizations and small governmental jurisdictions. I hereby certify that the proposed amendment would not have a significant impact on a substantial number of small entities.

The proposed rule would affect motor vehicle manufacturers and tire

manufacturers and/or suppliers. The agency does not believe that any of the tire manufacturers are small businesses. However, there are thousands of small tire retail outlets that will in some small way be impacted by this rule. As mentioned earlier, increasing the price of the less expensive tire could potentially allow used tires and retread tires to make more inroads into the tire retail business. This could impact small businesses. At this time, it is unknown whether the impacts will be insignificant and just an increase in price to consumers, or whether there will be some competitive effects brought about by the price increase.

NHTSA estimates that there are only about four small passenger car and light truck vehicle manufacturers in the United States. These manufacturers serve a niche market. The agency believes that small manufacturers manufacture less than 0.1 percent of total U.S. passenger car and light truck production per year.

NHTSA notes that final stage manufacturers and alterers could also be affected by this proposal. Many final stage manufacturers and alterers install supplier manufactured tires in vehicles they produce. The proposal would not have any significant effect on final stage manufacturers or alterers, however, since the tires they purchase should be tested and certified by the tire manufacturer and the potential cost impacts associated with this proposed action should only slightly affect the price of new motor vehicles and replacement tires.

The agency requests comments concerning the economic impact of the proposed rule on small vehicle manufacturers, tire manufacturers, tire retail outlets, final stage manufacturers and vehicle alterers.

Additional information concerning the potential impacts of the proposed requirements on small entities is presented in the PEA.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments, as it is here.

This proposal is not estimated to result in expenditures by State, local or tribal governments of more than $109 million annually. However, it is likely to result in the expenditure by automobile manufacturers and/or their tire manufacturers of more than $109 million annually. The average costs estimate in this analysis is $3 per tire. Estimating that 32.8 percent of 287 million light vehicle tires sold annually (including new vehicle tire sales and aftermarket tires sales but excluding temporary spare tires) results in $282 million in annual costs. These effects have been discussed in the PEA.

F. Civil Justice Reform

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Certain technical standards developed by the Society of Automotive Engineers (SAE) and other bodies have been incorporated into this proposal but the overall need for safety precludes, in NHTSA's view, the adoption of such voluntary standards as a substitute for this proposal for several reasons. First, no one voluntary standard contains all six of the proposed test procedures and requirements in this proposal. Second, voluntary consensus standards do not exist for several of the test procedures and requirements in the agency's proposal. Third, while the testing conditions and procedures of some voluntary standard have been incorporated by reference into the agency's proposal, the specified performance requirements of the voluntary standards are either different than those specified in our proposal or are non-existent.

H. Paperwork Reduction Act

The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35).

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Phase-In Production Reporting Requirements for new pneumatic tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less.

Type of Request: Routine.

OMB Clearance Number: 2127–[XXXX].

Affected Public: The respondents are manufacturers of tires. The agency estimates that there are about 75 such manufacturers.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual hour burden is 75 hours.

Estimated Costs: NHTSA estimates the total cost annual burden, in dollars to be $0. No additional resources would be expended by manufacturers to gather annual production information because they already compile this data for their own uses.

Summary of the Collection of Information: This collection would require manufacturers of new pneumatic tires to provide tire production data for the year September 1, 2003 to August 31, 2004.

Description of the Need for the Information and Proposed Use of the Information: The purpose of the reporting requirements would be to aid the National Highway Traffic Safety Administration in determining whether a manufacturer of tires has complied with the requirements of Standard No. 139 during the phase-in of those requirements. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. These comments must be received on or before May 6, 2002.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

XI. Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this proposed rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of the proposal you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments.

Accordingly, we recommend that you periodically check the Docket for new material.

XII. Proposed Regulatory Text

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, we propose to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 20111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.109 would be removed.

3. Section 571.110, as proposed to be amended in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be further amended by revising S4.2.1, S4.2.2, and S4.4.1(a), by adding S4.2.1.1, S4.2.1.2, S4.2.2.1, S4.2.2.2, S4.2.2.3, and S4.4.2 and by adding to S3 in alphabetical order, definitions for ''Rim size designation,'' ''Rim diameter,'' ''Rim width,'' ''Rim type designation,'' ''Weather side,'' to read as follows:

§ 571.110 Standard No. 110; Tire selection and rims for motor vehicles with a GVWR of 10,000 pounds or less.

* * * * *

S3. Definitions

* * * * *

Rim diameter means nominal diameter of the bead seat.

Rim size designation means rim diameter and width.

Rim type designation means the industry of manufacturer's designation for a rim by style or code.

Rim width means nominal distance between rim flanges.

* * * * *

Weather side means the surface area of the rim not covered by the inflated tire.

* * * * *

S4.2.1 Tire Load Limits for Passenger Cars

S4.2.1.1 The vehicle maximum load on the tire shall not be greater than the applicable maximum load rating as marked on the sidewall of the tire.

S4.2.1.2. The vehicle normal load on the tire shall not be greater than 85 percent (as specified in the high speed performance test in S6.1 of § 571.139) of the load rating at the vehicle manufacturer's recommended cold inflation pressure for that tire.

S4.2.2 Tire Load Limits for Multipurpose Passenger Vehicles, Trucks, Buses, and Trailers

S4.2.2.1 Except as provided in S4.2.2.2, the sum of the maximum load ratings of the tires fitted to an axle shall not be less than the GAWR of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. If the certification label shows more than one GAWR for the axle system, the sum shall be not less than the GAWR corresponding to the size designation of the tires fitted to the axle. If the size designation of the tires fitted to the axle does not appear on the certification label, the sum shall not be less than the lowest GAWR appearing on the label.

S4.2.2.2 When passenger car (P-metric) tires are installed on an MPV, truck, bus, or trailer, each tire's load rating is reduced by dividing it by 1.10 before determining, under S4.2.2.1, the sum of the maximum load ratings of the tires fitted to an axle.

S4.2.2.3 (a) For vehicles equipped with P-metric tires, the vehicle normal load on the tire shall be no greater than the derated value of 85 percent (as specified in the high speed performance test in S6.1 of § 571.139) of the load rating at the vehicle manufacturer's recommended cold inflation pressure for that tire.

(b) For vehicles equipped with LT tires, the vehicle normal load on the tire shall be no greater than 85 percent (as specified in the high speed performance test in S6.1 of § 571.139) of the load rating at the vehicle manufacturer's recommended cold inflation pressure for that tire.

* * * * *

S4.4.1 * * *

(a) Be constructed to the dimensions of a rim that is listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S4 of § 571.139.

(b) * * *

S4.4.2. *Rim markings for vehicles other than passenger cars.* Each rim or, at the option of the manufacturer in the case of a single-piece wheel, each wheel disc shall be marked with the information listed in paragraphs (a) through (e) of this S4.4.2, in lettering not less than 3 millimeters in height, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeters. The information listed in paragraphs (a) through (c) of this S4.2.2 shall appear on the outward side. In the case of rims of multi piece construction, the information listed in paragraphs (a) through (e) of this S4.2.2 shall appear on the rim base and the information listed in paragraphs (b) and (d) of this S4.2.2 shall also appear on each other part of the rim.

(a) A designation which indicates the source of the rim's published nominal dimensions, as follows:

(1) ''T'' indicates The Tire and Rim Association.

(2) ''E'' indicates The European Tyre and Rim Technical Organization.

(3) ''J'' indicates Japan Automobile Tire Manufacturers'' Association, Inc.

(4) ''D'' indicates Deutsche Industrie Norm.

(5) ''S'' indicates Scandinavian Tire and Rim Organization.

(6) ''A'' indicates The Tyre and Rim Association of Australia.

(7) ''N'' indicates an independent listing pursuant to S4.1 of § 571.139 or S5.1(a) of § 571.119.

(b) The rim size designation, and in case of multipiece rims, the rim type designation. For example: 20 x 5.50, or 20 x 5.5.

(c) The symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable Federal motor vehicle safety standards.

(d) A designation that identifies the manufacturer of the rim by name, trademark, or symbol.

(e) The month, day and year or the month and year of manufacture, expressed either numerically or by use of a symbol, at the option of the manufacturer. For example: ''September 4, 2001'' may be expressed numerically as: ''90401'', ''904, 01'' or ''01, 904''; ''September 2001'' may be expressed as: ''901'', ''9, 01'' or ''01, 9''.

(1) Any manufacturer that elects to express the date of manufacture by means of a symbol shall notify NHTSA in writing of the full names and addresses of all manufacturers and brand name owners utilizing that symbol and the name and address of the trademark owner of that symbol, if any. The notification shall describe in narrative form and in detail how the month, day, and year or the month and year are depicted by the symbol. Such description shall include an actual size graphic depiction of the symbol, showing and/or explaining the interrelationship of the component parts of the symbol as they will appear on the rim or single piece wheel disc, including dimensional specifications, and where the symbol will be located on the rim or single piece wheel disc. The notification shall be received by NHTSA not less than 60 calendar days before the first use of the symbol. The notification

shall be mailed to the Office of Vehicle Safety Compliance (NSA–30), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. All information provided to NHTSA under this paragraph will be placed in the public docket.

(2) Each manufacturer of wheels shall provide an explanation of its date of manufacture symbol to any person upon request.

* * * * *

4. Section 571.117, as proposed to be amended in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be further amended by revising S1, S2, and S3, and by removing the phrase ''§ 571.109'' wherever it appears and adding in its place the phrase ''§ 571.139'' in S4.2, S5.1.1, S5.1.2, and S5.1.4, to read as follows:

§ 571.117 Standard No. 117; Retreaded pneumatic tires.

S1. *Scope.* This standard specifies performance, labeling, and certification requirements for retreaded pneumatic tires for motor vehicles, except for motorcycles, with a GVWR of 10,000 pounds or less.

S2. *Purpose.* The purpose of this standard is to require retreaded pneumatic tires for motor vehicles, except for motorcycles and trailers, with a GVWR of 10,000 pounds or less, to meet safety criteria similar to those for new pneumatic tires for those vehicles.

S3. *Application.* This standard applies to retreaded pneumatic tires for use on motor vehicles, except for motorcycles, with a GVWR of 10,000 pounds or less, manufactured after 1975.

* * * * *

5. Section 571.119 would be amended by revising its heading, S1, S2, and S3, to read as follows:

§ 571.119 Standard No. 119; New pneumatic tires for motor vehicles with a GVWR of more than 10,000 pounds.

S1. *Scope.* This standard establishes performance and marking requirements for tires for use on motor vehicles with a GVWR of more than 10,000 pounds and motorcycles.

S2. *Purpose.* The purpose of this standard is to provide safe operational performance levels for tires used on motor vehicles with a GVWR of more than 10,000 pounds, trailers, and motorcycles, and to place sufficient information on the tires to permit their proper selection and use.

S3. *Application.* This standard applies to new pneumatic tires designed for highway use on motor vehicles with a GVWR of more than 10,000 pounds, trailers, and motorcycles manufactured after 1948.

* * * * *

6. Tables I, II, and III, in the tables at the end of § 571.119, would be revised to read as follows:

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TABLE I—STRENGTH TEST PLUNGER DIAMETER

	Plunger diameter	
	(mm)	(inches)
Tire type:		
Light truck	19.05	3/4
Motorcycle	.....	5/16
Tires for 12-inch or smaller rims, except motorcycle	19.05	3/4
Tires other than above types:		
Tubeless:		
17.5-inch or smaller rims	19.05	3/4
Larger than 17.5-inch rims:		
Load range F	31.75	1 1/4
Load range over F	38.10	1 1/2
Tube type:		
Load range F	31.75	1 1/4
Load range over F	38.10	1 1/2

TABLE II—MINIMUM STATIC BREAKING ENERGY (JOULES (J)) AND INCH-POUNDS (INCH-LBS))

Load Range			All 12 rim diameter code or smaller rim size		Light truck 17.5 rim diameter or smaller rime tubeless		Tube Type		Tubeless		Tube Type		Tubeless	
Tire Characteristic	Motorcycle		19.05 J	¾"	19.05 J	¾"	31.75 J	1 ¼"	J	Inch-lbs	38.10 J	1 ½"	J	Inch-lbs
Plunger diameter (mm and inches)	7.94 J	5/16"												
A	16	150	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
B	33	300	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
C	45	400	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
D	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
E	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
F	.....	.....	406	3,600	644	5,700	1,785	15,800	1,412	12,500	.....	.....	.....	.....
G	.....		.....	.....	711	6,300	.....	.....	.....	.....	2,282	20,200	1,694	15,000
H	.....	.....	.....	.....	768	6,800	.....	.....	.....	.....	2,598	23,000	2,090	18,500
J	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2,824	25,000	2,203	19,500
L	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,050	27,000	.....	.....
M	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,220	28,500	.....	.....
N	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,389	30,000	.....	.....

TABLE III—ENDURANCE TEST SCHEDULE

Description	Load Range	Test wheel speed (r/m)	Test load: Percent of maximum load rating			Total Best Revolutions (thousands)
			I-7 hours	II-16 hours	III-24 hours	
Speed restricted service:						
88 km/h (55 mph).....	F,G,H,J, L, M, N ...	125	66	84	101	352.0
80 km/h (50 mph)	F,G,H,J, L.....	100	66	84	101	282.5
56 km/h (35 mph)	All.....	75	66	84	101	211.0
Motorcycle	All.....	250	[1]100	[2]108	117	510.0
All other.....	F.....	200	66	84	101	564.0
	G.....	175	66	84	101	493.5
	H,J,L,N.....	150	66	84	101	423.5

[1] 4 hr. for tire sizes subject to high speed requirements (S6.3).
[2] 6 hr. for tire sizes subject to high speed requirements (S6.3).

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7. Section 571.120, as proposed to be amended in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be further amended by revising S5.1.1, and S5.1.2 to read as follows:

§ 571.120 Standard No. 120; Tire selection and rims for motor vehicles with a GVWR of more than 10,000 pounds.

* * * * *

S5.1.1 Except as specified in S5.1.3, each vehicle equipped with pneumatic tires for highway service shall be equipped with tires that meet the requirements of § 571.119, New pneumatic tires for motor vehicles with a GVWR of more than 10,000 pounds, and rims that are listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S5.1 of § 571.119, except that vehicles may be equipped with a non-pneumatic spare tire assembly that meets the requirements of § 571.129, New non-pneumatic tires for passenger cars, and S8 of this standard. Vehicles equipped with such an assembly shall meet the requirements of S5.3.3, S7, and S9 of this standard.

S5.1.2 Except in the case of a vehicle which has a speed attainable in 3.2 kilometers of 80 kilometers per hour or less, the sum of the maximum load ratings of the tires fitted to an axle shall be not less than the gross axle weight rating (GAWR) of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. Except in the case of a vehicle which has a speed attainable in 2 miles of 50 mph or less, the sum of the maximum load ratings of the tires fitted to an axle shall be not less than the gross axle weight rating (GAWR) of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. If the certification label shows more than one GAWR for the axle system, the sum shall be not less than the GAWR corresponding to the size designation of the tires fitted to the axle. If the size designation of the tires fitted to the axle does not appear on the certification label, the sum shall be not less than the lowest GAWR appearing on the label.

* * * * *

8. Section 571.129, as proposed to be amended in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be further amended by revising S2, S4.2.2.4, S4.2.2.5, S4.2.2.6, and by removing S5.3 through S6, to read as follows:

§ 571.129— New non-pneumatic tires for motor vehicles with a GVWR of 10,000 pounds or less.

* * * * *

S2. Application. This standard applies to temporary non-pneumatic tires for use on motor vehicles, except for motorcycles, with a GVWR of 10,000 pounds or less, manufactured after 1975.

* * * * *

S4.2.2.4 Road Hazard Impact. Each new non-pneumatic tire shall comply with the requirements of S6.5 of § 571.139.

S4.2.2.5 Tire Endurance. Each new non-pneumatic tire shall comply with the requirements of S6.3 of § 571.139.

S4.2.2.6 High Speed Performance. Each new non-pneumatic tire shall comply with the requirements of S6.2 of § 571.139.

* * * * *

9. Section 571.139, as proposed to be added in the Notice of Proposed Rulemaking published on December 19, 2001 (66 FR 65536), would be amended by adding S3, S5.1 through S5.4, S6 and S7 to read as follows:

§ 571.139 Standard No. 139; New pneumatic tires for motor vehicles with a GVWR of 10,000 pounds or less.

* * * * *

S3. Definitions.

Bead means the part of the tire that is made of steel wires, wrapped or reinforced by ply cords and that is shaped to fit the rim.

Bead separation means a breakdown of the bond between components in the bead.

Bias ply tire means a pneumatic tire in which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

Carcass means the tire structure, except tread and sidewall rubber which, when inflated, bears the load.

Chunking means the breaking away of pieces of the tread or sidewall.

Cord means the strands forming the plies in the tire.

Cord separation means the parting of cords from adjacent rubber compounds.

Cracking means any parting within the tread, sidewall, or inner liner of the tire extending to cord material.

CT means a pneumatic tire with an inverted flange tire and rim system in which the rim is designed with rim flanges pointed radially inward and the tire is designed to fit on the underside of the rim in a manner that encloses the rim flanges inside the air cavity of the tire.

Extra load tire means a tire designed to operate at higher loads and at higher inflation pressures than the corresponding standard tire.

Groove means the space between two adjacent tread ribs.

Innerliner means the layer(s) forming the inside surface of a tubeless tire that contains the inflating medium within the tire.

Innerliner separation means the parting of the innerliner from cord material in the carcass.

Light truck (LT) tire means a tire designated by its manufacturer as primarily intended for use on lightweight trucks or multipurpose passenger vehicles.

Load rating means the maximum load that a tire is rated to carry for a given inflation pressure.

Maximum load rating means the load rating for a tire at the maximum permissible inflation pressure for that tire.

Maximum permissible inflation pressure means the maximum cold inflation pressure to which a tire may be inflated.

Measuring rim means the rim on which a tire is fitted for physical dimension requirements.

Open splice means any parting at any junction of tread, sidewall, or innerliner that extends to cord material.

Outer diameter means the overall diameter of an inflated new tire.

Overall width means the linear distance between the exteriors of the sidewalls of an inflated tire, including elevations due to labeling, decorations, or protective bands or ribs.

Ply means a layer of rubber-coated parallel cords.

Ply separation means a parting of rubber compound between adjacent plies.

Pneumatic tire means a mechanical device made of rubber, chemicals, fabric and steel or other materials, that, when mounted on an automotive wheel, provides the traction and contains the gas or fluid that sustains the load.

Radial ply tire means a pneumatic tire in which the ply cords that extend to the beads are laid at substantially 90 degrees to the centerline of the tread.

Reinforced tire means a tire designed to operate at higher loads and at higher inflation pressures than the corresponding standard tire.

Rim means a metal support for a tire or a tire and tube assembly upon which the tire beads are seated.

Section width means the linear distance between the exteriors of the sidewalls of an inflated tire, excluding elevations due to labeling, decoration, or protective bands.

Sidewall means that portion of a tire between the tread and bead.

Sidewall separation means the parting of the rubber compound from the cord material in the sidewall.

Test rim means the rim on which a tire is fitted for testing, and may be any rim listed as appropriate for use with that tire.

Tread means that portion of a tire that comes into contact with the road.

Tread rib means a tread section running circumferentially around a tire.

Tread separation means pulling away of the tread from the tire carcass.

Treadwear indicators (TWI) means the projections within the principle grooves designed to give a visual indication of the degrees of wear of the tread.

Wheel-holding fixture means the fixture used to hold the wheel and tire assembly securely during testing.

* * * * *

S5. General requirements

S5.1. *Size and construction.* Each tire shall fit each rim specified for its size designation in accordance with S4.1.

S5.2. *Performance requirements.* Each tire shall conform to each of the following:

(a) It shall meet the requirements specified in S6 for its tire size designation, type, and maximum permissible inflation pressure.

(b) It shall meet each of the applicable requirements set forth in paragraphs (c) and (d) of this S5.2, when mounted on a model rim assembly corresponding to any rim designated by the tire manufacturer for use with the tire in accordance with S4.

(c) Except in the case of a CT tire, its maximum permissible inflation pressure shall be either 32, 36, 40, or 60 psi, or 240, 280, 300, 340, or 350 kPa. For a CT tire, the maximum permissible inflation pressure shall be either 290, 330, 350, or 390 kPa.

(d) Its load rating shall be that specified either in a submission made by an individual manufacturer, pursuant to S4, or in one of the publications described in S4 for its size designation, type and each appropriate inflation pressure. If the maximum load rating for a particular tire size is shown in more than one of the publications described in S4, each tire of that size designation shall have a maximum load rating that is not less than the published maximum load rating, or if there are differing maximum load ratings for the same tire size designation, not less then the lowest published maximum load rating.

S5.3. *Test sample.* For the tests specified in S6, use:

(a) One tire for high speed;

(b) Another tire for endurance and high speed low inflation pressure performance;

(c) Another tire for road hazard impact test and bead unseating; and

(d) A fourth tire for aging effects.

S5.4. *Treadwear indicators.* Except in the case of tires with a 12-inch or smaller rim diameter, each tire shall have not less than six treadwear indicators spaced approximately equally around the circumference of the tire that enable a person inspecting the tire to determine visually whether the tire has worn to a tread depth of one sixteenth of an inch. Tires with 12-inch or smaller rim diameter shall have not less than three such treadwear indicators.

* * * * *

S6. *Test procedures, conditions and performance requirements.* Each tire shall meet all of the applicable requirements of this section when tested according to the conditions and procedures set forth in S5 and S6.1 through S6.7.

S6.1. Tire Dimensions

S6.1.1 *Test conditions and procedures.*

S6.1.1.1 *Tire Preparation.*

S6.1.1.1.1 Mount the tire on the measuring rim specified by the tire manufacturer or in one of the publications listed in S4.1.1

S6.1.1.1.2 In the case of a P-metric tire, inflate it to the pressure specified in the following table:

Radial and bias-belted inflation pressure (kPa)		Diagonal (bias-ply) inflation pressure (kPa)			T-type temporary use spare inflation pressure (kPa)	CT tires (kPa)	
Standard	Reinforced	Ply rating				Standard	Reinforced
		4	6	8			
180	220	170	190	220	420	230	270

S6.1.1.1.3 In the case of a LT tire, inflate it to the pressure index given by the manufacturer.

S6.1.1.1.4 Condition the assembly at 25 ±5°C for not less than 24 hours.

S6.1.1.1.5 Readjust the tire pressure to that specified in S6.1.1.2.

S6.1.1.2 Test Procedure

S6.1.1.2.1 Measure the section width and overall width by caliper at six points approximately equally spaced around the circumference of the tire, avoiding measurement of the additional thickness of the special protective ribs or bands. The average of the measurements so obtained are taken as the section width and overall width, respectively.

S6.1.1.2.2 Determine the outer diameter by measuring the maximum circumference of the tire and dividing the figure so obtained by Pi (3.14).

S6.1.2 *Performance Requirements.* The actual section width and overall width for each tire measured in accordance with S6.1.1.2, shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.1.1(a) or in one of the publications described in S4.1.1(b) for its size designation and type by more than:

(a) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(b) (For tires with a maximum permissible inflation pressure of 240, 280, 290, 300, 330, 350 or 390 kPa, or 60 psi) 7 percent or 10 mm (0.4 inches), whichever is larger.

S6.2 High Speed.

S6.2.1 *Test conditions and procedures.*

S6.2.1.1 *Preparation of tire.*

S6.2.1.1.1 Mount the tire on a test rim and inflate it to the pressure specified for the tire in the following table:

Tire application	Test pressure (kPa)
P-metric:	
Standard load	220
Extra load	260
Load Range C	320
Load Range D	410
Load Range E	500
CT:	
Standard load	270
Extra load	310

S6.2.1.1.2. Condition the assembly at 35 ± 5°C for not less than three hours.

S6.2.1.1.3 Before or after mounting the assembly on a test axle, readjust the tire pressure to that specified in S6.2.1.1.1.

S6.2.1.2. *Test procedure.*

S6.2.1.2.1 Press the assembly against the outer face of a test drum with a diameter of 1.70 m ± 1%.

S6.2.1.2.2 Apply to the test axle a load equal to 85% of the tire's maximum load carrying capacity.

S6.2.1.2.3 Break-in the tire by running it for 15 minutes at 80 km/h.

S6.2.1.2.4 Allow tire to cool to 40°C and readjust inflation pressure to applicable pressure in 6.2.1.1.1 immediately before the test.

S6.2.1.2.5 Throughout the test, the inflation pressure is not corrected and the test load is maintained at the value applied in S6.2.1.2.2.

S6.2.1.2.6 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, shall be maintained at not less than 40° C.

S6.2.1.2.7 The test is conducted, continuously and uninterrupted, for ninety minutes through three thirty minute consecutive test stages at the following speeds: 140, 150, and 160 km/h.

S6.2.1.2.8 Not more than 15 minutes after running the tire for the specified time, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.2.2 *Performance requirements.* When the tire is tested in accordance with S6.2.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, innerliner, belt or bead separation, chunking, open splices, cracking, or broken cords.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.2.1.

S6.3 *Tire Endurance.*

S6.3.1 *Test conditions and procedures.*

S6.3.1.1 *Preparation of Tire.*

S6.3.1.1.1 Mount the tire on a test rim and inflate it to the pressure specified for the tire in the following table:

Tire application	Test pressure (kPa)
P-metric:	
Standard load	180
Extra load	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410
CT:	
Standard load	230
Extra load	270

S6.3.1.1.2 Condition the assembly at 35 ± 5° C for not less than three hours.

S6.3.1.1.3 Readjust the pressure to the value specified in S6.3.1.1.1 immediately before testing.

S6.3.1.2. *Test Procedure.*

S6.3.1.2.1 Mount the assembly on a test axle and press it against the outer face of a smooth wheel having a diameter of 1.70 m ± 1%.

S6.3.1.2.2 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, shall not be less than 40° C.

S6.3.1.2.3 Conduct the test, without interruptions, at not less than 120 km/h test speed with loads and test periods not less than those shown in the following table:

Test period	Duration (hours)	Load as a percentage of tire maximum load rating (percent)
1	8	90
2	10	100
3	22	110

S6.3.1.2.4 Throughout the test, the inflation pressure is not corrected and the test loads are maintained at the value corresponding to each test period, as shown in the table in S6.3.1.2.3.

S6.3.1.2.5 Not more than 15 minutes after running the tire for the time specified in the table in S6.3.1.2.3, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.3.2 *Performance requirements.* When the tire is tested in accordance with S6.3.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, innerliner, belt or bead separation, chunking, open splices, cracking or broken cords.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.1.1.

S6.4 *Low Inflation Pressure Performance.*

S6.4.1 *Test conditions and procedures.*

S6.4.1.1 *Preparation of tire.*

S6.4.1.1.1 Mount the same tire tested in accordance with 6.3 on a test rim and inflate it to the following appropriate pressure:

Tire application	Test pressure (kPa)
P-metric:	
Standard load	140
Extra load	160
LT:	
Load Range C	200
Load Range D	260
Load Range E	320
CT:	
Standard load	170
Extra load	180

S6.4.1.1.2 Condition the assembly at 35 ± 5° C for not less than three hours.

S6.4.1.1.3 Before or after mounting the assembly on a test axle, readjust the tire pressure to that specified in S6.3.1.1.1.

[Proposed S6.4.1.2 through S6.4.1.2.6—Alternative 1]

S6.4.1.2 *Test procedure.*

S6.4.1.2.1 The test is conducted for ninety minutes at the end of the test specified in S6.3, continuous and uninterrupted, at a speed of 120 km/h.

S6.4.1.2.2 Press the assembly against the outer face of a test drum with a diameter of 1.70 m ± 1%.

S6.4.1.2.3 Apply to the test axle a load equal to 100% of the tire's maximum load carrying capacity.

S6.4.1.2.4 Throughout the test, the inflation pressure is not corrected and the test load is maintained at the initial level.

S6.4.1.2.5 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is maintained at not less than 40° C.

S6.4.1.2.6 Not more than 15 minutes after running the tire for the specified time, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

[Proposed S6.4.1.2 through S6.4.1.2.6—Alternative 2]

S6.4.1.2 *Test procedure.*

S6.4.1.2.1 Press the assembly against the outer face of the test drum.

S6.4.1.2.2. Apply to the test axle a load equal to 67% of the tire's maximum load carrying capacity.

S6.4.1.2.3 Throughout the test, the inflation pressure is not corrected and the test load is maintained at the original level.

S6.4.1.2.4 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is maintained at not less than 40° C.

S6.4.1.2.5 The test is conducted, continuously and uninterrupted, for ninety minutes through three consecutive test stages of 30 minutes each at the following speeds: 140, 150, and 160 km/h.

S6.4.1.2.6 Allow the tire to cool for one hour. Then deflate the tire and remove it from the test rim.

S6.4.2 *Performance requirements.* When the tire is tested in accordance with S6.4.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, innerliner, belt or bead separation, chunking, open splices, cracking, or broken cords. For tires tested at a speed of 300 km/h or above, superficial blistering in the tire tread due to localized heat build-up in the test drum is acceptable.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.4.1.1.1.

S6.5 Road Hazard Impact.

S6.5.1 *Test conditions and procedures.*

S6.5.1.1 *Test conditions.*

S6.5.1.1.1 The tire is prepared and mounted on the equipment in accordance with section 3.2 of SAE Recommended Practice J1981 (JUN94), Road Hazard Impact Test for Wheel and Tire Assemblies (Passenger Car, Light Truck, and Multipurpose Vehicles).

S6.5.1.1.2 The test pressure shall be inflated to the appropriate test pressure:

Tire application	Test pressure (kPa)
P-metric:	.....
Standard load	180
Extra load	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410

S6.5.1.2 *Test procedures.* The test is conducted in accordance with the test procedures described in section 3.3 of SAE Recommended Practice J1981 (JUN94). Initiate the test by raising the pendulum to a drop height based on a pendulum centerline angle of 80 degrees to the vertical. Repeat the test so that the impact occurs at five test points equally spaced around the circumference of the tire.

S6.5.2 *Performance requirements.*

S6.5.2.1 When the tire has been tested in accordance with S6.5.1.2 using a test rim that undergoes no permanent deformation, the test pressure shall not be less than the initial test pressures specified in S6.5.1.1.

S6.5.2.2 There shall be no visible evidence of tread, sidewall, ply, cord, inner liner, belt or bead separation, chunking, open splices, cracking, or broken cords.

S6.6 Bead Unseating.

S6.6.1 *Test conditions and procedures.*

S6.6.1.1 *Test conditions.*

S6.6.1.1.1 *Tire inclination angle.* The tire inclination angle is 5° to the vertical axis.

S6.6.1.1.2 *Simulated road surface inclination angle.* The simulated road surface inclination angle is 10° to the horizontal. The road surface shall be free from rubber and other substances.

S6.6.1.1.3 *Tire mounting.* No lubricant, such as soapy water, is used when mounting tire. The tire inflation pressure, after mounting, is set at the appropriate test pressure:

Tire Application	Test pressure (kPa)
P-metric:	
Standard load	180
Extra load	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410

S6.6.1.2 *Test procedure.* Apply a lateral force of 2.0 times the maximum tire load labeled on the tire sidewall at a rate of 220 millimeters per second (mm/s) to the tire, and maintain the lateral force for 20 seconds. Repeat the test at no less than four points equally spaced around the tire circumference.

S6.6.2 *Performance requirements.* When a tire is tested in accordance with S6.6.1.2., no air loss shall occur.

S6.7 Aging Effects.

[Proposed S6.7.1 through S6.7.2—Alternative 1]

S6.7.1. *Test conditions and procedures.*

S6.7.1.1 Preparation of Tire.

S6.7.1.1.2 Mount the tire on a test rim and inflate it to the pressure specified in the following table:

Tire application	Test pressure (kPa)
P-metric:	
Standard load	180
Extra load	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410

S6.7.1.1.3 Condition the assembly at 35 ± 5° C for not less than three hours.

S6.7.1.1.4 Readjust the pressure to the value specified in S6.6.1.1.2 immediately before testing.

S6.7.1.2 *Test Procedure.*

S6.7.1.2.1 Mount the assembly on a test axle and press it against the outer face of a smooth wheel having a diameter of 1.70 m ± 1%.

S6.7.1.2.2 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is not less than 40° C.

S6.7.1.2.3 Conduct the test, without interruptions, at not less than 120 km/h (75 mph) test speed for 24 hours with loads not less than those shown in the following table:

Test period	Duration (hours)	Load as a percentage of tire maximum load rating (percent)
1	8	90
2	8	100
3	8	100

S6.7.1.2.4 Throughout the test, the inflation pressure is not corrected and the test loads are kept constant at the value corresponding to each test period.

S6.7.1.2.5 Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.7.2 *Performance requirements.* The tire, after being tested in accordance with S6.7.1.2, exhibits a peel strength of not less than 30 pounds per inch in accordance with American Society for Testing and Materials Method D 413–98 (Machine Method).

[Proposed S6.7.1 through S6.7.2—Alternative 2]

S6.7.1 Test conditions and procedures.

S6.7.1.1 *Preparation of tire.*

S6.7.1.1.2 Mount the tire on a test rim and inflate it, with a gas blend of 50% O_2 (oxygen) and 50% N_2 (nitrogen), to

the pressure specified in the following table:

Tire application	Test pressure (kPa)
P-metric	275
LT:	
Load Range C	390
Load Range D	450
Load Range E	550

S6.7.1.1.3 Condition the assembly at 35 ± 5° C for not less than three hours.

S6.7.1.1.4 Readjust the pressure to the value specified in S6.6.1.1.2 immediately before testing.

S6.7.1.2. *Test Procedure.*

S6.7.1.2.1 Mount the assembly on a test axle and press it against the outer face of a smooth wheel having a diameter of 1.70 m ± 1%.

S6.7.1.2.2 During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is not less than 40° C.

S6.7.1.2.3 Conduct the test, without interruptions, at not less than 96 km/h (60 mph) for 250 hours with loads not less than those shown in the following table:

Tire application	Load as a percentage of tire maximum load rating (perecent)
P-metric	111
LT:	
Load Range C	112
Load Range D	98
Load Range E	92

S6.7.1.2.4 Throughout the test, the inflation pressure is not corrected and the test loads are maintained at the original level.

S6.7.1.2.5 Not more than 15 minutes after running the tire the specified time, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.7.2 *Performance requirements.* When the tire is tested in accordance with S6.7.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, inner liner, belt or bead separation, chunking, open splices, cracking or broken cords.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.1.1.

[Proposed S6.7.1 through S6.7.2—Alternative 3]

S6.7.1. *Test conditions and procedures.*

S6.7.1.1. *Preparation of Tire.*

S6.7.1.1.2 Condition tire in an oven at 75°C (167°F), continuously and uninterrupted for 14 days.

S6.7.1.1.2. Mount the tire on a test rim and inflate it to the pressure specified in the following table:

Tire application	Test pressure (kPa)
P-metric:	
Standard	180
Reinforced	220
LT:	
Load Range C	260
Load Range D	340
Load Range E	410

S6.7.1.1.3. Condition the assembly at 35 ± 5° C for not less than three hours.

S6.7.1.1.4. Readjust the pressure to the value specified in S6.3.1.1.2 immediately before testing.

S6.7.1.2. *Test Procedure.*

S6.7.1.2.1. Mount the assembly on a test axle and press it against the outer face of a smooth wheel having a diameter of 1.70 m ± 1%.

S6.7.1.2.2. During the test, the ambient temperature, at a distance of not less than 150 mm and not more than 1 m from the tire, is not less than 40° C.

S6.7.1.2.3. Conduct the test, without interruptions, at not less than 120 km/h test speed with loads and test period not less than those shown in the following table:

Test period	Duration (hours)	Load as a percentage of tire maximum load rating (percent)
1	8	90
2	8	100
3	8	110

S6.7.1.2.4. Throughout the test the inflation pressure is not corrected and the test loads are maintained at the value corresponding to each test period.

S6.7.1.2.5. Not more than 15 minutes after running the tire the specified time, measure its inflation pressure. Allow the tire to cool for one hour. Then, deflate the tire and remove it from the test rim.

S6.7.2. *Performance requirements.* When the tire is tested in accordance with S6.7.1:

(a) There shall be no visible evidence of tread, sidewall, ply, cord, inner liner, belt or bead separation, chunking, open splices, cracking or broken cords.

(b) The tire pressure, when measured not more than 15 minutes after the test, shall not be less than the initial pressure specified in S6.1.1.

[Proposed S7 through S7.3—Alternative 1]

S7. Phase-In Schedule

S7.1 *P-metric tires manufactured on or after September 1, 2003 and before September 1, 2004.* For tires manufactured by a manufacturer on or after September 1, 2003 and before September 1, 2004, the amount of tires complying with S4 through S6 must be 50 percent of the manufacturers production of P-metric tires during that period.

S7.2 *P-metric tires manufactured on or after September 1, 2004.* Each P-metric tire manufactured on or after September 1, 2004 must comply with S4 through S6 of this standard.

S7.3 *LT tires manufactured on or after September 1, 2005.* Each LT tire manufactured on or after September 1, 2005 must comply with S4 through S6 of this standard.

[Proposed S7 through S7.3—Alternative 2]

S7. Phase-In Schedule

S7.1 *P-metric tire manufactured on or after September 1, 2003.* Each P-metric tire manufactured on or after September 1, 2003 must comply with S4 through S6 of this standard.

S7.2 *LT tires manufactured on or after September 1, 2004.* Each LT tire manufactured on or after September 1,

2004 must comply with S4 through S6 of this standard.

10. Part 597 would be added to read as follows:

PART 597—TIRES FOR MOTOR VEHICLES WITH A GVWR OF 10,000 POUNDS OR LESS PHASE-IN REPORTING REQUIREMENTS

Sec.
597.1 Scope.
597.2 Purpose.
597.3 Applicability.
597.4 Definitions.
597.5 Response to inquiries.
597.6 Reporting requirements.
597.7 Records.
597.8 Petition to extend period to file report.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 597.1 Scope.

This part establishes requirements for manufacturers of new pneumatic tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less to submit a report, and maintain records related to the report, concerning the number of such tires the meet the requirements of Standard No. 139 (49 CFR 571.139).

§ 597.2 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 139 (49 CFR 571.139).

§ 597.3 Applicability.

This part applies to manufacturers of tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.

§ 597.4 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) Motor vehicle and gross vehicle weight rating are used as defined in 49 CFR 571.3.

(c) Production year means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 597.5 Response to inquiries.

At anytime beginning September 1, 2003, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the tires (by make, model, brand and tire identification number) that have been certified as complying with Standard No. 139 (49 CFR 571.139). The manufacturer's designation of a tire as a certified tire is irrevocable.

§ 597.6 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 2004, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 139 (49 CFR 571.139) for its P-metric tires produced in that year for motor vehicles with a GVWR of 10,000 pounds or less. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with Standard No. 139 (49 CFR 571.139) for the period covered by the report and the basis for that statement;

(5) Provide the information specified in paragraph (b) of this section;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report Content.* (1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of new pneumatic tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States shall report the number of such vehicles manufactured during the current production year.

(2) *Production.* Each manufacturer shall report for the production year for which the report is filed: the number of new pneumatic tires for motor vehicles with a GVWR of 10,000 pounds or less that meet Standard No. 139 (49 CFR 571.139).

§ 597.7 Records.

Each manufacturer must maintain records of the tire identification number for each tire for which information is reported under § 590.6(b)(2) until December 31, 2006.

§ 597.8 Petition to extend period to file report.

A manufacturer may petition for extension of time to submit a report under this part. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. The petition must be received not later than 15 days before expiration of the time stated in § 597.6(a). The filing of a petition does not automatically extend the time for filing a report. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

Issued: February 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–5151 Filed 2–28–02; 10:44 am]

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Federal Register

Tuesday,
March 5, 2002

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities for one or more Burn Model Systems (BMS) Projects and one Burn Data Center under the Disability and Rehabilitation Research Projects (DRRP) Program of the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year (FY) 2002. The Assistant Secretary takes this action to focus research attention on an identified national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with severe burn injuries.

DATES: We must receive your comments on or before April 4, 2002.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

You must include the term Burn Data Projects or Burn Data Center in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

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 person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION

Invitation to Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

General Information

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

The proposed priorities refer to the New Freedom Initiative (NFI). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priorities also refer to NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities to:

(a) Develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

The BMS Projects must conduct research designed to improve treatment and service delivery outcomes and must demonstrate excellence in clinical care, rehabilitation research, and relevance to consumers, principally individuals with burn injuries and their families. Each BMS project funded under this program will have an integrated continuum of care to support the rehabilitation of persons with burn injury, with early linkage to trauma centers as well as community-based treatment alternatives. There should be an emphasis on multi-disciplinary treatment and service delivery approaches. Additional information on the BMS program is available on the Internet at: *http://mama.uchsc.edu/pub/nidrr.*

The Department is particularly interested in ensuring appropriate expenditure of public funds. Not later than three years after the establishment of any project, NIDRR will conduct one or more reviews of the activities and achievements of the project to ensure that it is carrying out proposed activities and contributing to the advancement of knowledge. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of stated objectives.

The NFI emphasizes the importance of access to assistive and universally designed technologies, employer and workplace supports, and promoting full access to community-based care. The Plan emphasizes the need for consumer knowledge and information, new techniques and technologies, and advancements in the overall body of scientific knowledge. Focusing on both individual and systemic factors that impact functional capability, the Plan includes the following elements: employment outcomes; health and function; technology for access and function; and independent living and community integration.

NIDRR recently completed summative reviews of its BMS projects. Participants in the program reviews observed that the comprehensive continuum of quality care should continue to be a key requirement for participation in the BMS program. In addition, participants felt that projects must demonstrate the impact on individual outcomes of integrating rehabilitation techniques in burn treatment. Reviewers also noted that uniformly comprehensive, high quality care together with a common data collection system and administrative infrastructure make the BMS program a valuable platform for

various collaborative studies, including multi-center trials of rehabilitation therapies and technologies.

The BMS program has, since its inception, been guided by a committee consisting of the individual project directors. The project representatives will be required to meet annually in Washington, DC, and with NIDRR input and guidance, develop and oversee the policies of the BMS. NIDRR intends to work through the project directors to implement the following recommendations:

- Systematic evaluation of the burn longitudinal data set, with reduction in redundancy of data items and consideration of adoption of a minimal data set;
- Development of guidelines for public use of the data set, ensuring confidentiality of data;
- Continued development of research management mechanisms that ensure rigorous attention to protocols in collaborative studies; and
- Evaluation of the inclusion criteria's impact on the population admitted to the model system.

Proposed Priorities—Burn Model System Projects and Burn Data Coordinating Center

Background

In 1994, NIDRR established the Burn Injury Rehabilitation Model Systems of Care (Burn Model Systems) by making 36-months awards to three Centers. In 1997, NIDRR continued the Burn Model Systems (BMS) program and funded four projects for 60 months. NIDRR funded a separate Burn Data Coordinating Center in 1998. The BMS projects are committed to developing and demonstrating comprehensive burn care and rehabilitation services, involving all necessary and appropriate disciplines, for children and adults with severe burns, from point of injury to community integration and long-term follow-up. The BMS projects also evaluate the efficacy of the BMS program through the collection and analysis of uniform data on the course of recovery and outcomes following the delivery of a coordinated system of care that includes emergency care, acute care management, comprehensive inpatient rehabilitation, and long-term interdisciplinary follow-up services.

The Burn Data Coordinating Center (BDCC) coordinates the centralized data collection, manages the database, and provides statistical support to the BMS projects. The current data elements may be obtained from: *http://mama.uchsc.edu/pub/nidrr.*

In the past, the use of data from the BMS database has been largely restricted to the use of BMS researchers. Recent Federal regulations (see March 16, 2000; 65 FR 14416–14418) outline conditions under which outside parties may request access to the data under the auspices of the Freedom of Information Act. In addition, there is increased interest in expanding the use of these data in conjunction with population-based data to further research on burn injury rehabilitation by the larger research community. Both activities require development of guidelines that ensure subject confidentiality, protect the identity of individual projects, and support use of the data in rigorous research efforts.

The American Burn Association (ABA) reports that about 51,000 Americans, one-third under age 20, are hospitalized for severe burn treatment every year. Of this number, 5,500 die (ABA National Burn Repository Report, April 18, 2001; http://www.ameriburn.org/pub/factsheet.htm). Burn injuries can have devastating impacts on the ability of an individual to function in the community and to achieve positive long-term outcomes. Early initiation of an aggressive inpatient rehabilitation program in a burn program is critical for restoration of optimal physical and psychological function (De Santi L., Lincoln L., Egan F., Dempling, R., *Development of a burn rehabilitation unit: Impact on burn center length of stay and functional outcome,* Journal of Burn Care and Rehabilitation, Sept.-Oct. 1998; 19(5): 414–9).

In the past, individuals who didn't die from burn shock during the first few weeks following the burn incident often died from wound sepsis in the following weeks. Today, new innovative therapies such as improved antibiotics for wound management and infection control, improved nutritional supports, and advanced surgical skin grafting techniques provide burn survivors greater chances of survival. Acute burn treatment encompasses a number of elements that will affect the rehabilitation process. For instance, research has led to improved biotechnology-based products (i.e., biodegradable bandage or spray-on dressings) that are redefining potential outcomes of severe burn by limiting scarring and increasing potential for regaining function (*Crab shells and healing webs: Burn Therapy's Bright Future, http://healthwatch.medscape.com/cx/viewarticle/216114,* Sept. 19, 2001). Treatment to enhance mobility reduces contractures and improves long-term functional outcomes. Nutrition also is critical to wound healing and to regaining strength and ability to participate in ongoing rehabilitation efforts (Deitch E.A., *Nutritional support of the burn patient,* Critical Care Clinics, July 1995, 11(3): 735–50).

The goal of rehabilitation intervention for burn patients is to maximize function, minimize or prevent secondary complications, and improve long-term outcomes such as return to community, employment, and quality of life. Burn trauma often causes injuries and impairments in addition to the burn, and many individuals with burn injuries have secondary complications related to the burn condition, such as disfiguring scars, contractures, chronic open wounds, hypersensitivity to heat and cold, amputation, heterotopic ossification, chronic pain, deconditioning/weakness, and neuropathies. Neuropathy is a common complication of severe burn injury inpatients who are older and critically ill (Kowalske K., Holavanahalli R., Helm P., *Neuropathy after burn injury,* Journal of Burn Care and Rehabilitation, Sept.-Oct. 2001; 22(5): 353–7). Scars may require many surgeries and lifelong management. Many of these impairments may be mitigated by integrating rehabilitation techniques and approaches into the acute treatment setting and continuing with aggressive rehabilitation interventions once the acute phase of treatment is completed.

A number of rehabilitation techniques are used with burn survivors. These include psychological treatments to deal with problems of self-image and depression, physical therapy to facilitate muscle use and strengthening, occupational therapy to assist with activities of daily living (*e.g.,* dressing), and assistive devices. Complementary and alternative therapies (*e.g.,* massage therapy) may be useful tools in relieving post-burn itching, pain, and psychological symptoms. Wellness programs such as aerobic exercise can be effective in increasing muscular strength and functional outcome (Cucuzzo N.A., Ferrando A., Herndon D.N., *The effects of exercise programming vs. traditional outpatient therapy in the rehabilitation of severely burned children,* Journal of Burn Care and Rehabilitation, May-June 2001; 22(3): 214–20). Advancing technology has the potential to enhance access and function for individuals with burns such as the expanded use of virtual reality for reducing pain during burn therapy sessions (Hoffman H.G., Patterson D.R., Carrougher G.J., Sharar S.R., *Effectiveness of virtual reality-based pain control with multiple treatments,* Clinical Journal of Pain, Sept. 2001; 17(3): 229–35). Assistive

devices such as orthotics or prosthetics may reduce the likelihood of secondary complications in burn injuries and maximize residual function for persons who acquired limb loss because of the burn. Telerehabilitation programs may provide services for people with burn injuries who live in rural areas (Massman N.J., Dodge J.D., Fortmark K., Schwartg K.J., Solem L.D., *Burns follow-up: An innovative application of telemedicine,* Journal of Telemedicine and Telecare, 1999; 5 Supplement 1:S52–4).

Rehabilitation for burn survivors includes efforts by social workers and psychologists who work with the individuals to deal with the psychological aftermath of severe burn and issues such as sexuality, family emotional status, and long-term behavioral adjustment of pediatric burn survivors. Strategies such as peer support begun early in the rehabilitation process may enhance return to participation in the community. Support groups can provide an opportunity to communicate with others going through the same unsettling changes. Rehabilitation goals include community reintegration and burn survivors face many obstacles in reaching this goal. For instance, a number of environmental factors, such as alcohol dependency, drug abuse, psychiatric treatment, heat/cold hypersensitivity or preexisting physical disability may impact vocational rehabilitation, community and workplace integration (Fauerbach J.A., Engrav L., Kowalske K., Brych S., Bryant A., Lawrence J., Li G., Munster A., de Latour B., *Barriers to employment among working-aged patients with major burn injury,* Journal of Burn Care and Rehabilitation, Jan.–Feb. 2001; 22(1): 26–34; Horn W., Yoels W., Bartolucci A., *Factors associated with patient's participation in rehabilitation services: a comparative injury analysis 12 months post-discharge,* Disability and Rehabilitation; May 20, 2000; 22(8): 358–62).

Priorities

Priority 1—Burn Model System Projects

The Assistant Secretary proposes to fund an absolute priority for one or more Burn Model System projects for the purpose of generating new knowledge through research to improve treatment and service delivery outcomes for persons with burn injury. A BMS project must:

(1) Establish a multidisciplinary system that begins with acute care and encompasses rehabilitation services specifically designed to meet the needs of individuals with burn injuries. This system must encompass a continuum of care, including emergency medical services; acute care services; acute medical rehabilitation services; post-acute services; psychosocial/vocational services; and long-term community follow-up.

(2) Participate as directed by the Assistant Secretary in national studies of burn injuries by contributing to a national database and by other means as required by the Assistant Secretary; and

(3) Conduct significant and substantial research in burn injury rehabilitation, ensuring that each project has sufficient sample size and methodological rigor to generate robust findings that will contribute to the advancement of knowledge in accordance with the NFI and the Plan. Applicants may develop up to three site-specific projects and develop up to two projects to be done in collaboration with other BMS projects.

In proposing research studies, applicants must demonstrate their potential impact on rehabilitation goals and objectives. Applicants may select from the following research directives related to specific areas of the NFI and the Plan:

• *Integrating Persons with Disabilities into the Workforce:* (1) Assess intervention strategies for improving employment outcomes of persons surviving severe burns; (2) Identify environmental factors that either enable or impede community and workplace integration.

• *Maintaining Health and Function:* (1) Study interventions to improve rehabilitation potential in the acute care setting such as nutritional support, early therapeutic exercise to increase mobility, treatment for scar tissue, or the prevention and treatment of secondary conditions; (2) Develop and evaluate rehabilitation treatment/interventions for persons surviving severe burns; or (3) Design and test service delivery models that provide quality rehabilitation care for burn survivors under constraints imposed by recent changes in the health care financing system.

• *Assistive and Universally Designed Technologies:* (1) Evaluate the impact of selected innovations in technology (*e.g.,* assistive devices, biomaterials) on outcomes such as function, independence, and employment of individuals with burn injuries; or (2) Investigate the impact of national telecommunications and information policy on the access of persons with burn injuries to related education, work, and other opportunities.

• *Full Access to Community Life:* Assess the value of peer support and early onset of services from community and social support organizations to improve outcomes such as independence, community integration, employment, function, and health maintenance.

• *Associated Areas:* Develop and refine measures of treatment effectiveness in burn rehabilitation to incorporate environmental factors in the assessment of function.

(4) Provide widespread consumer-oriented dissemination activities to other burn projects, rehabilitation practitioners, researchers, individuals with burn injuries and their families and representatives, and other public and private organizations involved in burn care and rehabilitation.

In carrying out these purposes, the projects must:

• Involve consumers, as appropriate, in all stages of the research and demonstration endeavor;

• Demonstrate culturally appropriate and sensitive methods of data collection, measurements, and dissemination addressing needs of burn survivors with diverse backgrounds;

• Demonstrate the research and clinical capacity to participate in collaborative projects, clinical trials, or technology transfer with other BMS projects, other NIDRR grantees, and similar programs of other public and private agencies and institutions; and

• In conjunction with other BMS projects, plan and conduct a State-of-the-Science conference on ''New Trends in Burn Injury Rehabilitation'' and publish a comprehensive report on the final outcomes of the conference. The report must be published by the end of the fourth year of grant.

Proposed Priority 2—Burn Data Coordinating Center

The Assistant Secretary proposes to fund an absolute priority for a Burn Data Coordinating Center for the purpose of managing and facilitating the use of information collected by the BMS projects on individuals with burn injury. The BDCC must:

(1) Establish and maintain a database repository for data from BMS projects while providing for confidentiality, quality control, and data retrieval capabilities, using cost-effective and user-friendly technology;

(2) Ensure data quality, reliability, and integrity by providing training and technical assistance to BMS projects on data collection procedures, data entry methods, and use of study instruments;

(3) Provide consultation to NIDRR and to directors and staff of the BMS

projects on utility and quality of data elements;

(4) Support efforts to improve the research findings of the BMS projects by providing statistical and other consultation regarding the national database;

(5) Facilitate dissemination of information generated by the BMS projects, including statistical information, scientific papers, and consumer materials;

(6) Evaluate the feasibility of linking and comparing BMS data to population-based data sets or other available burn data and provide technical assistance for such linkage, as appropriate; and

(7) Develop guidelines to provide access to BMS data by individuals and institutions, ensuring that data are available in accessible formats for persons with disabilities.

In carrying out these purposes, the center must:

- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches; and
- Collaborate with other NIDRR-funded projects, e.g., the Model Spinal Cord Injury and Traumatic Brain Injury Model System Data Centers, regarding issues such as database development and maintenance, center operations, and data management.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at 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.

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: February 27, 2002.

Lorretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5229 Filed 3–4–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
March 5, 2002

Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities for one or more Burn Model Systems (BMS) Projects and one Burn Data Center under the Disability and Rehabilitation Research Projects (DRRP) Program of the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year (FY) 2002. The Assistant Secretary takes this action to focus research attention on an identified national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with severe burn injuries.

DATES: We must receive your comments on or before April 4, 2002.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

You must include the term Burn Data Projects or Burn Data Center in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

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 person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION

Invitation to Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

General Information

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

The proposed priorities refer to the New Freedom Initiative (NFI). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priorities also refer to NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities to:

(a) Develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Act.

The BMS Projects must conduct research designed to improve treatment and service delivery outcomes and must demonstrate excellence in clinical care, rehabilitation research, and relevance to consumers, principally individuals with burn injuries and their families. Each BMS project funded under this program will have an integrated continuum of care to support the rehabilitation of persons with burn injury, with early linkage to trauma centers as well as community-based treatment alternatives. There should be an emphasis on multi-disciplinary treatment and service delivery approaches. Additional information on the BMS program is available on the Internet at: *http://mama.uchsc.edu/pub/nidrr.*

The Department is particularly interested in ensuring appropriate expenditure of public funds. Not later than three years after the establishment of any project, NIDRR will conduct one or more reviews of the activities and achievements of the project to ensure that it is carrying out proposed activities and contributing to the advancement of knowledge. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of stated objectives.

The NFI emphasizes the importance of access to assistive and universally designed technologies, employer and workplace supports, and promoting full access to community-based care. The Plan emphasizes the need for consumer knowledge and information, new techniques and technologies, and advancements in the overall body of scientific knowledge. Focusing on both individual and systemic factors that impact functional capability, the Plan includes the following elements: employment outcomes; health and function; technology for access and function; and independent living and community integration.

NIDRR recently completed summative reviews of its BMS projects. Participants in the program reviews observed that the comprehensive continuum of quality care should continue to be a key requirement for participation in the BMS program. In addition, participants felt that projects must demonstrate the impact on individual outcomes of integrating rehabilitation techniques in burn treatment. Reviewers also noted that uniformly comprehensive, high quality care together with a common data collection system and administrative infrastructure make the BMS program a valuable platform for

various collaborative studies, including multi-center trials of rehabilitation therapies and technologies.

The BMS program has, since its inception, been guided by a committee consisting of the individual project directors. The project representatives will be required to meet annually in Washington, DC, and with NIDRR input and guidance, develop and oversee the policies of the BMS. NIDRR intends to work through the project directors to implement the following recommendations:

- Systematic evaluation of the burn longitudinal data set, with reduction in redundancy of data items and consideration of adoption of a minimal data set;
- Development of guidelines for public use of the data set, ensuring confidentiality of data;
- Continued development of research management mechanisms that ensure rigorous attention to protocols in collaborative studies; and
- Evaluation of the inclusion criteria's impact on the population admitted to the model system.

Proposed Priorities—Burn Model System Projects and Burn Data Coordinating Center

Background

In 1994, NIDRR established the Burn Injury Rehabilitation Model Systems of Care (Burn Model Systems) by making 36-months awards to three Centers. In 1997, NIDRR continued the Burn Model Systems (BMS) program and funded four projects for 60 months. NIDRR funded a separate Burn Data Coordinating Center in 1998. The BMS projects are committed to developing and demonstrating comprehensive burn care and rehabilitation services, involving all necessary and appropriate disciplines, for children and adults with severe burns, from point of injury to community integration and long-term follow-up. The BMS projects also evaluate the efficacy of the BMS program through the collection and analysis of uniform data on the course of recovery and outcomes following the delivery of a coordinated system of care that includes emergency care, acute care management, comprehensive inpatient rehabilitation, and long-term interdisciplinary follow-up services.

The Burn Data Coordinating Center (BDCC) coordinates the centralized data collection, manages the database, and provides statistical support to the BMS projects. The current data elements may be obtained from: *http://mama.uchsc.edu/pub/nidrr.*

In the past, the use of data from the BMS database has been largely restricted to the use of BMS researchers. Recent Federal regulations (see March 16, 2000; 65 FR 14416–14418) outline conditions under which outside parties may request access to the data under the auspices of the Freedom of Information Act. In addition, there is increased interest in expanding the use of these data in conjunction with population-based data to further research on burn injury rehabilitation by the larger research community. Both activities require development of guidelines that ensure subject confidentiality, protect the identity of individual projects, and support use of the data in rigorous research efforts.

The American Burn Association (ABA) reports that about 51,000 Americans, one-third under age 20, are hospitalized for severe burn treatment every year. Of this number, 5,500 die (ABA National Burn Repository Report, April 18, 2001; http://www.ameriburn.org/pub/factsheet.htm). Burn injuries can have devastating impacts on the ability of an individual to function in the community and to achieve positive long-term outcomes. Early initiation of an aggressive inpatient rehabilitation program in a burn program is critical for restoration of optimal physical and psychological function (De Santi L., Lincoln L., Egan F., Dempling, R., *Development of a burn rehabilitation unit: Impact on burn center length of stay and functional outcome,* Journal of Burn Care and Rehabilitation, Sept.-Oct. 1998; 19(5): 414–9).

In the past, individuals who didn't die from burn shock during the first few weeks following the burn incident often died from wound sepsis in the following weeks. Today, new innovative therapies such as improved antibiotics for wound management and infection control, improved nutritional supports, and advanced surgical skin grafting techniques provide burn survivors greater chances of survival. Acute burn treatment encompasses a number of elements that will affect the rehabilitation process. For instance, research has led to improved biotechnology-based products (i.e., biodegradable bandage or spray-on dressings) that are redefining potential outcomes of severe burn by limiting scarring and increasing potential for regaining function (*Crab shells and healing webs: Burn Therapy's Bright Future, http://healthwatch.medscape.com/cx/viewarticle/216114,* Sept. 19, 2001). Treatment to enhance mobility reduces contractures and improves long-term functional outcomes. Nutrition also is critical to wound healing and to regaining strength and ability to participate in ongoing rehabilitation efforts (Deitch E.A., *Nutritional support of the burn patient,* Critical Care Clinics, July 1995, 11(3): 735–50).

The goal of rehabilitation intervention for burn patients is to maximize function, minimize or prevent secondary complications, and improve long-term outcomes such as return to community, employment, and quality of life. Burn trauma often causes injuries and impairments in addition to the burn, and many individuals with burn injuries have secondary complications related to the burn condition, such as disfiguring scars, contractures, chronic open wounds, hypersensitivity to heat and cold, amputation, heterotopic ossification, chronic pain, deconditioning/weakness, and neuropathies. Neuropathy is a common complication of severe burn injury inpatients who are older and critically ill (Kowalske K., Holavanahalli R., Helm P., *Neuropathy after burn injury,* Journal of Burn Care and Rehabilitation, Sept.-Oct. 2001; 22(5): 353–7). Scars may require many surgeries and lifelong management. Many of these impairments may be mitigated by integrating rehabilitation techniques and approaches into the acute treatment setting and continuing with aggressive rehabilitation interventions once the acute phase of treatment is completed.

A number of rehabilitation techniques are used with burn survivors. These include psychological treatments to deal with problems of self-image and depression, physical therapy to facilitate muscle use and strengthening, occupational therapy to assist with activities of daily living (*e.g.,* dressing), and assistive devices. Complementary and alternative therapies (*e.g.,* massage therapy) may be useful tools in relieving post-burn itching, pain, and psychological symptoms. Wellness programs such as aerobic exercise can be effective in increasing muscular strength and functional outcome (Cucuzzo N.A., Ferrando A., Herndon D.N., *The effects of exercise programming vs. traditional outpatient therapy in the rehabilitation of severely burned children,* Journal of Burn Care and Rehabilitation, May-June 2001; 22(3): 214–20). Advancing technology has the potential to enhance access and function for individuals with burns such as the expanded use of virtual reality for reducing pain during burn therapy sessions (Hoffman H.G., Patterson D.R., Carrougher G.J., Sharar S.R., *Effectiveness of virtual reality-based pain control with multiple treatments,* Clinical Journal of Pain, Sept. 2001; 17(3): 229–35). Assistive

devices such as orthotics or prosthetics may reduce the likelihood of secondary complications in burn injuries and maximize residual function for persons who acquired limb loss because of the burn. Telerehabilitation programs may provide services for people with burn injuries who live in rural areas (Massman N.J., Dodge J.D., Fortmark K., Schwartg K.J., Solem L.D., *Burns follow-up: An innovative application of telemedicine,* Journal of Telemedicine and Telecare, 1999; 5 Supplement 1:S52–4).

Rehabilitation for burn survivors includes efforts by social workers and psychologists who work with the individuals to deal with the psychological aftermath of severe burn and issues such as sexuality, family emotional status, and long-term behavioral adjustment of pediatric burn survivors. Strategies such as peer support begun early in the rehabilitation process may enhance return to participation in the community. Support groups can provide an opportunity to communicate with others going through the same unsettling changes. Rehabilitation goals include community reintegration and burn survivors face many obstacles in reaching this goal. For instance, a number of environmental factors, such as alcohol dependency, drug abuse, psychiatric treatment, heat/cold hypersensitivity or preexisting physical disability may impact vocational rehabilitation, community and workplace integration (Fauerbach J.A., Engrav L., Kowalske K., Brych S., Bryant A., Lawrence J., Li G., Munster A., de Latour B., *Barriers to employment among working-aged patients with major burn injury,* Journal of Burn Care and Rehabilitation, Jan.–Feb. 2001; 22(1): 26–34; Horn W., Yoels W., Bartolucci A., *Factors associated with patient's participation in rehabilitation services: a comparative injury analysis 12 months post-discharge,* Disability and Rehabilitation; May 20, 2000; 22(8): 358–62).

Priorities

Priority 1—Burn Model System Projects

The Assistant Secretary proposes to fund an absolute priority for one or more Burn Model System projects for the purpose of generating new knowledge through research to improve treatment and service delivery outcomes for persons with burn injury. A BMS project must:

(1) Establish a multidisciplinary system that begins with acute care and encompasses rehabilitation services specifically designed to meet the needs of individuals with burn injuries. This system must encompass a continuum of care, including emergency medical services; acute care services; acute medical rehabilitation services; post-acute services; psychosocial/vocational services; and long-term community follow-up.

(2) Participate as directed by the Assistant Secretary in national studies of burn injuries by contributing to a national database and by other means as required by the Assistant Secretary; and

(3) Conduct significant and substantial research in burn injury rehabilitation, ensuring that each project has sufficient sample size and methodological rigor to generate robust findings that will contribute to the advancement of knowledge in accordance with the NFI and the Plan. Applicants may develop up to three site-specific projects and develop up to two projects to be done in collaboration with other BMS projects.

In proposing research studies, applicants must demonstrate their potential impact on rehabilitation goals and objectives. Applicants may select from the following research directives related to specific areas of the NFI and the Plan:

• *Integrating Persons with Disabilities into the Workforce:* (1) Assess intervention strategies for improving employment outcomes of persons surviving severe burns; (2) Identify environmental factors that either enable or impede community and workplace integration.

• *Maintaining Health and Function:* (1) Study interventions to improve rehabilitation potential in the acute care setting such as nutritional support, early therapeutic exercise to increase mobility, treatment for scar tissue, or the prevention and treatment of secondary conditions; (2) Develop and evaluate rehabilitation treatment/interventions for persons surviving severe burns; or (3) Design and test service delivery models that provide quality rehabilitation care for burn survivors under constraints imposed by recent changes in the health care financing system.

• *Assistive and Universally Designed Technologies:* (1) Evaluate the impact of selected innovations in technology (*e.g.,* assistive devices, biomaterials) on outcomes such as function, independence, and employment of individuals with burn injuries; or (2) Investigate the impact of national telecommunications and information policy on the access of persons with burn injuries to related education, work, and other opportunities.

• *Full Access to Community Life:* Assess the value of peer support and early onset of services from community and social support organizations to improve outcomes such as independence, community integration, employment, function, and health maintenance.

• *Associated Areas:* Develop and refine measures of treatment effectiveness in burn rehabilitation to incorporate environmental factors in the assessment of function.

(4) Provide widespread consumer-oriented dissemination activities to other burn projects, rehabilitation practitioners, researchers, individuals with burn injuries and their families and representatives, and other public and private organizations involved in burn care and rehabilitation.

In carrying out these purposes, the projects must:

• Involve consumers, as appropriate, in all stages of the research and demonstration endeavor;

• Demonstrate culturally appropriate and sensitive methods of data collection, measurements, and dissemination addressing needs of burn survivors with diverse backgrounds;

• Demonstrate the research and clinical capacity to participate in collaborative projects, clinical trials, or technology transfer with other BMS projects, other NIDRR grantees, and similar programs of other public and private agencies and institutions; and

• In conjunction with other BMS projects, plan and conduct a State-of-the-Science conference on ''New Trends in Burn Injury Rehabilitation'' and publish a comprehensive report on the final outcomes of the conference. The report must be published by the end of the fourth year of grant.

Proposed Priority 2—Burn Data Coordinating Center

The Assistant Secretary proposes to fund an absolute priority for a Burn Data Coordinating Center for the purpose of managing and facilitating the use of information collected by the BMS projects on individuals with burn injury. The BDCC must:

(1) Establish and maintain a database repository for data from BMS projects while providing for confidentiality, quality control, and data retrieval capabilities, using cost-effective and user-friendly technology;

(2) Ensure data quality, reliability, and integrity by providing training and technical assistance to BMS projects on data collection procedures, data entry methods, and use of study instruments;

(3) Provide consultation to NIDRR and to directors and staff of the BMS

projects on utility and quality of data elements;

(4) Support efforts to improve the research findings of the BMS projects by providing statistical and other consultation regarding the national database;

(5) Facilitate dissemination of information generated by the BMS projects, including statistical information, scientific papers, and consumer materials;

(6) Evaluate the feasibility of linking and comparing BMS data to population-based data sets or other available burn data and provide technical assistance for such linkage, as appropriate; and

(7) Develop guidelines to provide access to BMS data by individuals and institutions, ensuring that data are available in accessible formats for persons with disabilities.

In carrying out these purposes, the center must:

- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches; and
- Collaborate with other NIDRR-funded projects, e.g., the Model Spinal Cord Injury and Traumatic Brain Injury Model System Data Centers, regarding issues such as database development and maintenance, center operations, and data management.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: February 27, 2002.

Lorretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5229 Filed 3–4–02; 8:45 am]

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Federal Register

Tuesday,
March 5, 2002

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes funding a priority for a Traumatic Brain Injury Model Systems (TBIMS) Program under the Disability and Rehabilitation Research Projects (DRRP) Program for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year (FY) 2002. The Assistant Secretary takes this action to focus research attention on an identified national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with Traumatic Brain Injury.

DATES: We must receive your comments on or before April 4, 2002.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

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SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we will invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to:

(a) Develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act).

Description of Special Projects and Demonstrations for Traumatic Brain Injuries

The Traumatic Brain Injury Model Systems (TBIMS) program requires excellence in clinical care, rehabilitation research, and relevance to consumers, principally individuals with traumatic brain injuries and their families. Each TBIMS project funded under this program must have an integrated continuum of care to support the rehabilitation of persons with TBI, with linkage to a trauma system project and community-based treatment settings. Each project must have capacity to enroll TBI subjects and conduct research on TBI.

The Department is particularly interested in ensuring appropriate expenditure of public funds. Not later than three years after the establishment of any TBI project, NIDRR will conduct one or more reviews of the activities and achievements of each project to ensure that the grantee is carrying out proposed activities and contributing to the advancement of knowledge. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of stated objectives.

The New Freedom Initiative (NFI) emphasizes the importance of assistive and universal designed technologies, other employment initiatives, and promotion of full access to community-based living. The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.* NIDRR's published Long-Range Plan (the Plan), focusing on both individual and systemic factors that impact functional capability, includes the following elements: employment outcomes, health and function, technology for access, community integration and independent living, and associated activities such as development of outcome measures and disability statistics. The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Priority

Background:

An estimated 5.3 million Americans currently live with disabilities resulting from TBI. The Centers for Disease Control (CDC) estimates that approximately 80,000 Americans experience the onset of disabilities resulting from traumatic brain injury each year. The three leading causes of TBI are motor vehicle crashes, violence, and falls, particularly among the elderly. Following TBI, individuals may have impairments in cognition, movement, and sensation (Thurman D.J., Alverson C.A., Dunn K.A., Guerrero J., Sniezek, J.E., *Traumatic brain injury in the United States: A Public Health Perspective,* Journal of Head Trauma Rehabilitation. 1999, 14(6): 602–615). The CDC maintains a website on ''Epidemiology of Traumatic Brain Injury in the United States'' at *http://www.cdc.gov/ncipc/dacrrdp/tbi.htm.*

As stated in the 1998 National Institute of Health (NIH) Consensus Conference Proceedings, ''TBI may result in lifelong impairment of an individual's physical, cognitive, and psychosocial functioning.'' In a 1995 review of the literature on TBI survivors, Morton and Wehman identified ''significant'' decreases in opportunities for social interaction and maintaining friendships as well as high levels of anxiety and depression lasting for prolonged periods following TBI (Morton M., Wehman P., *Psychosocial and Emotional Sequelae of Individuals with Traumatic Brain Injury: A Literature Review and Recommendations,* Brain Injury, 1995, Vol. 9, No. 1, 81–92). In the civilian population, it is estimated that fewer than 25% of persons experiencing TBI are ''able to gain and maintain employment'' (Kolakowsky-Hayner S., Kreutzer J.S., Miner K.D., *Validation of the Service Obstacles Scale for the Traumatic Brain Injury Population,* NeuroRehabilitation, 2000, Vol. 14, 151–158.) Other research has found high rates of rehospitalization after TBI, often for seizures and psychiatric difficulties (Marwitz J.H., Cifu D.X., Englander J., High W.M., *A Multi-System Project Analysis of Rehospitalizations Five Years After Brain Injury,* Journal of Head Trauma Rehabilitation, Aug. 16, 2001, No. 4, 307–17).

In 1987, NIDRR established the National Traumatic Brain Injury Model Systems (TBIMS) Program by funding four projects to provide comprehensive, multidisciplinary rehabilitation services to persons who experience TBI and to conduct research to foster advances in TBI rehabilitation. This number expanded to 17 projects in 1998. The TBIMS program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of TBI care.

Contributions to the TBI National Data Center Project

From 1989 to present, the TBIMS projects have collected information on common data elements and contributed to a centralized TBI database (additional information on TBIMS can be found at *http://www.tbims.org*). The TBI National Data Center (TBINDC) project coordinates data collection, manages the TBI database, and provides statistical support to the model system projects. To date, TBI projects have contributed 2,553 cases to the national database, with follow up data currently extending to 12 years post injury. For purposes of the TBIMS, TBI is defined as damage to brain tissue caused by an external mechanical force as evidenced by: Loss of consciousness due to brain trauma, post-traumatic amnesia (PTA), skull fracture, or objective neurological findings that can be reasonably attributed to TBI on physical examination or mental status examination. Penetrating wounds fitting the definition listed above are included. Lacerations or bruises or both of the scalp or forehead without other criteria listed above are excluded. Primary anoxic encephalopathy is excluded.

In the current TBIMS, participants must meet the following criteria: (a) Fit the above definition of TBI; (b) be 16 or older; (c) entered the Model System's acute care hospital emergency department within 24 hours of injury; (d) receive both acute hospital care and care on a designated inpatient rehabilitation unit within the model system; and (e) be able to understand and signs an informed consent form or, if unable, have a family or legal guardian who understands and sign the informed consent form. At the present time, TBIMS projects collects 429 data items on each individual during the initial hospitalization, and an additional 459 items during follow up.

TBI Rehabilitation

In recent years, medical and pharmacological therapies have shown promise for preserving and enhancing function for individuals with TBI. The availability of drugs capable of regulating neurotransmitter release or receptor function has led to research into neuroprotective intervention in TBI (Verma A., *Opportunities for Neuroprotection in TBI,* Journal of Head Trauma and Rehabilitation, 2000; 15(5): 1149–1161); (McIntosh T.K., Juhler M., et al., *Novel Pharmacologic Strategies in the Treatment of Experimental Traumatic Brain Injury,* Journal of Neurotrauma, Oct. 1998; 15(10): 731–69). Psychopharmacological agents such as amantadine have shown responsiveness to symptoms that include problems with short-term memory, attention, planning, problem solving, impulsivity, disinhibition, poor motivation, and other behavioral and cognitive deficits (Kraus M.F., Maki P.M., *Effect of Amantadine Hydrochloride on Symptoms of Frontal Lobe Dysfunction in Brain Injury: Case Studies and Review,* Journal of Neuropsychiatry and Clinical Neurosciences, Spring 1997; 9(2): 222–30).

Diagnostic data offer new promise for facilitating treatment interventions and impacting outcomes. For instance, evidence indicates that intracranial pressure (ICP) data can increase the confidence of outcome predictions that are based on the clinical examination alone (Bullock R., Chesnut R.M., et al., *Guidelines for the Management of Severe Head Injury, Brain Trauma Foundation,* European Journal of Emergency Medicine (England), June 1996; 3(2): 109–27). Magnetic resonance imaging (MRI) may clarify the relationship between chronic symptoms such as headaches and irritability after TBI and MRI abnormalities. MRI also appears to be the most sensitive imaging method for assessing mild TBI (MTBI) (Voller B., Auff E., et al., *To Do or Not to Do? Magnetic Resonance Imaging in Mild Traumatic Brain Injury,* Brain Injury, Feb. 2001; 15(2): 107–15).

New technologies and therapeutic interventions have the potential to improve understanding and enhance access and function for individuals with TBI. Virtual reality (VR) technology can be used to assess TBI patients and enable them to relearn activities of daily living (ADL) in a safe, controlled, visually stimulating environment (Gourlay D., Lun K.C., et al., *Virtual Reality for Relearning Daily Living Skills,* International Journal of Medical Informatics, Dec. 2000; 60(3): 255–61). Tele-rehabilitation is being used to conduct follow-up psychological testing of individuals with TBI who live in rural areas. This technology may facilitate access for individuals who must travel long distances to see providers.

Research on improving employment outcomes has found that specific vocational interventions tailored to the needs of individuals with TBI may be effective despite significant neuropsychological impairments (Johnstone B., Schopp L.H., Harper J., Koscuilek J., *Neuropsychological Impairments, Vocational Outcomes, and Financial Costs for Individuals with Traumatic Brain Injury Receiving State Vocational Rehabilitation Services,* Journal of Head Trauma Rehabilitation, 1999, Vol. 14, 220–232). Yet other research finds that ''significant service gaps remain, particularly in the area of employment outcomes'' (Goodall P., Ghilone C.T., *The Changing Face of Publicly Funded Employment Services,* Journal of Head Trauma Rehabilitation, 2001, Vol. 16, No. 1, 94–106).

Despite the emergence of improved imaging techniques and psychopharmacologic treatments, the effectiveness of many rehabilitation interventions for persons with TBI has yet to be demonstrated conclusively. In work funded by the Agency for Health Care Policy and Research (now the Agency for Health Care Research and Quality), a panel of experts concluded that there is little evidence relating the

intensity of acute inpatient TBI rehabilitation to outcome. Research on TBI interventions must have methodological rigor that includes attention to study population, controls, hypotheses, appropriate measures, and appropriate statistical analysis methods (Evidence Report/Technology Assessment Number 2. Rehabilitation for Traumatic Brain Injury, AHCPR Publication No. 99–E006).

NIDRR recently completed a Summative Program Review of the current TBIMS projects. Participants in the review process observed that the comprehensive continuum of quality care should continue to be a requirement for participation in the TBIMS projects program. In addition, the review panels identified longitudinal data collection and innovative research as achievements of the TBIMS. Reviewers also noted that uniformly comprehensive, high quality care, together with a common data collection system and administrative infrastructure, make the TBIMS program a valuable platform for various collaborative studies, including multi-system project trials of therapies and technologies as well as community-based interventions. NIDRR will hold a separate competition to foster collaborative research to take advantage of the multi-site capacities of the TBIMS.

A committee consisting of the individual system project program directors has, since its inception, guided the TBIMS program. This group meets bi-annually in Washington, DC, and, in consultation with NIDRR, develops and oversees the policies of the TBIMS. It is anticipated that this mechanism will continue. In the current funding cycle, this governing body developed a set of strategic recommendations for the Model Systems. NIDRR intends to work through the system project directors to implement some of the recommendations of this group, including:

- Evaluation of the inclusion criteria and its impact on the population admitted to the model system;
- Systematic evaluation of the TBI longitudinal data set, with reduction in redundancy of data items and consideration of adoption of a minimal data set;
- Development of guidelines for public use of the data set, ensuring confidentiality of data; and
- Continued development of research management mechanisms that promote rigor in TBI studies.

Proposed Priority

The Assistant Secretary proposes to establish an absolute priority for Traumatic Brain Injury Model System projects for the purpose of generating new knowledge through research to improve treatment and services delivery outcomes for persons with TBI. A TBIMS project must:

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(2) Conduct no more than three research studies focused on areas identified in the NFI and the Plan, ensuring that each project has sufficient sample size and methodological rigor to generate robust findings. These studies may be done in collaboration with other TBIMS projects.

(3) Participate as directed by the Assistant Secretary in national studies of TBI by contributing to a national database and by other means as required by the Assistant Secretary, collect data on TBIMS participants, adhering to data collection and data quality guidelines developed by the TBINDC in consultation with NIDRR, and demonstrating capacity to maintain long-term retention of participants.

(4) Disseminate research findings to clinical and consumer audiences, using accessible formats, and evaluate impact of these findings on improved outcomes for persons with TBI.

(5) Collaborate, as appropriate, with other system projects in ongoing research and dissemination efforts, providing information on coordination mechanisms, quality control, and impact on overall management of the system project.

In carrying out these purposes, the TBIMS project may select one of the following research objectives related to specific areas of the NFI or the Plan:

- *Integrating Persons with Disabilities into the Workforce:* (1) Develop and evaluate strategies that improve the employment outcomes of persons with TBI, particularly focusing on job quality and job stability; and (2) Investigate the relationship between treatment in TBIMS and improved employment outcomes for persons with TBI.
- *Maintaining Health and Function:* (1) Study the impact of diagnostic innovations, such as use of ICP and fMRI, in acute management on rehabilitation outcomes; (2) Identify pharmacologic interventions of psychoactive drugs and other pharmacologic agents to enhance cognitive and behavioral outcomes, (3) Design and test rehabilitation interventions that improve functional and long-term outcomes of persons with TBI; or (4) Examine treatment alternatives for depression and other affective disorders.
- *Assistive and Universally Designed Technologies:* (1) Evaluate the impact of selected innovations in technology or rehabilitation engineering or both on outcomes such as function, independence, and employment; or (2) Evaluate the impact of selected innovations in technology or rehabilitation engineering or both on service delivery to persons with TBI.
- *Full Access to Community Life:* (1) Develop and test strategies for improving the independent living/community integration outcomes of persons with TBI, including identifying predictors of community participation and interventions that may affect it; (2) Evaluate the role of family and social supports in facilitating the independent living/community integration outcomes of persons with disabilities; or (3) Examine the impact of environmental barriers on the outcomes of persons with TBI.

In carrying out these purposes, the system project must:

- Involve, as appropriate, individuals with disabilities and individuals from minority backgrounds in all aspects of the research as well as in design of clinical services and dissemination activities.
- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches;
- Collaborate with other related projects, including the other funded TBIMS projects.

Applicable Program Regulations: 34 CFR part 350.

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Program Authority: 29 U.S.C. 762(g) and 764(b).

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Dated: February 27, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5230 Filed 3–4–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
March 5, 2002

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes funding a priority for a Traumatic Brain Injury Model Systems (TBIMS) Program under the Disability and Rehabilitation Research Projects (DRRP) Program for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year (FY) 2002. The Assistant Secretary takes this action to focus research attention on an identified national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with Traumatic Brain Injury.

DATES: We must receive your comments on or before April 4, 2002.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

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 person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we will invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to:

(a) Develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act).

Description of Special Projects and Demonstrations for Traumatic Brain Injuries

The Traumatic Brain Injury Model Systems (TBIMS) program requires excellence in clinical care, rehabilitation research, and relevance to consumers, principally individuals with traumatic brain injuries and their families. Each TBIMS project funded under this program must have an integrated continuum of care to support the rehabilitation of persons with TBI, with linkage to a trauma system project and community-based treatment settings. Each project must have capacity to enroll TBI subjects and conduct research on TBI.

The Department is particularly interested in ensuring appropriate expenditure of public funds. Not later than three years after the establishment of any TBI project, NIDRR will conduct one or more reviews of the activities and achievements of each project to ensure that the grantee is carrying out proposed activities and contributing to the advancement of knowledge. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment of stated objectives.

The New Freedom Initiative (NFI) emphasizes the importance of assistive and universal designed technologies, other employment initiatives, and promotion of full access to community-based living. The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.* NIDRR's published Long-Range Plan (the Plan), focusing on both individual and systemic factors that impact functional capability, includes the following elements: employment outcomes, health and function, technology for access, community integration and independent living, and associated activities such as development of outcome measures and disability statistics. The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Priority

Background:

An estimated 5.3 million Americans currently live with disabilities resulting from TBI. The Centers for Disease Control (CDC) estimates that approximately 80,000 Americans experience the onset of disabilities resulting from traumatic brain injury each year. The three leading causes of TBI are motor vehicle crashes, violence, and falls, particularly among the elderly. Following TBI, individuals may have impairments in cognition, movement, and sensation (Thurman D.J., Alverson C.A., Dunn K.A., Guerrero J., Sniezek, J.E., *Traumatic brain injury in the United States: A Public Health Perspective,* Journal of Head Trauma Rehabilitation. 1999, 14(6): 602–615). The CDC maintains a website on ''Epidemiology of Traumatic Brain Injury in the United States'' at *http://www.cdc.gov/ncipc/dacrrdp/tbi.htm.*

As stated in the 1998 National Institute of Health (NIH) Consensus Conference Proceedings, ''TBI may result in lifelong impairment of an individual's physical, cognitive, and psychosocial functioning.'' In a 1995 review of the literature on TBI survivors, Morton and Wehman identified ''significant'' decreases in opportunities for social interaction and maintaining friendships as well as high levels of anxiety and depression lasting for prolonged periods following TBI (Morton M., Wehman P., *Psychosocial and Emotional Sequelae of Individuals with Traumatic Brain Injury: A Literature Review and Recommendations,* Brain Injury, 1995, Vol. 9, No. 1, 81–92). In the civilian population, it is estimated that fewer than 25% of persons experiencing TBI are ''able to gain and maintain employment'' (Kolakowsky-Hayner S., Kreutzer J.S., Miner K.D., *Validation of the Service Obstacles Scale for the Traumatic Brain Injury Population,* NeuroRehabilitation, 2000, Vol. 14, 151–158.) Other research has found high rates of rehospitalization after TBI, often for seizures and psychiatric difficulties (Marwitz J.H., Cifu D.X., Englander J., High W.M., *A Multi-System Project Analysis of Rehospitalizations Five Years After Brain Injury,* Journal of Head Trauma Rehabilitation, Aug. 16, 2001, No. 4, 307–17).

In 1987, NIDRR established the National Traumatic Brain Injury Model Systems (TBIMS) Program by funding four projects to provide comprehensive, multidisciplinary rehabilitation services to persons who experience TBI and to conduct research to foster advances in TBI rehabilitation. This number expanded to 17 projects in 1998. The TBIMS program is designed to study the course of recovery and outcomes following the delivery of a coordinated system of TBI care.

Contributions to the TBI National Data Center Project

From 1989 to present, the TBIMS projects have collected information on common data elements and contributed to a centralized TBI database (additional information on TBIMS can be found at *http://www.tbims.org*). The TBI National Data Center (TBINDC) project coordinates data collection, manages the TBI database, and provides statistical support to the model system projects. To date, TBI projects have contributed 2,553 cases to the national database, with follow up data currently extending to 12 years post injury. For purposes of the TBIMS, TBI is defined as damage to brain tissue caused by an external mechanical force as evidenced by: Loss of consciousness due to brain trauma, post-traumatic amnesia (PTA), skull fracture, or objective neurological findings that can be reasonably attributed to TBI on physical examination or mental status examination. Penetrating wounds fitting the definition listed above are included. Lacerations or bruises or both of the scalp or forehead without other criteria listed above are excluded. Primary anoxic encephalopathy is excluded.

In the current TBIMS, participants must meet the following criteria: (a) Fit the above definition of TBI; (b) be 16 or older; (c) entered the Model System's acute care hospital emergency department within 24 hours of injury; (d) receive both acute hospital care and care on a designated inpatient rehabilitation unit within the model system; and (e) be able to understand and signs an informed consent form or, if unable, have a family or legal guardian who understands and sign the informed consent form. At the present time, TBIMS projects collects 429 data items on each individual during the initial hospitalization, and an additional 459 items during follow up.

TBI Rehabilitation

In recent years, medical and pharmacological therapies have shown promise for preserving and enhancing function for individuals with TBI. The availability of drugs capable of regulating neurotransmitter release or receptor function has led to research into neuroprotective intervention in TBI (Verma A., *Opportunities for Neuroprotection in TBI,* Journal of Head Trauma and Rehabilitation, 2000; 15(5): 1149–1161); (McIntosh T.K., Juhler M., et al., *Novel Pharmacologic Strategies in the Treatment of Experimental Traumatic Brain Injury,* Journal of Neurotrauma, Oct. 1998; 15(10): 731–69). Psychopharmacological agents such as amantadine have shown responsiveness to symptoms that include problems with short-term memory, attention, planning, problem solving, impulsivity, disinhibition, poor motivation, and other behavioral and cognitive deficits (Kraus M.F., Maki P.M., *Effect of Amantadine Hydrochloride on Symptoms of Frontal Lobe Dysfunction in Brain Injury: Case Studies and Review,* Journal of Neuropsychiatry and Clinical Neurosciences, Spring 1997; 9(2): 222–30).

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Applicable Program Regulations: 34 CFR part 350.

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Program Authority: 29 U.S.C. 762(g) and 764(b).

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Dated: February 27, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5230 Filed 3–4–02; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 5, 2002

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Dichlobenil, etc.; published 12-5-01

FEDERAL TRADE COMMISSION

Industry guides:

Household furniture industry; guides rescinded; published 3-5-02

New automobiles; fuel economy advertising; published 3-5-02

Rebuilt, reconditioned, and other used automobile parts industry; published 3-5-02

TENNESSEE VALLEY AUTHORITY

Lobbying; new restricitons:

Civil monetary penalties; inflation adjustments; published 3-5-02

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

New Jersey; published 2-25-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Pet bird identification; microchip implants; comments due by 3-12-02; published 1-11-02 [FR 02-00740]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Pet birds, performing or theatrical birds, poultry and poultry products; limited ports of entry; comments due by 3-14-02; published 2-12-02 [FR 02-03343]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Fire ant, imported; comments due by 3-11-02; published 1-9-02 [FR 02-00455]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Findings on petitions, etc.—

North American green sturgeon; comments due by 3-14-02; published 12-14-01 [FR 01-30930]

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Groundfish; comments due by 3-11-02; published 2-8-02 [FR 02-02878]

DEFENSE DEPARTMENT

Air Force Department

Privacy Act; implementation; comments due by 3-12-02; published 1-11-02 [FR 02-00681]

DEFENSE DEPARTMENT

Army Department

Privacy Act; implementation:; comments due by 3-12-02; published 1-11-02 [FR 02-00680]

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National Reconnaissance Office; comments due by 3-15-02; published 1-14-02 [FR 02-00679]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act), natural gas companies (Natural Gas Act), and oil pipelines (Interstate Commerce Act):

Uniform System of Accounts—

Financial instruments, comprehensive income, derivatives, and hedging activities; accounting and reporting requirements; comments due by 3-11-02; published 1-8-02 [FR 02-00190]

Practice and procedure:

Critical energy infrastructure information; and previously published documents, treatment; comments due by 3-11-02; published 1-23-02 [FR 02-01614]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Testing and monitoring provisions; amendments; comments due by 3-12-02; published 1-30-02 [FR 02-02232]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 3-14-02; published 2-12-02 [FR 02-03347]

New Mexico; comments due by 3-11-02; published 2-8-02 [FR 02-03102]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

New Mexico; comments due by 3-11-02; published 2-8-02 [FR 02-03103]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.J. Res. 82/P.L. 107–143

Recognizing the 91st birthday of Ronald Reagan. (Feb. 14, 2002; 116 Stat. 17)

S. 737/P.L. 107–144

To designate the facility of the United States Postal Service located at 811 South Main Street in Yerington, Nevada, as the ''Joseph E. Dini, Jr. Post Office''. (Feb. 14, 2002; 116 Stat. 18)

S. 970/P.L. 107–145

To designate the facility of the United States Postal Service located at 39 Tremont Street, Paris Hill, Maine, as the ''Horatio King Post Office Building''. (Feb. 14, 2002; 116 Stat. 19)

S. 1026/P.L. 107–146

To designate the United States Post Office located at 60 Third Avenue in Long Branch, New Jersey, as the ''Pat King Post Office Building''. (Feb. 14, 2002; 116 Stat. 20)

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