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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE176; Special Condition Number 23–111–SC]

Special Conditions: Extra Flugzeugbau GmbH, Model EA–400 Airplane, Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions, request for comments.

SUMMARY: These special conditions are issued to Extra Flugzeugbau GmbH, for an amended type certificate for the EA–400 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic attitude direction indicator installed by Extra Flugzeugbau GmbH for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is February 27, 2002. The Federal Aviation Administration (FAA) must receive any comments on or before April 11, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. CE176, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone 816–329–4123; facsimile 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE176.'' The postcard will be date stamped and returned to the commenter.

Background

On September 5, 2001, Extra Flugzeugbau GmbH, Flugplatz Dinslaken Schwarze Heide, 46569 Hünxe, Federal Republic of Germany, made an application to the FAA for an amended type certificate for the EA–400 airplane. The EA–400 airplane is currently approved under TC No. A43CE. The proposed modification incorporates a novel or unusual design feature, such as an electronic attitude direction indicator that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Extra Flugzeugbau GmbH must show that the EA–400 airplane meets the following provisions, or the applicable regulations in effect on the date of application, 14 CFR part 23 at Amendment 23–54.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions are normally issued in accordance with § 11.19 as required by and become a part of the type certification basis in accordance with § 21.101(d).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

Extra Flugzeugbau GmbH plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include an electronic attitude direction indicator, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform

functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. In addition, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows: The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz&–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values, over the complete modulation period.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts rms per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the EA–400 airplane. Should Extra Flugzeugbau GmbH apply at a later date for a design approval to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the specified airplane model(s). It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, 11.19.

The Special Conditions

Accordingly, by the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the EA–400 airplane modified by Extra Flugzeugbau GmbH to add an electronic attitude direction indicator.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be

designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on February 27, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–5810 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AF60

Determining Income Under the Supplemental Security Income Program; Student Child Earned Income Exclusion

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising our rules on deeming of income so that we use the same increased earned income exclusion amounts for both eligible and ineligible students in Supplemental Security Income (SSI) households. Beginning with earned income for January 2001, the monthly and yearly SSI student child earned income exclusion (SEIE) amounts were increased for eligible children based on final rules published in the **Federal Register** on December 29, 2000. The same increase should have been made for ineligible children for purposes of deeming calculations, but it was inadvertently not included in the published final rules. Under SSA's longstanding rule, the same SEIE amounts have applied to the income of both eligible and ineligible children. Consistent with the increase made in the final rules published December 29, 2000, this final rule applies the same increase in the SEIE to ineligible children.

EFFECTIVE DATE: This rule is effective on March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Office of Process and Innovation Management, L2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, *regulations@ssa.gov,* (410) 965–3632 or TTY (410) 966–5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet web site, Social Security Online, at *http://www.ssa.gov.*

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SUPPLEMENTARY INFORMATION: Section 1612 of the Social Security Act (the Act) describes the meaning of ''income'' for purposes of the SSI program. This section also explains what is excluded from income. Section 1612(b)(1) provides an exclusion from earned income for a child who is a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare for gainful employment. The section also provides that the Commissioner may prescribe the maximum amount of the exclusion. Prior to January 2001, regulations at §§ 416.1112(c)(3) and 416.1161(c) provided, for a child who is a student, an SEIE of up to $400 a month of earned income with an annual limit of $1,620.

If an SSI eligible individual lives in the same household with a parent or spouse who does not receive SSI benefits (hereafter referred to as an ''ineligible parent'' or ''ineligible spouse''), the ineligible parent's or spouse's income may be considered available (deemed) to the eligible individual. This concept is called ''deeming'' and is provided for in section 1614 of the Act. In determining the amount of an ineligible parent's or spouse's income to consider in determining the individual's eligibility and benefit amounts, we deduct an allocation for other children living in the household who are not eligible for SSI benefits (hereafter referred to as ''ineligible children'') (see § 416.1160(c)(2)). We reduce the amount of this allocation by the amount of the ineligible child's own income (see § 416.1161(c)). However, if an ineligible child is a student who is working, his or her earned income is reduced by the amount of the SEIE exclusion before that income is used to reduce the amount of the allocation.

On December 29, 2000, we published final rules in the **Federal Register** (65 FR 82905) to, among other things, revise § 416.1112(c)(3) of our regulations. Effective for earned income beginning in January 2001, these revisions increased the maximum monthly and yearly SEIE amounts used in determining SSI eligibility and payment amounts for student children, and provided for the automatic adjustment of the monthly and yearly exclusion amounts each year based on increases in the cost of living. Under our longstanding rules, the SEIE maximum exclusion amounts have been the same for ineligible children as for eligible children. However, the new rules applied the new exclusion amounts to eligible children but inadvertently did not include ineligible children for deeming calculation purposes. The preamble to those rules noted that the prior amounts had been in place since 1974, and stated that the change in these amounts was being made in response to increases in school expenses since that time. The rationale for this increase is equally applicable to ineligible student children as for eligible student children.

This final rule amends the regulations to apply the same increase in the SEIE amounts to ineligible children as for eligible children. We are now addressing the oversight noted above in order to be consistent with our longstanding policy of having the same SEIE amounts for both eligible and ineligible children and with the regulatory increase in the SEIE amounts already made for eligible children. This final rule therefore amends § 416.1161(c) to provide a cross-reference to the eligible child regulation in § 416.1112(c)(3) that provides for a SEIE in 2001 of up to $1,290 a month with an annual limit of $5,200, and automatic adjustments each subsequent year as provided in that section. These amounts have increased for calendar year 2002 to $1,320 and $5,340, respectively.

The effects of this rule change are most easily understood by considering an example. John, an ineligible student, lives with his mother and his SSI eligible brother, Mark. In June, July and August of 2002, John earns $750 each month to defray his school expenses in the fall. His mother also works and her earnings are deemed to Mark. As part of the deeming computation we deduct from the mother's earnings a living allowance allocation of $272 each month for John subject to reduction for

his own income after application of the SEIE. *Under the prior rule:* The maximum monthly SEIE amount of $400 would be subtracted from John's earnings ($750 − $400=$350), and $350 would be considered in reducing the living allowance of ineligible student. Since $350 is more than the $272 allocation, there would be no deduction from the mother's earnings of a living allowance allocation for John. *Under the new rule:* The maximum monthly SEIE amount of $1,320 exceeds John's monthly earnings of $750. Therefore, the SEIE would apply to all of John's earnings, and none of those earnings would reduce the living allowance allocation for John. Therefore, a living allowance allocation of $272 each month would be deducted from the amount of the mother's earnings deemed to Mark.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this rule merely adapts the rules for the SEIE that have always been reflected in our regulations for both eligible and ineligible student children in order to continue SSA's longstanding policy of having the same exclusion amounts apply to both eligible and ineligible children. This final rule contains no substantive changes of interpretation. Therefore, opportunity for prior comment is unnecessary, and we are issuing this as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the SEIE provision. However, without these changes, our rules will conflict and may mislead the public. Therefore, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with Executive Order (E.O.) 12866.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements that require OMB review.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public Assistance programs, reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: February 26, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending part 416 of Chapter III of title 20 of the Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for Subpart K of part 416 continues to read as follows:

Authority: Secs.702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Revise the last sentence of § 416.1161(c) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(c) * * * In addition, if the ineligible child is a student (see § 416.1861), we exclude his/her earned income subject to the amounts set in § 416.1112(c)(3).

* * * * *

[FR Doc. 02–5858 Filed 3–11–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8984]

RIN 1545–BA51

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations under sections 337(d) and 1502. These regulations permit certain losses recognized on sales of subsidiary stock by members of a consolidated group. These regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date*: These regulations are effective March 7, 2002.

Applicability Date: For dates of applicability, see §§ 1.337(d)–2T(g), 1.1502–20T(i) and 1.1502–32T(b)(4)(v).

FOR FURTHER INFORMATION CONTACT: Sean P. Duffley (202) 622–7530 or Lola L. Johnson (202) 622–7550 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1774. Responses to this collection of information are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden,

please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 337(d) of the Internal Revenue Code, enacted in 1986, directs the Secretary to prescribe regulations to ensure that the purposes of *General Utilities* repeal, which generally requires a corporation to recognize gain or loss on a disposition of any asset, may not be circumvented through the use of the consolidated return regulations. Pursuant to that directive, in 1990, the IRS and Treasury promulgated § 1.337(d)–2. Section 1.337(d)–2 generally disallows any loss recognized by a member of a consolidated group on the disposition of subsidiary stock, except to the extent the consolidated group disposes of its entire equity interest in a subsidiary to persons not related to any member of the consolidated group within the meaning of section 267(b) or section 707(b)(1) (applying the language ''10 percent'' instead of ''50 percent'') and can establish that such loss is not attributable to the recognition of built-in gain. Section 1.337(d)–2, however, only applies with respect to dispositions and deconsolidations that occur on or after November 19, 1990, and that are not subject to § 1.1502–20.

Section 1.1502–20, which applies to all dispositions and deconsolidations of subsidiary stock that occur on or after February 1, 1991, disallows certain losses recognized by a member of a consolidated group on the disposition of subsidiary stock. The rule disallows losses to the extent of the sum of ''extraordinary gain dispositions,'' ''positive investment adjustments,'' and ''duplicated loss.'' The rule is designed not only to implement *General Utilities* repeal, but also to further single entity principles by preventing the allowance of stock losses that are reflected in a subsidiary's assets or loss carryovers.

In *Rite Aid Corp.* v. *United States*, 255 F.3d 1357 (Fed. Cir. 2001), the United States Court of Appeals for the Federal Circuit held that the duplicated loss component of § 1.1502–20 was an invalid exercise of regulatory authority. As stated in Notice 2002–11, 2002–7 I.R.B. 526, the IRS has decided that the interests of sound tax administration will not be served by continuing to litigate the validity of the loss duplication factor of § 1.1502–20. Moreover, because of the interrelationship in the operation of all of the loss disallowance factors, the IRS and Treasury have decided that new rules governing loss disallowance on sales of stock of a member of a consolidated group should be implemented.

Explanation of Provisions

This Treasury decision adds §§ 1.337(d)–2T, 1.1502–20T(i), and 1.1502–32T(b)(4)(v), as described below.

For dispositions and deconsolidations of subsidiary stock on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before such date that was in continuous effect until the disposition or deconsolidation, this Treasury decision provides that § 1.337(d)–2T, and not § 1.1502–20, governs the amount of loss allowable on such sales, or the amount of basis reduction required on such deconsolidations, of subsidiary stock. In substantial part, § 1.337(d)–2T restates the current § 1.337(d)–2, with certain modifications. As described above, as currently in effect, § 1.337(d)–2 permits recognition of loss only where a consolidated group disposes of its entire equity interest in a member of the group to persons not related to any member of the consolidated group within the meaning of section 267(b) or section 707(b)(1) (applying the language ''10 percent'' instead of ''50 percent''). Section 1.337(d)–2T eliminates those restrictions.

For dispositions and deconsolidations of subsidiary stock before March 7, 2002, and dispositions and deconsolidations of subsidiary stock on or after March 7, 2002, that were effected pursuant to a binding written contract entered into before such date that was in continuous effect until the disposition or deconsolidation, this Treasury decision adds § 1.1502–20T(i). Section 1.1502–20T(i) permits consolidated groups to calculate allowable loss on the sale of subsidiary stock by applying § 1.1502–20 in its entirety or, in lieu thereof, by electing to apply one of two alternative regimes. In particular, the group may elect to apply the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, i.e., calculating disallowed loss by taking into account only extraordinary gain dispositions and positive investment adjustment amounts. Alternatively, the group may elect to apply the provisions of § 1.337(d)–2T. Such election may be made with the original return for the taxable year that includes the later of March 7, 2002, and the date of the disposition or deconsolidation of the stock of the subsidiary. Alternatively, the election may be made with an amended return, provided that the amended return is filed before the date the original return for the taxable year that includes March 7, 2002, is due.

An election described in § 1.1502–20(g) to reattribute losses will be respected only if the requirements of § 1.1502–20(g), including the requirement that the election be filed with the group's income tax return for the year of the disposition, have been or are satisfied. The temporary regulations do not extend the time for filing an election under § 1.1502–20(g). If a group made an election described in § 1.1502–20(g) and elects to determine allowable loss by applying one of the alternative regimes pursuant to § 1.1502–20T(i), the amount of loss treated as reattributed may be reduced. If the group elects to determine allowable loss by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, the amount of loss treated as reattributed is equal to the amount of loss originally reattributed, reduced to the extent that it exceeds the greater of (1) the loss disallowance amount determined by taking into account only extraordinary gain dispositions and positive investment adjustments (and not the duplicated loss factor of the loss disallowance formula) and (2) the amount of reattributed losses that the common parent of the selling group absorbed in closed years. If the group elects to determine allowable loss by applying § 1.337(d)–2T, the amount of loss treated as reattributed is the greater of (1) zero and (2) the amount of reattributed losses that the common parent of the selling group absorbed in closed years. For this purpose, a taxable year is a closed year to the extent the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply one of the alternative regimes is filed and at all times thereafter.

To the extent that an election under § 1.1502–20T(i) results in a reduction in the amount of losses treated as reattributed, such excess losses will be treated as available for use by the subsidiary or any other group of which the subsidiary is a member, subject to any applicable limitations (e.g., section 382). In order to permit the subsidiary's use of such losses that are subject to an

existing section 382 limitation, § 1.1502–20T(i) allows the common parent of the group that disposed of the stock to make certain adjustments to the amount of such a limitation apportioned under § 1.1502–95 or § 1.1502–96.

Section 1.1502–20T(i) requires the common parent of the selling group to notify the subsidiary of the recomputed reattribution amount and any adjustment to the apportionment of a section 382 limitation made in connection with the election to apply one of the alternative regimes. In addition, if the acquirer was a member of a consolidated group at the time of the acquisition, the common parent of the selling group must provide such notification to the common parent of the acquirer at the time of the acquisition. The rules set forth in § 1.1502–20T(i) also confirm that any losses treated as reattributed to the common parent of the selling group will not be available to offset income of the subsidiary or any other group of which such subsidiary is a member.

The IRS and Treasury do not intend for a purchasing consolidated group to be unfairly disadvantaged in the event that the common parent of a selling member elects to apply one of the alternative regimes under § 1.1502–20T(i) and, as a result, the amount of losses treated as reattributed to the common parent of the selling group is decreased and the amount of losses treated as available to the subsidiary is increased. Therefore, this Treasury decision adds § 1.1502–32T(b)(4)(v), which provides that, to the extent that the subsidiary's loss carryovers are increased by reason of an election to apply one of the alternative regimes and such loss carryovers expire, or would have been properly used to offset income, in a closed year, the purchasing group will be deemed to have made an election to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before the subsidiary became a member of the purchasing group. Accordingly, no basis reduction under § 1.1502–32 will result from the expiration of, or failure to use, such losses.

Section 1.1502–32T(b)(4)(v) further provides that, to the extent the subsidiary's loss carryovers are increased by reason of an election to apply one of the alternative regimes and such loss carryovers have not expired, and would not have been properly used to offset income, in a closed year, the purchasing group may make an election under § 1.1502–32(b)(4) to treat all or a portion of such loss carryovers as expiring for all Federal income tax purposes immediately before the subsidiary became a member of the purchasing group. The election must be filed with the purchasing group's return for the taxable year in which the subsidiary receives the notification of the recomputed reattributed loss amount.

For purposes of § 1.1502–32T(b)(4)(v), a taxable year is a closed year to the extent the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which the subsidiary receives the notification of the recomputed reattributed loss amount and at all times thereafter.

Special Analyses

In light of the Federal Circuit's decision in *Rite Aid Corp.* v. *United States*, 255 F.3d 1357 (Fed. Cir. 2001), these temporary regulations are necessary in order to provide taxpayers with immediate guidance regarding allowable loss and basis reductions in connection with dispositions and deconsolidations of subsidiary stock and to carry out the principles of *General Utilities* repeal pending the issuance of further guidance. These temporary regulations permit taxpayers to determine the amount of allowable loss or basis reduction by applying § 1.1502–20 in its entirety or, in lieu thereof, by electing to apply the provisions of either § 1.337(d)–2T or 1.1502–20 without regard to § 1.1502–20(c)(1)(iii). In addition, these temporary regulations provide taxpayers with guidance on the effect of elections previously made under § 1.1502–20(g) to reattribute losses to the common parent of a selling group. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal authors of these regulations are Sean P. Duffley and Lola L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.337(d)–2T also issued under 26 U.S.C. 337(d). * * *

Section 1.1502–20T(i) also issued under 26 U.S.C. 1502. * * *

Section 1.1502–32T(b)(4)(v) also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.337(d)–2 is amended by adding paragraph (g)(4) to read as follows:

§ 1.337(d)–2 Loss limitation window period.

* * * * *

(g) * * *

(4) For dispositions and deconsolidations on and after March 7, 2002, see § 1.337(d)–2T.

Par. 3. Section 1.337(d)–2T is added to read as follows:

§ 1.337(d)–2T Loss limitation window period (temporary).

(a) *Loss disallowance*—(1) *General rule.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

(2) *Definitions.* For purposes of this section:

(i) The definitions in § 1.1502–1 apply.

(ii) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(3) *Coordination with loss deferral and other disallowance rules.* For purposes of this section, the rules of § 1.1502–20(a)(3) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(b) *Basis reduction on deconsolidation*—(1) *General rule.* If the basis of a member of a consolidated group in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) of this section applies and, to the extent necessary to effectuate the purposes of this section,

this paragraph (b) applies following the application of paragraph (a) of this section.

(2) *Deconsolidation.* Deconsolidation means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value. Value* means fair market value.

(c) Allowable Loss—(1) Application. This paragraph (c) applies with respect to stock of a subsidiary only if a separate statement entitled ''§ 1.337(d)–2T(c) statement'' is included with the return in accordance with paragraph (c)(3) of this section.

(2) *General rule.* Loss is not disallowed under paragraph (a)(1) of this section and basis is not reduced under paragraph (b)(1) of this section to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities). Loss or basis may be attributable to the recognition of built-in gain on the disposition of an asset by a prior group. For purposes of this section, gain recognized on the disposition of an asset is built-in gain to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis that is reflected, before the disposition of the asset, in the basis of the share, directly or indirectly, in whole or in part, after applying section 1503(e) and other applicable provisions of the Internal Revenue Code and regulations.

(3) *Contents of statement and time of filing.* The statement required under paragraph (c)(1) of this section must be included with or as part of the taxpayer's return for the year of the disposition or deconsolidation and must contain:

(i) The name and employer identification number (E.I.N.) of the subsidiary.

(ii) The amount of the loss not disallowed under paragraph (a)(1) of this section by reason of this paragraph (c) and the amount of basis not reduced under paragraph (b)(1) of this section by reason of this paragraph (c).

(4) *Example.* The principles of paragraphs (a), (b), and (c) of this section are illustrated by the examples in §§ 1.337(d)–1(a)(5) and 1.1502–20(a)(5) (other than *Examples 3, 4,* and *5*) and (b), with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20, and by the following example. For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. Investment adjustment system means the rules of § 1.1502–32.

Example. Loss offsetting built-in gain in a prior group. (i) P buys all the stock of T for $50 in Year 1, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of $50 and a value of $0, and asset 2 has a basis of $0 and a value of $50. T sells asset 2 during Year 3 for $50, and recognizes a $50 gain. Under the investment adjustment system, P's basis in the T stock increased to $100 as a result of the recognition of gain. In Year 5, all of the stock of P is acquired by the P1 group, and the former members of the P group become members of the P1 group. T then sells asset 1 for $0, and recognizes a $50 loss. Under the investment adjustment system, P's basis in the T stock decreases to $50 as a result of the loss. T's assets decline in value from $50 to $40. P then sells all the stock of T for $40 and recognizes a $10 loss.

(ii) P's basis in the T stock reflects both T's unrecognized gain and unrecognized loss with respect to its assets. The gain T recognizes on the disposition of asset 2 is built-in gain with respect to both the P and the P1 groups for purposes of paragraph (c)(2) of this section. In addition, the loss T recognizes on the disposition of asset 2 is built-in loss with respect to the P and P1 groups for purposes of paragraph (c)(2) of this section. T's recognition of the built-in loss while a member of the P1 group offsets the effect on T's stock basis of T's recognition of the built-in gain while a member of the P group. Thus, P's $10 loss on the sale of the T stock is not attributable to the recognition of built-in gain, and the loss is therefore not disallowed under paragraph (c)(2) of this section.

(iii) The result would be the same if, instead of having a $50 built-in loss in asset 2 when it becomes a member of the P group, T has a $50 net operating loss carryover and the carryover is used by the P group.

(d) *Successors.* For purposes of this section, the rules and examples of § 1.1502–20(d) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(e) *Anti-avoidance rules.* For purposes of this section, the rules and examples of § 1.1502–20(e) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(f) *Investment adjustments.* For purposes of this section, the rules and examples of § 1.1502–20(f) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(g) *Effective dates.* This section applies with respect to dispositions and deconsolidations on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation. In addition, this section applies to dispositions and deconsolidations for which an election is made under § 1.1502-20T(i)(2) to determine allowable loss under this section. If loss is recognized because stock of a subsidiary became worthless, the disposition with respect to the stock is treated as occurring on the date the stock became worthless. For dispositions and deconsolidations prior to March 7, 2002, see §§ 1.337(d)–1 and 1.337(d)–2 as contained in the 26 CFR part 1 edition revised as of April 1, 2001.

Par. 4. In § 1.1502–20, paragraph (i) is added to read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

* * * * *

(i) [Reserved]. For further guidance, see § 1.1502–20T(i).

Par. 5. Section 1.1502–20T is added to read as follows:

§ 1.1502–20T Disposition or deconsolidation of subsidiary stock (temporary).

(a) through (h) [Reserved]. For further guidance, see § 1.1502–20(a) through (h).

(i) Limitations on the applicability of § 1.1502–20—(1) Dispositions and deconsolidations on or after March 7, 2002. Except to the extent specifically incorporated in § 1.337(d)-2T, § 1.1502–20 does not apply to a disposition or deconsolidation of stock of a subsidiary on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation.

(2) *Dispositions and deconsolidations prior to March 7, 2002.*

In the case of a disposition or deconsolidation of stock of a subsidiary by a member before March 7, 2002, or a disposition or deconsolidation on or after March 7, 2002, that was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation, a consolidated group may determine the amount of the member's allowable loss or basis reduction by applying § 1.1502–20 in its entirety, or, in lieu thereof, subject to the conditions set forth in this paragraph (i), by making an irrevocable

election to apply the provisions of either—

(i) Section 1.1502–20, except that in applying § 1.1502–20(c)(1), the amount of loss disallowed under § 1.1502–20(a)(1) and the amount of basis reduction under § 1.1502–20(b)(1) with respect to a share of stock will not exceed the sum of the amounts described in § 1.1502–20(c)(1)(i) and (ii); or

(ii) Section 1.337(d)–2T.

(3) *Operating rules*—(i) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section.* If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, an election described in § 1.1502–20(g) to reattribute losses will be respected only if the requirements of § 1.1502–20(g), including the requirement that the election be filed with the group's income tax return for the year of the disposition, have been or are satisfied. For example, if a consolidated group did not file a valid election described in § 1.1502–20(g) with its return for the year of the disposition, this section does not authorize the group that disposed of the stock to make such an election with its return for the year in which it elects to determine its allowable stock loss under the provisions described in paragraph (i)(2)(i) of this section. If a consolidated group that made a valid election described in § 1.1502–20(g) with respect to the disposition of stock elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, the election described in § 1.1502–20(g) may not be revoked, and the amount of loss treated as reattributed as of the time of the disposition pursuant to the election described in § 1.1502–20(g) is the amount of loss originally reattributed, reduced to the extent that it exceeds the greater of—

(A) The amount of stock loss disallowed after applying the provisions described in paragraph (i)(2)(i) of this section; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(i) of this section is filed and at all times thereafter.

(ii) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section.* If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section, the consolidated group may not make an election described in § 1.1502–20(g) to reattribute any losses. If the consolidated group made an election described in § 1.1502–20(g) with respect to the disposition of subsidiary stock, the amount of loss treated as reattributed pursuant to such election will be the greater of—

(A) Zero; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(ii) of this section is filed and at all times thereafter.

(iii) *Apportionment of section 382 limitation in the case of a reduction of reattributed losses*—(A) *Losses subject to a separate section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change separate attributes that were subject to a separate section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limitation to itself under § 1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself.

(B) *Losses subject to a subgroup section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change subgroup attributes that were subject to a subgroup section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limitation to itself under § 1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself. In addition, if such subsidiary has ceased to be a member of the loss subgroup to which the pre-change subgroup attributes relate, the common parent may increase the total amount of such limitation apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under § 1.1502–95(c) by an amount not in excess of the amount by which such limitation that is apportioned to the common parent is reduced pursuant to the previous sentence.

(C) *Losses subject to a consolidated section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change consolidated attributes (or pre-change subgroup attributes) that were subject to a consolidated section 382 limitation (or subgroup section 382 limitation where the common parent was a member of the loss subgroup) are treated as losses of a subsidiary, and the subsidiary has ceased to be a member of the loss group (or loss subgroup), the common parent may increase the amount of such limitation that is apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under § 1.1502–95(c). The amount of each element of such limitation that can be apportioned to a subsidiary (or loss subgroup that includes such subsidiary) pursuant to this paragraph (i)(3)(iii)(C), however, cannot exceed the product of (x) the element and (y) a fraction the numerator of which is the amount of pre-change consolidated attributes (or subgroup attributes) subject to that limitation that are treated as losses of the subsidiary (or loss subgroup) as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section and the denominator of which is the total amount of pre-change attributes subject to that limitation determined as of the close of the taxable year in which the subsidiary ceases to be a member of the group (or loss subgroup).

(D) *Operating rules*—(i) *Limitations on apportionment.* In making any adjustment to an apportionment of a subgroup section 382 limitation or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the common parent must take into account the extent, if any, to which such limitation has previously been apportioned to another subsidiary or loss subgroup prior to the date the election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section is filed.

(ii) *Manner and effect of adjustment to previous apportionment of limitation to common parent.* Any reduction in a previous apportionment of a separate section 382 limitation or a subgroup section 382 limitation to the common parent made pursuant to paragraph (i)(3)(iii)(A) or (B) of this section is treated as effective when the previous apportionment was effective. Any such adjustment must be made in a manner consistent with the principles of § 1.1502–95(c). For example, to the extent the apportionment of a separate section 382 limitation or a subgroup section 382 limitation to a common parent is reduced pursuant to paragraph (i)(3)(iii)(A) or (B) of this section, the amount of such limitation available to the subsidiary or loss subgroup, as applicable, is increased.

(iii) *Manner and effect of adjustment to apportionment of limitation to*

departing subsidiary or loss subgroup. Any increase in an amount of a subgroup section 382 limitation or a consolidated section 382 limitation apportioned to a departing subsidiary (or loss subgroup that includes such subsidiary) made pursuant to paragraph (i)(3)(iii)(B) or (C) of this section is treated as effective for taxable years ending after the date the subsidiary ceases to be a member of the group or loss subgroup. Any such adjustment may be made regardless of whether the common parent previously elected to apportion all or a part of such limitation to such subsidiary (or loss subgroup that includes such subsidiary) under § 1.1502–95(c) or 1.1502–95A(c), but must be made in a manner consistent with the principles of § 1.1502–95(c). For example, to the extent the apportionment of an element of a subgroup section 382 limitation or a consolidated section 382 limitation to a departing subsidiary is increased pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the amount of such element of such limitation that is available to the loss subgroup or loss group is reduced consistent with § 1.1502–95(c)(3).

(iv) *Prohibition against other adjustments.* This paragraph (i)(3)(iii) does not authorize the common parent to adjust the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation that it previously apportioned to a subsidiary, to a loss subgroup, or to itself under § 1.1502–95(c), 1.1502–95A(c), or 1.1502–96(d), other than as provided in paragraphs (i)(3)(iii)(A), (B), and (C) of this section.

(E) *Time and manner of making apportionment adjustment.* An adjustment to the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section must be made as part of the group's election to apply the provisions of paragraph (i)(2)(i) or (ii) of this section, as described in paragraph (i)(4) of this section.

(iv) *Notification of reduction of reattributed losses and adjustment of apportionment of section 382 limitation.* If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the losses treated as reattributed pursuant to an election described in § 1.1502–20(g), then, prior to the date that the group files its income tax return for the taxable year that includes March 7, 2002, the common parent must send the notification required by this paragraph to the subsidiary, at the subsidiary's last known address. In addition, if the acquirer of the subsidiary stock was a member of a consolidated group at the time of the disposition, the common parent must send a copy of such notification to the person that was the common parent of the acquirer's group at the time of the acquisition, at its last known address. The notification is to be in the form of a statement entitled ''Recomputation of Losses Reattributed Pursuant to the Election Described in § 1.1502–20(g),'' that is signed by the common parent and that includes the following information—

(A) The name and employer identification number (E.I.N.) of the subsidiary;

(B) The original and the recomputed amount of losses treated as reattributed pursuant to the election described in § 1.1502–20(g); and

(C) If the apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and the adjusted apportionment of such limitation.

(v) *Items taken into account in closed years.* An election under paragraph (i)(2) of this section affects a taxpayer's items of income, gain, deduction, or loss only to the extent that the election gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund of overpayment, as the case may be, is not prevented by any law or rule of law.

(vi) *Conforming amendments for items previously taken into account in open years.* To the extent that, on any Federal income tax return, the common parent absorbed losses that were reattributed pursuant to an election described in § 1.1502–20(g) and the amount of losses so absorbed is in excess of the amount of losses that are treated as reattributed after application of paragraph (i)(3)(i) or (ii) of this section, or that may be taken into account after any adjustment to an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii) of this section, such returns must be amended to the greatest extent possible to reflect the reduction in the amount of losses treated as reattributed and any adjustment to the apportionment of such limitation.

(vii) *Availability of losses to subsidiary.* To the extent that any losses of a subsidiary are reattributed to the common parent pursuant to an election described in § 1.1502–20(g), such reattribution is binding on the subsidiary and any group of which the subsidiary is or becomes a member. Therefore, if the subsidiary ceases to be a member of the group, any reattributed losses are not thereafter available to the subsidiary and may not be utilized by the subsidiary or any other group of which such subsidiary is or becomes a member. To the extent that the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction in the amount of losses treated as reattributed to the common parent pursuant to an election described in § 1.1502–20(g), however, losses in the amount of such reduction are available to the subsidiary and may be utilized by the subsidiary or any group of which such subsidiary is a member, subject to applicable limitations (e.g., section 382).

(4) *Time and manner of making the election.* An election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section is made by including the statement required by this paragraph with or as part of the original return for the taxable year that includes the later of March 7, 2002, and the date of the disposition or deconsolidation of the stock of the subsidiary, or with or as part of an amended return filed before the date the original return for the taxable year that includes March 7, 2002, is due. The statement shall be entitled ''Allowed Loss under Section [Specify Section under Which Allowed Loss Is Determined] Pursuant to Section 1.1502–20T(i)'' and must include the following information—

(i) The name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock;

(ii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(ii) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iv) If an election described in § 1.1502–20(g) was made with respect to the disposition of the stock of the subsidiary, the amount of losses originally treated as reattributed pursuant to such election and the

amount of losses treated as reattributed pursuant to paragraph (i)(3)(i) or (ii) of this section;

(v) If an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and redetermined apportionment of such limitation; and

(vi) If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the amount of losses treated as reattributed pursuant to an election described in § 1.1502–20(g), a statement that the notification described in paragraph (i)(3)(iv) of this section was sent to the subsidiary and, if the acquirer was a member of a consolidated group at the time of the stock sale, to the person that was the common parent of such group at such time, as required by paragraph (i)(3)(iv) of this section.

(5) *Cross references.* See § 1.1502–32(b)(4)(v) for a special rule for filing a waiver of loss carryovers.

Par. 6. Section 1.1502–32 is amended by adding paragraph (b)(4)(v) to read as follows:

§ 1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(4) * * *

(v) [Reserved]. For further guidance, see § 1.1502–32T(b)(4)(v).

Par. 7. Section 1.1502–32T is added to read as follows:

§ 1.1502–32T Investment adjustments (temporary).

(a) through (b)(4)(iv) [Reserved]. For further guidance, see § 1.1502–32(a) through (b)(4)(iv).

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under § 1.1502–20T(i)(2) is made*—(A) *Expired losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under § 1.1502–32(b)(4) to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group.

(B) *Available losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers have not expired and would not have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group may make an election under § 1.1502–32(b)(4) to treat all or a portion of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. Such election must be filed with the group's original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv).

(C) *Effective date.* This paragraph (b)(4)(v) is applicable on and after March 7, 2002.

(c) through (h)(5)(ii) [Reserved]. For further guidance, see § 1.1502–32(c) through (h)(5)(ii).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

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

Par. 9. In § 602.101, paragraph (b) is amended by adding entries to the table in numerical order to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.337(d)–2T	1545–1774
* * * * *	
1.1502–20T	1545–1774
* * * * *	
1.1502–32T	1545–1774
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: February 27, 2002.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–5850 Filed 3–7–02; 3:17 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–004]

Drawbridge Operating Regulation; Three Mile Creek, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR part 117 governing the operation of the CSX Transportation railroad swing span drawbridge across Three Mile Creek, mile 0.3, at Mobile, Alabama. This deviation allows the draw of the railroad swing span bridge to remain closed to navigation from 10 a.m. until 3 p.m. on March 18 and 19, 2002. This temporary deviation will allow for conversion of the operating mechanism from mechanical to hydraulic.

DATES: This deviation is effective from 10 a.m. on Monday, March 18, 2002 until 3 p.m. on Tuesday, March 19, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The CSX Transportation railroad swing span drawbridge across Three Mile Creek, Baldwin County, Alabama has a vertical clearance in the closed-to-navigation position of 10 feet above mean high water and 12 feet above mean low water. The bridge provides unlimited vertical clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows and fishing vessels. Presently, the draw opens on signal.

CSX Transportation requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work. The work involves replacement of the deficient mechanical operating system with a new hydraulic system. This work is essential for continued operation of the draw span of the bridge and is expected to eliminate

frequent breakdowns resulting in emergency bridge closures.

This deviation allows the draw of the CSX Transportation railroad swing span drawbridge to remain closed to navigation from 10 a.m. until 3 p.m. on March 18 and 19, 2002.

Dated: February 25, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–5805 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 81

[OH132–4; FRL–7155–2]

Designation of Areas for Air Quality Planning Purposes; Ohio; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The Cincinnati-Hamilton moderate ozone nonattainment area (Cincinnati-Hamilton area) was redesignated to attainment on June 19, 2000. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. On September 11, 2001, the United States Court of Appeals for the 6th Circuit (Court) vacated EPA's redesignation of the Cincinnati-Hamilton area, after concluding that EPA erred in one respect that pertained solely to the Ohio portion of the area. Therefore, pursuant to the Court's decision, EPA is making a technical amendment to the listing of the Ohio portion of the Cincinnati-Hamilton area to reflect the designation of Hamilton, Butler, Clermont, and Warren Counties, Ohio as nonattainment for ozone, with a classification of moderate nonattainment, effective as of July 5, 2000, the effective date of EPA's June 19, 2000 rulemaking. The status of the Kentucky portion of the Cincinnati-Hamilton area has been addressed in a separate rulemaking action.

DATES: This technical amendment is effective on April 11, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, EPA Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604; (312) 353–5954, (portanova.mary@epa.gov).

SUPPLEMENTARY INFORMATION:

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I. What Action Are We Taking?
II. What is the background for this action?
III. What is the effect of this action?
IV. Administrative requirements.

I. What Action Are We Taking?

In this technical amendment, EPA is amending 40 CFR 81.336 to designate the Ohio portion of the Cincinnati-Hamilton area as nonattainment for ozone, with a classification of moderate nonattainment. EPA is making this amendment in response to the September 11, 2001 Court decision in *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) which vacated EPA's June 19, 2000 (65 FR 37879) redesignation of the Cincinnati-Hamilton area to attainment and remanded to EPA for further proceedings consistent with the Court's opinion.

II. What Is the Background for This Action?

Under section 107(d) of the Clean Air Act (CAA) as amended in 1977, the Cincinnati metropolitan area was designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, the Cincinnati-Hamilton area was reaffirmed as nonattainment and classified as moderate, due to monitored violations of the National Ambient Air Quality Standard (NAAQS) for ozone that occurred during the 1987–1989 time frame.

For the 1996–1998 ozone seasons, Kentucky and Ohio recorded three years of complete, quality-assured, ambient air monitoring data for the Cincinnati-Hamilton area that demonstrated attainment with the 1-hour ozone NAAQS, making the area eligible for redesignation. Quality-assured ozone monitoring data for the 1999 and 2000 ozone seasons, and preliminary ozone monitoring data for the 2001 ozone season, show that the area continues to attain the 1-hour ozone NAAQS.

Kentucky and Ohio submitted separate requests to redesignate the Cincinnati-Hamilton area from nonattainment to attainment for the 1-hour ozone NAAQS in 1999. On January 24, 2000 (65 FR 3630) EPA proposed to approve the redesignation requests. This rulemaking also proposed to determine that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS by its extended attainment date, and proposed to approve an exemption for the area from nitrogen oxides (NO_X) requirements as provided for in section 182(f) of the CAA. After taking and considering public comments, EPA issued a final rulemaking (65 FR 37879, June 19, 2000), effective July 5, 2000, which determined that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS, and approved Kentucky's and Ohio's requests for the area's redesignation to attainment and their plans for maintaining the 1-hour ozone NAAQS. This final rulemaking action revised 40 CFR 81.336 to list the Cincinnati-Hamilton area as attainment for ozone.

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the United States Court of Appeals for the Sixth Circuit (Court) for review of EPA's redesignation of the Cincinnati-Hamilton area. On September 11, 2001, the Court concluded that EPA erred only on one element that pertained solely to the Ohio portion of the Cincinnati-Hamilton area. The Court thus upheld EPA's actions, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the Reasonably Available Control Technology (RACT) rules of Part D, Subpart 2 of the Clean Air Act. The Court vacated EPA's action in redesignating the Cincinnati-Hamilton area and remanded to EPA for further proceedings. See *Wall* v. *EPA,* (265 F.3d 426, 6th Circuit 2001). EPA is therefore amending 40 CFR 81.336 to reflect the Court's decision.

III. What Is the Effect of This Action?

This technical amendment amends the listing in 40 CFR 81.336 to indicate that Hamilton, Butler, Clermont, and Warren Counties, Ohio are designated as nonattainment for ozone, with a classification of moderate nonattainment. This technical amendment has no impact on the official designation of the Kentucky Counties of Boone, Campbell, and Kenton, as identified in 40 CFR 81.318. The attainment status of the Kentucky portion of the Cincinnati-Hamilton area has been addressed in a separate rulemaking action.

The other EPA actions taken in the June 19, 2000, redesignation rulemaking for the Cincinnati-Hamilton area which were upheld by the Court are unaffected by this amendment. EPA's approvals of Kentucky's and Ohio's maintenance plans have remained in place, since the Court upheld our approval of these plans. Similarly, EPA's determination of attainment for the area has remained in place. Thus the requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the

requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment continue to remain inapplicable to the area. Since the NO_X exemption was not affected by the Court's ruling, the area also remains exempt from section 182(f) NO_X requirements for moderate ozone nonattainment areas.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action is taken pursuant to a decision of the United States Court of Appeals for the Sixth Circuit and merely reflects the Court's action in reinstating the area's previous designation, an action that affects the attainment status of a geographical area. Under these circumstances, correcting the listing for the designation of the area as nonattainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on sources, including small entities. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely reflects the Court's decision, reinstating a prior existing designation, it does not impose any additional enforceable duty beyond that previously required and it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action corrects the listing of the area's nonattainment designation, pursuant to court decision. It does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements. Nor does it alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this action. This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects In 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 28, 2002.

Norman Niedergang,

Acting Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.336, the ''Ohio-Ozone (1-Hour Standard)'' table is amended by revising the entry for the ''Cincinnati-Hamilton Area'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE (1-HOUR STANDARD)

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	* *	*	
Cincinnati-Hamilton Area:				
Butler County		Nonattainment		Moderate.[2]
Clermont County		Nonattainment		Moderate.[2]
Hamilton County		Nonattainment		Moderate.[2]
Warren County		Nonattainment		Moderate.[2]
* * *	*	* *	*	

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

* * * * *

[FR Doc. 02–5865 Filed 3–12–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7157–3]

Unregulated Contaminant Monitoring Regulation for Public Water Systems; Establishment of Reporting Date

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Today's direct final rule establishes August 9, 2002, as a new, later date by which large water systems serving more than 10,000 persons must report all contaminant monitoring results they receive before May 13, 2002, for the Unregulated Contaminant Monitoring Regulation (UCMR) monitoring program. Monitoring results received on or after May 13, 2002, must be reported within thirty days following the month in which laboratory results are received, as specified in the current regulation for this program.

DATES: This rule is effective May 13, 2002, without further notice, unless EPA receives adverse comment by April 11, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. EST on May 13, 2002, as provided in 40 CFR 23.7.

ADDRESSES: Please send an original and three copies of your comments and enclosures (including references) to docket number W–00–01–IV, Comment Clerk, Water Docket (MC4101), USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Due to uncertainty of mail delivery in the Washington, DC area, in order to ensure that your comments are received, please also send a separate copy of your comments to Greg Carroll, USEPA, 26 West Martin Luther King Drive, MC–140, Cincinnati, Ohio 45268. Hand deliveries should be delivered to EPA's Water Docket at 401 M. St., SW., Room EB57, Washington, DC. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov.* Electronic comments must be submitted as a Word Perfect (WP) WP5.1, WP6.1 or WP8 file or as an ASCII file, avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–00–01-IV. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this rule may be filed online at many Federal Depository Libraries.

The record for this rulemaking has been established under docket number W–00–01-IV and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB 57, USEPA Headquarters, 401 M St., SW., Washington, DC. For access to docket materials, please call 202/260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Jeffrey Bryan (202) 564–3942, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC–4606-M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460. General information about UCMR may be obtained from the EPA Safe Drinking Water Hotline at (800) 426–4791. The Hotline operates Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. ET.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

The regulated entities are public water systems. All large community and non-transient non-community water systems serving more than 10,000 persons are required to monitor and report under the UCMR. A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Non-transient non-community water system (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. This rule does not apply to systems serving 10,000 or fewer persons that were randomly selected to participate in the unregulated contaminant monitoring program, since EPA arranges for testing and reporting for those systems. States, Territories, and Tribes, with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples and are regulated by this action. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	NAICS
State, Territorial and Tribal Governments.	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Statutory Authority

SDWA section 1445 (a)(2), as amended in 1996, requires EPA to establish criteria for a program to monitor unregulated contaminants and to issue, by August 6, 1999, a list of contaminants to be monitored. In fulfillment of this requirement, EPA published Revisions to the UCMR for public water systems on September 17, 1999 (66 FR 46221), March 2, 2000 (65 FR 11372), and January 11, 2001 (66 FR 2273), which included lists of contaminants for which monitoring was required or would be required in the future. On September 4, 2001 (56 FR

46221), EPA published a rule delaying requirements for reporting of unregulated contaminant monitoring results until its electronic reporting system was ready to accept data. This rule provides the new reporting deadline.

II. Background

Today's action establishes August 9, 2002, as a new, later date by which all unregulated contaminant monitoring results received before May 13, 2002, must be reported to EPA. All monitoring results received on or after May 13, 2002, must be reported within thirty days following the month in which laboratory results are received, as currently specified in 40 CFR 141.35. Today's rule to establish the reporting date will not result in a major burden or impact on any affected party. Prior dates had been established in previous rules promulgated on September 17, 1999 (64 FR 50556), and January 11, 2001 (66 FR 2273), but changed because the EPA database was not ready to receive the data. The reporting date was delayed by rule on September 4, 2001 (66 FR 46221), to allow the initial version of the database to be completed and tested before operation. The database has now been in operation since October 1, 2001, and has been receiving data from water systems. Data resulting from unregulated contaminant monitoring and sample analysis received before May 13, 2002, must be reported by August 9, 2002. The establishment of this reporting date only affects community and non-transient non-community water systems serving more than 10,000 persons which are required to monitor for unregulated contaminants and report monitoring data to EPA.

III. Costs and Benefits of the Rule

Today's amendment to the UCMR does not require any additional costs that were not already considered in previous rulemakings related to this action. The only reason that the reporting date is being established in this rule at this time is that the previously established dates could not be implemented because the EPA database was not ready to receive the data. Through the public comment on the January 11, 2001 rulemaking for this program, commenters indicated that EPA should not require reporting of unregulated contaminant monitoring results until the database was ready. That database is now ready and has been receiving such data as of October 1, 2001.

IV. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(a) 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;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not ''economically significant'' under EO 12866; nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no additional enforceable duty on any State, local or Tribal governments or the private sector. This rule does not change the costs to State, local, or Tribal governments as estimated in the final revisions to the Unregulated Contaminant Monitoring Rule (64 FR 50556, September 17, 1999; 65 FR 11372, March 2, 2000; and 66 FR 2273, January 11, 2001). This rule merely establishes a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because this rule does not apply to small systems (i.e., systems serving a population of 10,000 or less), including those owned and operated by small governments. Thus today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et.seq.* This rule makes a minor revision to the Unregulated Contaminant Monitoring Rule to establish a new, later reporting deadline. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirement under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities for the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. secs. 601(3)–-(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA's) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition for all three categories of small entities in the **Federal Register**, (63 FR 7620, February 13, 1998) requested public comment, consulted with SBA regarding the alternative definition as it relates to small businesses, and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule makes a minor revision to the UCMR and imposes no additional enforceable duty on any State, local or Tribal governments or the private sector. It merely establishes a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported.

F. National Technology Transfer and Advancement Act

Section 12 (d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA's use of voluntary consensus standards in the UCMR program and approval of Method 515.4 were addressed in the September 1999 and January 2001 rulemakings (64 FR 50608 and 66 FR 2298). This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898—Environmental Justice Strategy

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Today's rule makes a minor change to the UCMR, and does not alter the regulatory impact of those regulations.

H. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule merely makes a minor change to the UCMR, establishing a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported. The rule imposes no cost on State and local governments, and does not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with

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

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule merely makes a minor change to the UCMR establishing a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported. The rule imposes no cost on Tribal governments and does not pre-empt Tribal law. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

This rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

K. Administrative Procedure Act

EPA is publishing this rule without prior proposal because it views this as a noncontroversial amendment and anticipates no adverse comment. EPA does not anticipate adverse comment because this rule merely establishes a new, later reporting deadline for UCMR data collected before May 13, 2002. However, in the ''Proposed Rule'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this rule if adverse comments are filed. This rule will be effective on May 13, 2002, without further notice unless EPA receives adverse comment by April 11, 2002. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the companion proposed rule published elsewhere in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on May 13, 2002.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indian lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 7, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.35 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 141.35 Reporting of unregulated contaminant monitoring results.

* * * * *

(c) * * * Exception: Reporting to EPA of monitoring results received by public water systems prior to May 13, 2002, must occur by August 9, 2002.

* * * * *

[FR Doc. 02–6016 Filed 3–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472,

(202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Executive Associate Director has resolved any appeals resulting from this notification.

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

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

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

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

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

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

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida:					
Lee (FEMA Docket No. D–7517).	Unincorporated Areas.	September 27, 2001, October 4, 2001, *News-Press*.	Mr. Doug St. Cerny, Chairman of the Lee County Board of County Commissioners, P.O. Box 398, Fort Myers, Florida 33902.	Sept. 20, 2001	125124 B
Leon (FEMA Docket No. D–7517).	City of Tallahassee.	September 28, 2001, October 5, 2001, *Tallahassee Democrat*.	The Honorable Scott Maddox, Mayor of the City of Tallahassee, 300 South Adams Street, Tallahassee, Florida 32301–1731.	Jan. 4, 2002	120144 D
Georgia:					
Bibb and Jones (FEMA Docket No. D–7517).	City of Macon	September 25, 2001, October 4, 2001, *The Macon Telegraph*.	The Honorable Jack Ellis, Mayor of the City of Macon, 700 Poplar Street, Macon, Georgia 31201.	Jan. 1, 2002	130011 E
Gwinnett (FEMA Docket No. D–7515).	Unincorporated Areas.	August 23, 2001, August 30, 2001, *Gwinnett Daily Post*.	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Nov. 29, 2001	130322 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Gwinnett (FEMA Docket No. D–7517).	Unincorporated Areas.	September 27, 2001, October 4, 2001, *Gwinnett Daily Post*.	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Sept. 20, 2001	130322 B&C
Kentucky: Whitley (FEMA Docket No. D–7515).	City of Williamsburg.	August 17, 2001, August 24, 2001, *Times Tribune*.	The Honorable Bill Nighbert, Mayor of the City of Williamsburg, P.O. Box 119, Williamsburg, Kentucky 40769.	Aug. 10, 2001	210228 B
Maine:					
York (FEMA Docket No. D–7517).	Town of Alfred	September 27, 2001, October 4, 2001, *The Sanford News*.	Mr. Perley Yeaton, Chairperson of the Board of Selectmen for the Town of Alfred, P.O. Box 667, Alfred, Maine 04002.	Sept. 19, 2001	230191C
Knox (FEMA Docket No. D–7517).	Town of St. George.	October 18, 2001, October 25, 2001, *Courier-Gazette*.	Mr. John Falla, St. George Town Manager, P.O. Box 131, Tenants Harbor, Maine 04860.	Oct. 12, 2001	230229 C
Michigan: Wayne (FEMA Docket No. D–7517).	Township of Canton.	October 18, 2001, October 25, 2001, *The Observer & Eccentric*.	Mr. Thomas J. Yack, Township of Canton Supervisor, 1150 South Canton Center Road, Canton, Michigan 48188.	Jan. 24, 2002	260219 B
North Carolina: Gaston (FEMA Docket No. D–7515).	City of Gastonia ...	August 29, 2001, September 5, 2001, *The Gaston Gazette*.	Mayor of the City of Gastonia, P.O. Box 1748, 181 South Street, Gastonia, North Carolina 28053–1748.	Dec. 5, 2001	370100D
Ohio: Warren (FEMA Docket No. D–7517).	City of Mason	September 5, 2001, September 12, 2001, *Pulse-Journal*.	The Honorable John McCurley, Mayor of the City of Mason, 202 West Main Street, Mason, Ohio 45040.	Aug. 30, 2001	390559 C
Puerto Rico:					
(FEMA Docket No. D–7517).	Commonwealth	October 5, 2001, October 12, 2001, *The San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, Puerto Rico 00901.	Jan. 11, 2002	720000 D
(FEMA Docket No. D–7517).	Commonwealth	October 12, 2001, October 19, 2001, *San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, Puerto Rico 00901.	Jan. 18, 2002	720000 B&C
South Carolina:					
Florence (FEMA Docket No. D–7517).	Unincorporated Areas.	September 5, 2001, September 12, 2001, *The News Journal*.	Mr. Joe King, Florence County Administrator, 180 North Irby Street MSC–G, Florence, South Carolina 29501.	Dec. 12, 2001	450076 B
Florence (FEMA Docket No. D–7517).	City of Lake City ..	September 5, 2001, September 12, 2001, *The News Journal*.	Mr. George Simmons, Lake City Administrator, 202 Kelly Street, Lake City, South Carolina 29560.	Dec. 12, 2001	450079 C
Lexington (FEMA Docket No. D–7515).	Unincorporated Areas.	August 20, 2001, August 27, 2001, *The State*.	Mr. Bruce Rucker, Lexington County Council Chairman, 212 South Lake Drive, Lexington, South Carolina 29072.	Aug. 13, 2001	450129D
Tennessee: Sullivan (FEMA Docket No. D–7515).	Town of Kingsport	August 23, 2001, August 30, 2001, *Kingsport Times*.	The Honorable Jeanette Blazier, Mayor of the City of Kingsport, 225 West Center Street, City Hall, Kingsport, Tennessee 37660–4237.	Aug. 16, 2001	470184D
Virginia: Fauquier (FEMA Docket No. D–7517).	Unincorporated Areas.	October 18, 2001, October 25, 2001 *Fauquier Citizen*.	Mr. G. Robert Lee, Fauquier County Administrator, 40 Culpeper Street, Warrenton, Virginia 20186.	Jan. 24, 2002	510055 A

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5834 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7521]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

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

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Executive Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

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

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

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

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

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

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

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

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

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Autauga, Elmore, Lowndes, & Montgomery.	City of Montgomery.	January 15, 2002, January 22, 2002, *The Montgomery Advertiser*.	The Honorable Bobby N. Bright, Mayor of the City of Montgomery, P.O. Box 1111, Montgomery, Alabama 36101–1111.	Apr. 23, 2002	010174 D

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Fairfield.	Town of Greenwich.	February 11, 2002, February 18, 2002, *Greenwich Times*.	Mr. Richard Bergstresser, First Selectman for the Town of Greenwich, 101 Field Point Road, Greenwich, Connecticut 06830.	Feb. 4, 2002	090008 C
Florida:					
Manatee	Unincorporated Areas.	January 15, 2002, January 21, 2002, *Sarasota Herald Tribune*.	Mr. Ernie Padgett, County Administrator, 1112 Manatee Avenue West, P.O. Box 1000, Bradenton, Florida 34206.	Jan. 7, 2002	120153 E
Orange	Unincorporated Areas.	January 16, 2002, January 23, 2002, *The Orlando Sentinel*.	Dr. M. Krishnamurthy, P.E., Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, Florida 32839–9205.	Apr. 24, 2002	120179 D
Osceola	Unincorporated Areas.	December 14, 2001, December 21, 2001, *Osceola Sentinel*.	Mr. Robert Fernandez, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, Florida 34741–5488.	Dec. 7, 2001	120189 D
Santa Rosa	Unincorporated Areas.	December 4, 2001, December 11, 2001, *The Pensacola News Journal*.	Mr. Hunter Walker, Santa Rosa County Administrator, 6495 Caroline Street, Suite D, Milton, Florida 32570–4592.	Nov. 27, 2001	120274 D&E
Sarasota	City of Sarasota	December 5, 2001, December 12, 2001, *Sarasota Herald Tribute*.	The Honorable Carolyn Mason, Mayor of the City of Sarasota, P.O. Box 1058, Sarasota, Florida 34230.	Nov. 28, 2001	125150 E
Pinellas	City of St. Petersburg.	November 14, 2001, November 21, 2001, *St. Petersburg Times*.	The Honorable Rick Baker, Mayor of the City of St. Petersburg, P.O. Box 2842, St. Petersburg, Florida 33731–2842.	Nov. 7, 2001	125148 E
Leon	City of Tallahassee.	January 16, 2002, January 23, 2002, *Tallahassee Democrat*.	The Honorable Scott Maddox, Mayor of the City of Tallahassee, City Hall, 300 South Adams Street, Tallahassee, Florida 32301–1731.	Apr. 24, 2002	120144 D
Georgia:					
Fulton	City of Alpharetta.	October 11, 2001, October 18, 2001, *The Review & News*.	The Honorable Charles E. Martin, Jr., Mayor of the City of Alpharetta, City Hall, 2 South Main Street, Alpharetta, Georgia 30004.	Jan. 17, 2001	130084 D
Columbia	Unincorporated Areas.	October 25, 2001, November 1, 2001, *The Augusta Chronicle*.	Mr. Barry Fleming, Chairman of the Columbia County, Board of Commissioners, 630 Ronald Reagan Drive, Evans, Georgia 30809.	Oct. 18, 2001	130059 D
Columbia	Unincorporated Areas.	November 8, 2001, November 15, 2001, *The Augusta Chronicle*.	Mr. Barry Flemming, Chairman of the Board, 630 Ronald Reagan Drive, Evans, Georgia 30809.	Nov. 1, 2001	130054 D
Fulton	Unincorporated Areas.	October 25, 2001, November 8, 2001, *The Atlanta Daily World*.	Mr. Thomas Andrews, Fulton County Manager, 141 Pryor Street S.W., Fulton County Government Center, Atlanta, Georgia 30303.	Jan. 31, 2002	135160 D
Gwinnett	Unincorporated Areas.	November 8, 2001, November 15, 2001, *Gwinnett Daily Post*.	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Nov. 1, 2001	130054 D
Harris	Unincorporated Areas.	January 2, 2002, January 9, 2002, *Harris County Journal*.	Ms. Carol Silva, Harris County Manager, P.O. Box 365, Hamilton, Georgia 31811.	Dec. 26, 2001	130338 D
Worth	Unincorporated Areas.	October 24, 2001, *Sylvester Local News*.	Mr. Dan Miller, Chairman of the Worth County Board of Commissioners, 201 North Main Street, 3rd Floor, Sylvester, Georgia 31791.	Nov. 16, 2001	130196 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Worth	Unincorporated Areas.	October 24, 2001, *Sylvester Local News*.	Mr. Dan Miller, Chairman of the Worth County Board of Commissioners, 201 North Main Street, 3rd Floor, Sylvester, Georgia 31791.	Nov. 16, 2001	130196 B
Illinois:					
Cook	Village of Arlington Heights.	November 2, 2001, November 9, 2001, *Daily Herald*.	The Honorable Arlene J. Mulder, Mayor of the Village of Arlington Heights, Arlington Heights Village Hall, 33 South Arlington Road, Arlington Heights, Illinois 60005.	Feb. 8, 2002	170056 F
Cook	Unincorporated Areas.	January 25, 2002, *The Daily Southtown*.	Mr. John H. Sroger, Jr., President, Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	Feb. 24, 2002	170054 F
Cook	Village of Willows Springs.	January 25, 2002, *The Daily Southtown*.	The Honorable Terrence Carr, Mayor of the Village of Willows Springs, 8156 South Archer Avenue, Willows Springs, Illinois 60480.	Feb. 24, 2002	170174 F
Indiana:					
Marion	City of Indianapolis.	*The Indianapolis Star,* February 5, 2002.	The Honorable Bart Peterson, Mayor of the City of Indianapolis, City/County Building, Suite 2501, 200 East Washington Street, Indianapolis, Indiana 46204.	Mar. 7, 2002	180159 E
DeKalb	Unincorporated Areas.	*The Evening Star,* February 26, 2002.	Ms. Connie Miles, President of the DeKalb County Board of Commissioners, 100 South Main Street, Auburn, Indiana 46706.	Mar. 7, 2002	180044 B
Noble	Unincorporated Areas.	*The Sun-News*, February 5, 2002, February 12, 2002.	Mr. Mark Pankap, President of the Noble County Board of Commissioners, Noble County Courthouse, 101 North Orange Street, Albion, Indiana 46701.	May 14, 2002	180183 A&B
Steuben	Unincorporated Areas.	*Herald Republican*, February 5, 2002.	Mr. Dale Hughes, Chairman of the Steuben County Board of Commissioners, Steuben County Community Center, 317 South Wayne Street, Suite 2J, Angola, Indiana 46703.	Mar. 7, 2002	180243 B
Kentucky: Jefferson.	Unincorporated Areas.	January 3, 2002, January 10, 2002, *Courier-Journal*.	The Honorable Rebecca Jackson, Jefferson County Judge Executive, Jefferson County Courthouse, 527 West Jefferson Street, Suite 400, Louisville, Kentucky 40202.	Apr. 11, 2001	210120 D
Maine: Cumberland.	Town of Scarborough.	November 30, 2001, December 7, 2001, *Portland Press Herald*.	Mr. Ronald W. Owens, Manager of the Town of Scarborough, P.O. Box 360, Scarborough, Maine 04070–0360.	Nov. 19, 2001	230052 D
Maryland: Frederick.	City of Frederick	November 19, 2001, November 26, 2001, *Frederick News Post*.	The Honorable James Grimes, Mayor of the City of Frederick, 101 North Court Street, Frederick, Maryland 21701.	Nov. 1, 2001	240030 B
Mississippi: Forrest and Lamar.	City of Hattiesburg.	January 24, 2002, January 30, 2002, *Hattiesburg American*.	The Honorable J. Ed Morgan, Mayor of the City of Hattiesburg, P.O. Box 1898, Hattiesburg, Mississippi 39403.	Jan. 16, 2002	280053 D
Massachusetts: Plymouth.	Town of Hanover.	December 12, 2001, December 19, 2001, *Hanover Mariner*.	Office of the Chairman of the Board of Selectmen, Town Hall, 550 Hanover Street, Hanover, Massachusetts 02339.	Mar. 13, 2002	250266 D
New York: Queensbury.	Town of Queensbury.	February 13, 2002, February 20, 2002, *The Post-Star*.	Mr. Dennis Brower, Supervisor for the Town of Queensbury, 742 Bay Road, Queensbury, New York 12804.	Aug. 6, 2002	360879 B
North Carolina:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Wake	Town of Cary	November 23, 2001, November 30, 2001, *The News and Observer*.	The Honorable Glenn D. Lang, Mayor of the Town of Cary, 318 North Academy Street, P.O. Box 8005, Cary, North Carolina 27512.	July 26, 2001	370238 D
Nash and Edgecomb.	City of Rocky Mount.	January 25, 2002, February 1, 2002, *Rocky Mount Telegram*.	Mr. Stephen W. Raper, Rocky Mount City Manager, P.O. Box 1180, Rocky Mount, North Carolina 27802–1180.	May 3, 2002	370092 D
Pennsylvania:					
Dauphin	Township of East Hanover.	November 30, 2001, December 7, 2001, *Patriot News*.	Mr. George Rish, Chairman, Township of East Hanover Board of Supervisors, 80848 Jonestown Road, Grantville, Pennsylvania 17028.	Nov. 14, 2001	420377 B
Carbon	Township of Lower Towamensing.	December 28, 2001, January 4, 2002, *Times News*.	Mr. Glen Hahn, Chairman, Township of Lower Towamensing Board of Supervisors, 595 Hahns Dairy Road, Palmerton, Pennsylvania 18701.	Apr. 5, 2002	421455 A
Carbon	Borough of Palmerton.	December 28, 2001, January 4, 2002, *Times News*.	Mr. John Vignone, Borough of Palmerton Council President, 443 Delaware Avenue, Palmerton, Pennsylvania 18701.	Apr 5, 2002	420253
Dauphin	Township of Swatara.	December 7, 2001, December 14, 2001, *Patriot News*.	Mr. Gregory J. Ricci, President of the Township of Swatara Board of Commissioners, 599 Eisenhower Boulevard, Swatara, Pennsylvania 17111–2397.	Mar. 15, 2002	420398 B
South Carolina:					
Richland	Unincorporated Areas.	December 26, 2001, January 2, 2002, *The State Newspaper*.	Mr. T. Cary McSwain, Richland County Administrator, P.O. Box 192, 2020 Hampton Street, Columbia, South Carolina 29202.	Dec. 19, 2001	450170 D
Richland	Unincorporated Areas.	December 17, 2001, December 24, 2001, *The State Newspaper*.	Mr. T. Cary McSwain, Richland County Administrator, P.O. Box 192, 2020 Hampton Street, Columbia, South Carolina 29202.	Dec. 10, 2001	450170 D
Tennessee:					
Williamson ..	City of Brentwood.	November 23, 2001, November 30, 2001, *The Review Appeal*.	The Honorable Joseph Reagan, Mayor of the City of Brentwood, 5211 Maryland Way, Brentwood, Tennessee 37024.	Nov. 16, 2001	470205 D
Shelby	City of Collierville.	October 18, 2001, October 25, 2001, *The Collierville Herald*.	The Honorable Linda Kerley, Mayor of the Town of Collierville, 101 Walnut Street, Collierville, Tennessee 38017–2671.	Jan. 31, 2002	470263 D
Sumner and Davidson.	City of Goodlettsville.	December 27, 2001, January 3, 2002, *The Tennessean*.	The Honorable Bobby T. Jones, Mayor of the City of Goodlettsville, City Hall, 105 South Main Street, Goodlettsville, Tennessee 37072.	Apr. 4, 2002	470287 D
McNairy	Unincorporated Areas.	January 16, 2002, January 23, 2002, *Independent Appeal*.	Mr. Mike Smith, McNairy County Executive, McNairy County Courthouse, 170 West Court Avenue, Selmer, Tennessee 38375.	Apr. 24, 2002	470127 C
Shelby	Unincorporated Areas.	Janaury 18, 2002, January 25, 2002, *Daily News*.	The Honorable Tim Rout, Mayor of Shelby County, 160 N. Main Street, Suite 850, Memphis, Tennessee 38103.	Apr. 24, 2002	470214 D
Virginia: Prince William.	Unincorporated Areas.	February 7, 2002, February 14, 2002, *Potomac News*.	Mr. Craig Gerhart, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.	May 16, 2002	510119 D

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5835 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NAVD) Elevation in feet (NAVD)
Alabama	
Elmore County (Unincorporated Areas) (FEMA Docket No.–D–7514)	
Tributary to Mill Creek:	
At a point approximately 1,000 feet upstream of the confluence with Mill Creek	*204
At a point approximately 2,500 feet upstream of the confluence with Mill Creek	*214
Alabama River:	
Approximately 950 feet downstream of Interstate 31	*161
Approximately 3,700 feet downstream of the confluence of Tallapoosa River	*168
Tallapoosa River:	
Approximately 2.6 miles upstream of the confluence of Gravel Pit Creek	*169
Approximately 4.6 miles downstream of the confluence of Chubbehatchee Creek	*176
Maps available for inspection at the Office of the Elmore County Engineer, 155 County Shop Road, Wetumpka, Alabama.	
New Jersey	
Deal (Borough), Monmouth County (FEMA Docket No. D–7514)	
Poplar Brook:	
Approximately 20 feet upstream of New York and Long Branch Railroad	*29
Approximately 480 feet downstream of Ocean Avenue	*11
Maps available for inspection at the Deal Borough Municipal Building, Durant Square, Deal, New Jersey.	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NAVD) Elevation in feet (NAVD)
Watchung (Borough), Somerset County (FEMA Docket No. D–7255)	
Stony Brook:	
Approximately 40 feet downstream of Johnston Drive	*115
Approximately 150 feet upstream of Somerset Street	*187
East Branch Stony Brook:	
Approximately 675 feet downstream of Valley Drive	*213
Approximately 20 feet downstream of Meadowlark Drive	*237
Green Brook:	
At Raymond Avenue	*128
Approximately 1,650 feet upstream of Apple Tree Road	*405
Maps available for inspection at the Watchung Borough Hall, 15 Mountain Boulevard, Watchung, New Jersey.	
New York	
Angola (Village), Erie County (FEMA Docket No. D–7514)	
Big Sister Creek:	
Downstream corporate limits.	
Approximately 150 feet upstream of upstream corporate limits	*644
Unnamed Tributary to Big Sister Creek:	
At confluence with Big Sister Creek	*643
Approximately 750 feet upstream of confluence with Big Sister Creek	*643
Maps available for inspection at the Angola Village Office, 41 Commercial Street, Angola, New York.	
East Aurora (Village), Erie County (FEMA Docket No. D–7514)	
Tannery Brook:	
At the confluence of East Branch Cazenovia Creek	*866
Approximately 710 feet upstream of Brooklea Drive	*944
Maps available for inspection at the East Aurora Village Hall, 571 Main Street, East Aurora, New York.	
Vermont	
Hardwick (Town/Village), Caledonia County (FEMA Docket No. D–7510)	
Lamoille River Divergence:	
Approximately 460 feet upstream of the confluence with Lamoille River	*794
At the divergence from Lamoille River	*804
Maps available for inspection at the Hardwick Town Hall, 20 Church Street, Hardwick, Vermont.	
West Virginia	
Berkeley County (Unincorporated Areas) (FEMA Docket No. D–7514)	
Evans Run:	
A point approximately 300 feet downstream of U.S. Route 11	*488
A point approximately 300 feet downstream of State Route 45	*556
Maps available for inspection at the Berkeley County Planning Commission, 119 West King Street, Martinsburg, West Virginia.	

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5833 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–500, MM Docket No. 01–222, RM–10240]

Digital Television Broadcast Service; Charleston, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WCIV, LLC, licensee of station WCIV(TV), NTSC channel 4, Charleston, South Carolina, substitutes DTV channel 34 for DTV channel 53. *See* 66 FR 47903, August 14, 2001. DTV channel 34 can be allotted to Charleston in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 32–55–28 N. and 79–41–58 W. with a power of 340, HAAT of 597 meters and with a DTV service population of 774 thousand. With is action, this proceeding is terminated.

DATES: Effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–222, adopted March 1, 2002, and released March 6, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by removing DTV channel 53 and adding DTV channel 34 at Charleston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–5849 Filed 3–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–501, MM Docket No. 01–332, RM–10334]

Television Broadcast Service; Pueblo, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Zavaletta Broadcasting of

Pueblo, an applicant for a construction permit for a new television station to operate on channel 26+ at Pueblo, Colorado, substitutes channel 48 for channel 26+ at Pueblo. *See* 66 FR 65873, December 21, 2001. TV channel 48 can be allotted to Pueblo, Colorado, in compliance with the principle community coverage requirements of Sections 73.610 and 73.698 at coordinates 38–21–30 N. and 104–33–24 W. with a zero offset.

With this action, this proceeding is terminated.

DATES: Effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–332, adopted March 1, 2002, and released March 6, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Colorado, is amended by removing TV channel 26+ and adding TV channel 48 at Pueblo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–5848 Filed 3–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AA48

Railroad Workplace Safety; Correction

AGENCY: Federal Railroad Administration (FRA), (DOT).

ACTION: Interim final rule; correction.

SUMMARY: In the **Federal Register** of Tuesday, January 15, 2002, (67 FR 1903), the FRA published an interim final rule prohibiting the use of body belts as permissible components of personal fall arrest systems and making technical changes. Inadvertently, §§ 214.105(b)(14) and 214.117(a) were incorrectly modified. This document corrects those modifications.

DATES: Effective on March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6320; or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6027.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 2002, (67 FR 1903), FRA incorrectly modified §§ 214.105(b)(14) and 214.117(a). This document corrects those modifications.

In rule FR Doc. 02–723 published on January 15, 2002 (67 FR 1903), amend the following sections.

1. On page 1907, in the second column, in § 214.105(b)(14), correct ''3,699'' to read ''3,000''.

2. On page 1908, in the second column, in § 214.117 correct paragraph (a) to read as follows:

(a) Railroad bridge workers shall be provided and wear eye and face protection equipment when potential eye or face injury may result from physical, chemical, or radiant agents.

* * * * *

Dated: March 6, 2002.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 02–5804 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 030602G]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the trip limit in the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, March 11, 2002, through June 30, 2002, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65

FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota newly implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with hook-and-line gear and run-around gillnets (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B)(*2*), from the date that 75 percent of the southern Florida west coast subzone's quota has been harvested until a closure of the subzone's fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel for vessels using hook-and-line gear in the southern Florida west coast subzone will be reached on March 10, 2002. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the southern Florida west coast subzone effective 12:01 a.m., local time, March 11, 2002. The 500–lb (227–kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2002), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone which from November 1 through March 31 extends south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat.(a line directly west from the Lee/Collier County, FL boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8′ N. lat. and 25°48′ N. lat.(a line directly west from the Monroe/Collier County, FL, boundary), i.e., the area off Collier County.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to reduce the trip limit 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), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under Executive Order 12866.

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

Dated: March 6, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–5872 Filed 3–7–02; 2:33 pm]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 48
Tuesday, March 12, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE176; Special Condition Number 23–111–SC]

Special Conditions: Extra Flugzeugbau GmbH, Model EA–400 Airplane, Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions, request for comments.

SUMMARY: These special conditions are issued to Extra Flugzeugbau GmbH, for an amended type certificate for the EA–400 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic attitude direction indicator installed by Extra Flugzeugbau GmbH for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is February 27, 2002. The Federal Aviation Administration (FAA) must receive any comments on or before April 11, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. CE176, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone 816–329–4123; facsimile 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE176.'' The postcard will be date stamped and returned to the commenter.

Background

On September 5, 2001, Extra Flugzeugbau GmbH, Flugplatz Dinslaken Schwarze Heide, 46569 Hünxe, Federal Republic of Germany, made an application to the FAA for an amended type certificate for the EA–400 airplane. The EA–400 airplane is currently approved under TC No. A43CE. The proposed modification incorporates a novel or unusual design feature, such as an electronic attitude direction indicator that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Extra Flugzeugbau GmbH must show that the EA–400 airplane meets the following provisions, or the applicable regulations in effect on the date of application, 14 CFR part 23 at Amendment 23–54.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions are normally issued in accordance with § 11.19 as required by and become a part of the type certification basis in accordance with § 21.101(d).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

Extra Flugzeugbau GmbH plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include an electronic attitude direction indicator, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform

functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. In addition, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows: The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz&–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values, over the complete modulation period.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts rms per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the EA–400 airplane. Should Extra Flugzeugbau GmbH apply at a later date for a design approval to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the specified airplane model(s). It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, 11.19.

The Special Conditions

Accordingly, by the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the EA–400 airplane modified by Extra Flugzeugbau GmbH to add an electronic attitude direction indicator.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be

designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on February 27, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–5810 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AF60

Determining Income Under the Supplemental Security Income Program; Student Child Earned Income Exclusion

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising our rules on deeming of income so that we use the same increased earned income exclusion amounts for both eligible and ineligible students in Supplemental Security Income (SSI) households. Beginning with earned income for January 2001, the monthly and yearly SSI student child earned income exclusion (SEIE) amounts were increased for eligible children based on final rules published in the **Federal Register** on December 29, 2000. The same increase should have been made for ineligible children for purposes of deeming calculations, but it was inadvertently not included in the published final rules. Under SSA's longstanding rule, the same SEIE amounts have applied to the income of both eligible and ineligible children. Consistent with the increase made in the final rules published December 29, 2000, this final rule applies the same increase in the SEIE to ineligible children.

EFFECTIVE DATE: This rule is effective on March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Office of Process and Innovation Management, L2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, *regulations@ssa.gov,* (410) 965–3632 or TTY (410) 966–5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet web site, Social Security Online, at *http://www.ssa.gov.*

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (i.e., Social Security Online): *http://www.ssa.gov/regulations/.* Electronic copies of public comments may also be found on this site.

SUPPLEMENTARY INFORMATION: Section 1612 of the Social Security Act (the Act) describes the meaning of ''income'' for purposes of the SSI program. This section also explains what is excluded from income. Section 1612(b)(1) provides an exclusion from earned income for a child who is a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare for gainful employment. The section also provides that the Commissioner may prescribe the maximum amount of the exclusion. Prior to January 2001, regulations at §§ 416.1112(c)(3) and 416.1161(c) provided, for a child who is a student, an SEIE of up to $400 a month of earned income with an annual limit of $1,620.

If an SSI eligible individual lives in the same household with a parent or spouse who does not receive SSI benefits (hereafter referred to as an ''ineligible parent'' or ''ineligible spouse''), the ineligible parent's or spouse's income may be considered available (deemed) to the eligible individual. This concept is called ''deeming'' and is provided for in section 1614 of the Act. In determining the amount of an ineligible parent's or spouse's income to consider in determining the individual's eligibility and benefit amounts, we deduct an allocation for other children living in the household who are not eligible for SSI benefits (hereafter referred to as ''ineligible children'') (see § 416.1160(c)(2)). We reduce the amount of this allocation by the amount of the ineligible child's own income (see § 416.1161(c)). However, if an ineligible child is a student who is working, his or her earned income is reduced by the amount of the SEIE exclusion before that income is used to reduce the amount of the allocation.

On December 29, 2000, we published final rules in the **Federal Register** (65 FR 82905) to, among other things, revise § 416.1112(c)(3) of our regulations. Effective for earned income beginning in January 2001, these revisions increased the maximum monthly and yearly SEIE amounts used in determining SSI eligibility and payment amounts for student children, and provided for the automatic adjustment of the monthly and yearly exclusion amounts each year based on increases in the cost of living. Under our longstanding rules, the SEIE maximum exclusion amounts have been the same for ineligible children as for eligible children. However, the new rules applied the new exclusion amounts to eligible children but inadvertently did not include ineligible children for deeming calculation purposes. The preamble to those rules noted that the prior amounts had been in place since 1974, and stated that the change in these amounts was being made in response to increases in school expenses since that time. The rationale for this increase is equally applicable to ineligible student children as for eligible student children.

This final rule amends the regulations to apply the same increase in the SEIE amounts to ineligible children as for eligible children. We are now addressing the oversight noted above in order to be consistent with our longstanding policy of having the same SEIE amounts for both eligible and ineligible children and with the regulatory increase in the SEIE amounts already made for eligible children. This final rule therefore amends § 416.1161(c) to provide a cross-reference to the eligible child regulation in § 416.1112(c)(3) that provides for a SEIE in 2001 of up to $1,290 a month with an annual limit of $5,200, and automatic adjustments each subsequent year as provided in that section. These amounts have increased for calendar year 2002 to $1,320 and $5,340, respectively.

The effects of this rule change are most easily understood by considering an example. John, an ineligible student, lives with his mother and his SSI eligible brother, Mark. In June, July and August of 2002, John earns $750 each month to defray his school expenses in the fall. His mother also works and her earnings are deemed to Mark. As part of the deeming computation we deduct from the mother's earnings a living allowance allocation of $272 each month for John subject to reduction for

his own income after application of the SEIE. *Under the prior rule:* The maximum monthly SEIE amount of $400 would be subtracted from John's earnings ($750 − $400=$350), and $350 would be considered in reducing the living allowance of ineligible student. Since $350 is more than the $272 allocation, there would be no deduction from the mother's earnings of a living allowance allocation for John. *Under the new rule:* The maximum monthly SEIE amount of $1,320 exceeds John's monthly earnings of $750. Therefore, the SEIE would apply to all of John's earnings, and none of those earnings would reduce the living allowance allocation for John. Therefore, a living allowance allocation of $272 each month would be deducted from the amount of the mother's earnings deemed to Mark.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this rule merely adapts the rules for the SEIE that have always been reflected in our regulations for both eligible and ineligible student children in order to continue SSA's longstanding policy of having the same exclusion amounts apply to both eligible and ineligible children. This final rule contains no substantive changes of interpretation. Therefore, opportunity for prior comment is unnecessary, and we are issuing this as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in the SEIE provision. However, without these changes, our rules will conflict and may mislead the public. Therefore, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with Executive Order (E.O.) 12866.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements that require OMB review.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public Assistance programs, reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: February 26, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending part 416 of Chapter III of title 20 of the Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for Subpart K of part 416 continues to read as follows:

Authority: Secs.702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Revise the last sentence of § 416.1161(c) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(c) * * * In addition, if the ineligible child is a student (see § 416.1861), we exclude his/her earned income subject to the amounts set in § 416.1112(c)(3).

* * * * *

[FR Doc. 02–5858 Filed 3–11–02; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8984]

RIN 1545–BA51

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations under sections 337(d) and 1502. These regulations permit certain losses recognized on sales of subsidiary stock by members of a consolidated group. These regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date*: These regulations are effective March 7, 2002.

Applicability Date: For dates of applicability, see §§ 1.337(d)–2T(g), 1.1502–20T(i) and 1.1502–32T(b)(4)(v).

FOR FURTHER INFORMATION CONTACT: Sean P. Duffley (202) 622–7530 or Lola L. Johnson (202) 622–7550 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1774. Responses to this collection of information are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden,

please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 337(d) of the Internal Revenue Code, enacted in 1986, directs the Secretary to prescribe regulations to ensure that the purposes of *General Utilities* repeal, which generally requires a corporation to recognize gain or loss on a disposition of any asset, may not be circumvented through the use of the consolidated return regulations. Pursuant to that directive, in 1990, the IRS and Treasury promulgated § 1.337(d)–2. Section 1.337(d)–2 generally disallows any loss recognized by a member of a consolidated group on the disposition of subsidiary stock, except to the extent the consolidated group disposes of its entire equity interest in a subsidiary to persons not related to any member of the consolidated group within the meaning of section 267(b) or section 707(b)(1) (applying the language ''10 percent'' instead of ''50 percent'') and can establish that such loss is not attributable to the recognition of built-in gain. Section 1.337(d)–2, however, only applies with respect to dispositions and deconsolidations that occur on or after November 19, 1990, and that are not subject to § 1.1502–20.

Section 1.1502–20, which applies to all dispositions and deconsolidations of subsidiary stock that occur on or after February 1, 1991, disallows certain losses recognized by a member of a consolidated group on the disposition of subsidiary stock. The rule disallows losses to the extent of the sum of ''extraordinary gain dispositions,'' ''positive investment adjustments,'' and ''duplicated loss.'' The rule is designed not only to implement *General Utilities* repeal, but also to further single entity principles by preventing the allowance of stock losses that are reflected in a subsidiary's assets or loss carryovers.

In *Rite Aid Corp.* v. *United States*, 255 F.3d 1357 (Fed. Cir. 2001), the United States Court of Appeals for the Federal Circuit held that the duplicated loss component of § 1.1502–20 was an invalid exercise of regulatory authority. As stated in Notice 2002–11, 2002–7 I.R.B. 526, the IRS has decided that the interests of sound tax administration will not be served by continuing to litigate the validity of the loss duplication factor of § 1.1502–20. Moreover, because of the interrelationship in the operation of all of the loss disallowance factors, the IRS and Treasury have decided that new rules governing loss disallowance on sales of stock of a member of a consolidated group should be implemented.

Explanation of Provisions

This Treasury decision adds §§ 1.337(d)–2T, 1.1502–20T(i), and 1.1502–32T(b)(4)(v), as described below.

For dispositions and deconsolidations of subsidiary stock on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before such date that was in continuous effect until the disposition or deconsolidation, this Treasury decision provides that § 1.337(d)–2T, and not § 1.1502–20, governs the amount of loss allowable on such sales, or the amount of basis reduction required on such deconsolidations, of subsidiary stock. In substantial part, § 1.337(d)–2T restates the current § 1.337(d)–2, with certain modifications. As described above, as currently in effect, § 1.337(d)–2 permits recognition of loss only where a consolidated group disposes of its entire equity interest in a member of the group to persons not related to any member of the consolidated group within the meaning of section 267(b) or section 707(b)(1) (applying the language ''10 percent'' instead of ''50 percent''). Section 1.337(d)–2T eliminates those restrictions.

For dispositions and deconsolidations of subsidiary stock before March 7, 2002, and dispositions and deconsolidations of subsidiary stock on or after March 7, 2002, that were effected pursuant to a binding written contract entered into before such date that was in continuous effect until the disposition or deconsolidation, this Treasury decision adds § 1.1502–20T(i). Section 1.1502–20T(i) permits consolidated groups to calculate allowable loss on the sale of subsidiary stock by applying § 1.1502–20 in its entirety or, in lieu thereof, by electing to apply one of two alternative regimes. In particular, the group may elect to apply the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, i.e., calculating disallowed loss by taking into account only extraordinary gain dispositions and positive investment adjustment amounts. Alternatively, the group may elect to apply the provisions of § 1.337(d)–2T. Such election may be made with the original return for the taxable year that includes the later of March 7, 2002, and the date of the disposition or deconsolidation of the stock of the subsidiary. Alternatively, the election may be made with an amended return, provided that the amended return is filed before the date the original return for the taxable year that includes March 7, 2002, is due.

An election described in § 1.1502–20(g) to reattribute losses will be respected only if the requirements of § 1.1502–20(g), including the requirement that the election be filed with the group's income tax return for the year of the disposition, have been or are satisfied. The temporary regulations do not extend the time for filing an election under § 1.1502–20(g). If a group made an election described in § 1.1502–20(g) and elects to determine allowable loss by applying one of the alternative regimes pursuant to § 1.1502–20T(i), the amount of loss treated as reattributed may be reduced. If the group elects to determine allowable loss by applying the provisions of § 1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, the amount of loss treated as reattributed is equal to the amount of loss originally reattributed, reduced to the extent that it exceeds the greater of (1) the loss disallowance amount determined by taking into account only extraordinary gain dispositions and positive investment adjustments (and not the duplicated loss factor of the loss disallowance formula) and (2) the amount of reattributed losses that the common parent of the selling group absorbed in closed years. If the group elects to determine allowable loss by applying § 1.337(d)–2T, the amount of loss treated as reattributed is the greater of (1) zero and (2) the amount of reattributed losses that the common parent of the selling group absorbed in closed years. For this purpose, a taxable year is a closed year to the extent the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply one of the alternative regimes is filed and at all times thereafter.

To the extent that an election under § 1.1502–20T(i) results in a reduction in the amount of losses treated as reattributed, such excess losses will be treated as available for use by the subsidiary or any other group of which the subsidiary is a member, subject to any applicable limitations (e.g., section 382). In order to permit the subsidiary's use of such losses that are subject to an

existing section 382 limitation, § 1.1502–20T(i) allows the common parent of the group that disposed of the stock to make certain adjustments to the amount of such a limitation apportioned under § 1.1502–95 or § 1.1502–96.

Section 1.1502–20T(i) requires the common parent of the selling group to notify the subsidiary of the recomputed reattribution amount and any adjustment to the apportionment of a section 382 limitation made in connection with the election to apply one of the alternative regimes. In addition, if the acquirer was a member of a consolidated group at the time of the acquisition, the common parent of the selling group must provide such notification to the common parent of the acquirer at the time of the acquisition. The rules set forth in § 1.1502–20T(i) also confirm that any losses treated as reattributed to the common parent of the selling group will not be available to offset income of the subsidiary or any other group of which such subsidiary is a member.

The IRS and Treasury do not intend for a purchasing consolidated group to be unfairly disadvantaged in the event that the common parent of a selling member elects to apply one of the alternative regimes under § 1.1502–20T(i) and, as a result, the amount of losses treated as reattributed to the common parent of the selling group is decreased and the amount of losses treated as available to the subsidiary is increased. Therefore, this Treasury decision adds § 1.1502–32T(b)(4)(v), which provides that, to the extent that the subsidiary's loss carryovers are increased by reason of an election to apply one of the alternative regimes and such loss carryovers expire, or would have been properly used to offset income, in a closed year, the purchasing group will be deemed to have made an election to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before the subsidiary became a member of the purchasing group. Accordingly, no basis reduction under § 1.1502–32 will result from the expiration of, or failure to use, such losses.

Section 1.1502–32T(b)(4)(v) further provides that, to the extent the subsidiary's loss carryovers are increased by reason of an election to apply one of the alternative regimes and such loss carryovers have not expired, and would not have been properly used to offset income, in a closed year, the purchasing group may make an election under § 1.1502–32(b)(4) to treat all or a portion of such loss carryovers as expiring for all Federal income tax purposes immediately before the subsidiary became a member of the purchasing group. The election must be filed with the purchasing group's return for the taxable year in which the subsidiary receives the notification of the recomputed reattributed loss amount.

For purposes of § 1.1502–32T(b)(4)(v), a taxable year is a closed year to the extent the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which the subsidiary receives the notification of the recomputed reattributed loss amount and at all times thereafter.

Special Analyses

In light of the Federal Circuit's decision in *Rite Aid Corp.* v. *United States*, 255 F.3d 1357 (Fed. Cir. 2001), these temporary regulations are necessary in order to provide taxpayers with immediate guidance regarding allowable loss and basis reductions in connection with dispositions and deconsolidations of subsidiary stock and to carry out the principles of *General Utilities* repeal pending the issuance of further guidance. These temporary regulations permit taxpayers to determine the amount of allowable loss or basis reduction by applying § 1.1502–20 in its entirety or, in lieu thereof, by electing to apply the provisions of either § 1.337(d)–2T or 1.1502–20 without regard to § 1.1502–20(c)(1)(iii). In addition, these temporary regulations provide taxpayers with guidance on the effect of elections previously made under § 1.1502–20(g) to reattribute losses to the common parent of a selling group. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal authors of these regulations are Sean P. Duffley and Lola L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.337(d)–2T also issued under 26 U.S.C. 337(d). * * *

Section 1.1502–20T(i) also issued under 26 U.S.C. 1502. * * *

Section 1.1502–32T(b)(4)(v) also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.337(d)–2 is amended by adding paragraph (g)(4) to read as follows:

§ 1.337(d)–2 Loss limitation window period.

* * * * *

(g) * * *

(4) For dispositions and deconsolidations on and after March 7, 2002, see § 1.337(d)–2T.

Par. 3. Section 1.337(d)–2T is added to read as follows:

§ 1.337(d)–2T Loss limitation window period (temporary).

(a) *Loss disallowance*—(1) *General rule.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

(2) *Definitions.* For purposes of this section:

(i) The definitions in § 1.1502–1 apply.

(ii) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(3) *Coordination with loss deferral and other disallowance rules.* For purposes of this section, the rules of § 1.1502–20(a)(3) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(b) *Basis reduction on deconsolidation*—(1) *General rule.* If the basis of a member of a consolidated group in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) of this section applies and, to the extent necessary to effectuate the purposes of this section,

this paragraph (b) applies following the application of paragraph (a) of this section.

(2) *Deconsolidation.* Deconsolidation means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value. Value* means fair market value.

(c) Allowable Loss—(1) Application. This paragraph (c) applies with respect to stock of a subsidiary only if a separate statement entitled ''§ 1.337(d)–2T(c) statement'' is included with the return in accordance with paragraph (c)(3) of this section.

(2) *General rule.* Loss is not disallowed under paragraph (a)(1) of this section and basis is not reduced under paragraph (b)(1) of this section to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities). Loss or basis may be attributable to the recognition of built-in gain on the disposition of an asset by a prior group. For purposes of this section, gain recognized on the disposition of an asset is built-in gain to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis that is reflected, before the disposition of the asset, in the basis of the share, directly or indirectly, in whole or in part, after applying section 1503(e) and other applicable provisions of the Internal Revenue Code and regulations.

(3) *Contents of statement and time of filing.* The statement required under paragraph (c)(1) of this section must be included with or as part of the taxpayer's return for the year of the disposition or deconsolidation and must contain:

(i) The name and employer identification number (E.I.N.) of the subsidiary.

(ii) The amount of the loss not disallowed under paragraph (a)(1) of this section by reason of this paragraph (c) and the amount of basis not reduced under paragraph (b)(1) of this section by reason of this paragraph (c).

(4) *Example.* The principles of paragraphs (a), (b), and (c) of this section are illustrated by the examples in §§ 1.337(d)–1(a)(5) and 1.1502–20(a)(5) (other than *Examples 3, 4,* and *5*) and (b), with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20, and by the following example. For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. Investment adjustment system means the rules of § 1.1502–32.

Example. Loss offsetting built-in gain in a prior group. (i) P buys all the stock of T for $50 in Year 1, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of $50 and a value of $0, and asset 2 has a basis of $0 and a value of $50. T sells asset 2 during Year 3 for $50, and recognizes a $50 gain. Under the investment adjustment system, P's basis in the T stock increased to $100 as a result of the recognition of gain. In Year 5, all of the stock of P is acquired by the P1 group, and the former members of the P group become members of the P1 group. T then sells asset 1 for $0, and recognizes a $50 loss. Under the investment adjustment system, P's basis in the T stock decreases to $50 as a result of the loss. T's assets decline in value from $50 to $40. P then sells all the stock of T for $40 and recognizes a $10 loss.

(ii) P's basis in the T stock reflects both T's unrecognized gain and unrecognized loss with respect to its assets. The gain T recognizes on the disposition of asset 2 is built-in gain with respect to both the P and the P1 groups for purposes of paragraph (c)(2) of this section. In addition, the loss T recognizes on the disposition of asset 2 is built-in loss with respect to the P and P1 groups for purposes of paragraph (c)(2) of this section. T's recognition of the built-in loss while a member of the P1 group offsets the effect on T's stock basis of T's recognition of the built-in gain while a member of the P group. Thus, P's $10 loss on the sale of the T stock is not attributable to the recognition of built-in gain, and the loss is therefore not disallowed under paragraph (c)(2) of this section.

(iii) The result would be the same if, instead of having a $50 built-in loss in asset 2 when it becomes a member of the P group, T has a $50 net operating loss carryover and the carryover is used by the P group.

(d) *Successors.* For purposes of this section, the rules and examples of § 1.1502–20(d) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(e) *Anti-avoidance rules.* For purposes of this section, the rules and examples of § 1.1502–20(e) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(f) *Investment adjustments.* For purposes of this section, the rules and examples of § 1.1502–20(f) apply, with appropriate adjustments to reflect differences between the approach of this section and that of § 1.1502–20.

(g) *Effective dates.* This section applies with respect to dispositions and deconsolidations on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation. In addition, this section applies to dispositions and deconsolidations for which an election is made under § 1.1502-20T(i)(2) to determine allowable loss under this section. If loss is recognized because stock of a subsidiary became worthless, the disposition with respect to the stock is treated as occurring on the date the stock became worthless. For dispositions and deconsolidations prior to March 7, 2002, see §§ 1.337(d)–1 and 1.337(d)–2 as contained in the 26 CFR part 1 edition revised as of April 1, 2001.

Par. 4. In § 1.1502–20, paragraph (i) is added to read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

* * * * *

(i) [Reserved]. For further guidance, see § 1.1502–20T(i).

Par. 5. Section 1.1502–20T is added to read as follows:

§ 1.1502–20T Disposition or deconsolidation of subsidiary stock (temporary).

(a) through (h) [Reserved]. For further guidance, see § 1.1502–20(a) through (h).

(i) Limitations on the applicability of § 1.1502–20—(1) Dispositions and deconsolidations on or after March 7, 2002. Except to the extent specifically incorporated in § 1.337(d)-2T, § 1.1502–20 does not apply to a disposition or deconsolidation of stock of a subsidiary on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation.

(2) *Dispositions and deconsolidations prior to March 7, 2002.*

In the case of a disposition or deconsolidation of stock of a subsidiary by a member before March 7, 2002, or a disposition or deconsolidation on or after March 7, 2002, that was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation, a consolidated group may determine the amount of the member's allowable loss or basis reduction by applying § 1.1502–20 in its entirety, or, in lieu thereof, subject to the conditions set forth in this paragraph (i), by making an irrevocable

election to apply the provisions of either—

(i) Section 1.1502–20, except that in applying § 1.1502–20(c)(1), the amount of loss disallowed under § 1.1502–20(a)(1) and the amount of basis reduction under § 1.1502–20(b)(1) with respect to a share of stock will not exceed the sum of the amounts described in § 1.1502–20(c)(1)(i) and (ii); or

(ii) Section 1.337(d)–2T.

(3) *Operating rules*—(i) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section.* If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, an election described in § 1.1502–20(g) to reattribute losses will be respected only if the requirements of § 1.1502–20(g), including the requirement that the election be filed with the group's income tax return for the year of the disposition, have been or are satisfied. For example, if a consolidated group did not file a valid election described in § 1.1502–20(g) with its return for the year of the disposition, this section does not authorize the group that disposed of the stock to make such an election with its return for the year in which it elects to determine its allowable stock loss under the provisions described in paragraph (i)(2)(i) of this section. If a consolidated group that made a valid election described in § 1.1502–20(g) with respect to the disposition of stock elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, the election described in § 1.1502–20(g) may not be revoked, and the amount of loss treated as reattributed as of the time of the disposition pursuant to the election described in § 1.1502–20(g) is the amount of loss originally reattributed, reduced to the extent that it exceeds the greater of—

(A) The amount of stock loss disallowed after applying the provisions described in paragraph (i)(2)(i) of this section; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(i) of this section is filed and at all times thereafter.

(ii) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section.* If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section, the consolidated group may not make an election described in § 1.1502–20(g) to reattribute any losses. If the consolidated group made an election described in § 1.1502–20(g) with respect to the disposition of subsidiary stock, the amount of loss treated as reattributed pursuant to such election will be the greater of—

(A) Zero; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(ii) of this section is filed and at all times thereafter.

(iii) *Apportionment of section 382 limitation in the case of a reduction of reattributed losses*—(A) *Losses subject to a separate section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change separate attributes that were subject to a separate section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limitation to itself under § 1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself.

(B) *Losses subject to a subgroup section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change subgroup attributes that were subject to a subgroup section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limitation to itself under § 1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself. In addition, if such subsidiary has ceased to be a member of the loss subgroup to which the pre-change subgroup attributes relate, the common parent may increase the total amount of such limitation apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under § 1.1502–95(c) by an amount not in excess of the amount by which such limitation that is apportioned to the common parent is reduced pursuant to the previous sentence.

(C) *Losses subject to a consolidated section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change consolidated attributes (or pre-change subgroup attributes) that were subject to a consolidated section 382 limitation (or subgroup section 382 limitation where the common parent was a member of the loss subgroup) are treated as losses of a subsidiary, and the subsidiary has ceased to be a member of the loss group (or loss subgroup), the common parent may increase the amount of such limitation that is apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under § 1.1502–95(c). The amount of each element of such limitation that can be apportioned to a subsidiary (or loss subgroup that includes such subsidiary) pursuant to this paragraph (i)(3)(iii)(C), however, cannot exceed the product of (x) the element and (y) a fraction the numerator of which is the amount of pre-change consolidated attributes (or subgroup attributes) subject to that limitation that are treated as losses of the subsidiary (or loss subgroup) as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section and the denominator of which is the total amount of pre-change attributes subject to that limitation determined as of the close of the taxable year in which the subsidiary ceases to be a member of the group (or loss subgroup).

(D) *Operating rules*—(i) *Limitations on apportionment.* In making any adjustment to an apportionment of a subgroup section 382 limitation or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the common parent must take into account the extent, if any, to which such limitation has previously been apportioned to another subsidiary or loss subgroup prior to the date the election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section is filed.

(ii) *Manner and effect of adjustment to previous apportionment of limitation to common parent.* Any reduction in a previous apportionment of a separate section 382 limitation or a subgroup section 382 limitation to the common parent made pursuant to paragraph (i)(3)(iii)(A) or (B) of this section is treated as effective when the previous apportionment was effective. Any such adjustment must be made in a manner consistent with the principles of § 1.1502–95(c). For example, to the extent the apportionment of a separate section 382 limitation or a subgroup section 382 limitation to a common parent is reduced pursuant to paragraph (i)(3)(iii)(A) or (B) of this section, the amount of such limitation available to the subsidiary or loss subgroup, as applicable, is increased.

(iii) *Manner and effect of adjustment to apportionment of limitation to*

departing subsidiary or loss subgroup. Any increase in an amount of a subgroup section 382 limitation or a consolidated section 382 limitation apportioned to a departing subsidiary (or loss subgroup that includes such subsidiary) made pursuant to paragraph (i)(3)(iii)(B) or (C) of this section is treated as effective for taxable years ending after the date the subsidiary ceases to be a member of the group or loss subgroup. Any such adjustment may be made regardless of whether the common parent previously elected to apportion all or a part of such limitation to such subsidiary (or loss subgroup that includes such subsidiary) under § 1.1502–95(c) or 1.1502–95A(c), but must be made in a manner consistent with the principles of § 1.1502–95(c). For example, to the extent the apportionment of an element of a subgroup section 382 limitation or a consolidated section 382 limitation to a departing subsidiary is increased pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the amount of such element of such limitation that is available to the loss subgroup or loss group is reduced consistent with § 1.1502–95(c)(3).

(iv) *Prohibition against other adjustments.* This paragraph (i)(3)(iii) does not authorize the common parent to adjust the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation that it previously apportioned to a subsidiary, to a loss subgroup, or to itself under § 1.1502–95(c), 1.1502–95A(c), or 1.1502–96(d), other than as provided in paragraphs (i)(3)(iii)(A), (B), and (C) of this section.

(E) *Time and manner of making apportionment adjustment.* An adjustment to the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section must be made as part of the group's election to apply the provisions of paragraph (i)(2)(i) or (ii) of this section, as described in paragraph (i)(4) of this section.

(iv) *Notification of reduction of reattributed losses and adjustment of apportionment of section 382 limitation.* If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the losses treated as reattributed pursuant to an election described in § 1.1502–20(g), then, prior to the date that the group files its income tax return for the taxable year that includes March 7, 2002, the common parent must send the notification required by this paragraph to the subsidiary, at the subsidiary's last known address. In addition, if the acquirer of the subsidiary stock was a member of a consolidated group at the time of the disposition, the common parent must send a copy of such notification to the person that was the common parent of the acquirer's group at the time of the acquisition, at its last known address. The notification is to be in the form of a statement entitled ''Recomputation of Losses Reattributed Pursuant to the Election Described in § 1.1502–20(g),'' that is signed by the common parent and that includes the following information—

(A) The name and employer identification number (E.I.N.) of the subsidiary;

(B) The original and the recomputed amount of losses treated as reattributed pursuant to the election described in § 1.1502–20(g); and

(C) If the apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and the adjusted apportionment of such limitation.

(v) *Items taken into account in closed years.* An election under paragraph (i)(2) of this section affects a taxpayer's items of income, gain, deduction, or loss only to the extent that the election gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund of overpayment, as the case may be, is not prevented by any law or rule of law.

(vi) *Conforming amendments for items previously taken into account in open years.* To the extent that, on any Federal income tax return, the common parent absorbed losses that were reattributed pursuant to an election described in § 1.1502–20(g) and the amount of losses so absorbed is in excess of the amount of losses that are treated as reattributed after application of paragraph (i)(3)(i) or (ii) of this section, or that may be taken into account after any adjustment to an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii) of this section, such returns must be amended to the greatest extent possible to reflect the reduction in the amount of losses treated as reattributed and any adjustment to the apportionment of such limitation.

(vii) *Availability of losses to subsidiary.* To the extent that any losses of a subsidiary are reattributed to the common parent pursuant to an election described in § 1.1502–20(g), such reattribution is binding on the subsidiary and any group of which the subsidiary is or becomes a member. Therefore, if the subsidiary ceases to be a member of the group, any reattributed losses are not thereafter available to the subsidiary and may not be utilized by the subsidiary or any other group of which such subsidiary is or becomes a member. To the extent that the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction in the amount of losses treated as reattributed to the common parent pursuant to an election described in § 1.1502–20(g), however, losses in the amount of such reduction are available to the subsidiary and may be utilized by the subsidiary or any group of which such subsidiary is a member, subject to applicable limitations (e.g., section 382).

(4) *Time and manner of making the election.* An election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section is made by including the statement required by this paragraph with or as part of the original return for the taxable year that includes the later of March 7, 2002, and the date of the disposition or deconsolidation of the stock of the subsidiary, or with or as part of an amended return filed before the date the original return for the taxable year that includes March 7, 2002, is due. The statement shall be entitled ''Allowed Loss under Section [Specify Section under Which Allowed Loss Is Determined] Pursuant to Section 1.1502–20T(i)'' and must include the following information—

(i) The name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock;

(ii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(ii) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iv) If an election described in § 1.1502–20(g) was made with respect to the disposition of the stock of the subsidiary, the amount of losses originally treated as reattributed pursuant to such election and the

amount of losses treated as reattributed pursuant to paragraph (i)(3)(i) or (ii) of this section;

(v) If an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and redetermined apportionment of such limitation; and

(vi) If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the amount of losses treated as reattributed pursuant to an election described in § 1.1502–20(g), a statement that the notification described in paragraph (i)(3)(iv) of this section was sent to the subsidiary and, if the acquirer was a member of a consolidated group at the time of the stock sale, to the person that was the common parent of such group at such time, as required by paragraph (i)(3)(iv) of this section.

(5) *Cross references.* See § 1.1502–32(b)(4)(v) for a special rule for filing a waiver of loss carryovers.

Par. 6. Section 1.1502–32 is amended by adding paragraph (b)(4)(v) to read as follows:

§ 1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(4) * * *

(v) [Reserved]. For further guidance, see § 1.1502–32T(b)(4)(v).

Par. 7. Section 1.1502–32T is added to read as follows:

§ 1.1502–32T Investment adjustments (temporary).

(a) through (b)(4)(iv) [Reserved]. For further guidance, see § 1.1502–32(a) through (b)(4)(iv).

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under § 1.1502–20T(i)(2) is made*—(A) *Expired losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under § 1.1502–32(b)(4) to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group.

(B) *Available losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers have not expired and would not have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group may make an election under § 1.1502–32(b)(4) to treat all or a portion of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. Such election must be filed with the group's original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv).

(C) *Effective date.* This paragraph (b)(4)(v) is applicable on and after March 7, 2002.

(c) through (h)(5)(ii) [Reserved]. For further guidance, see § 1.1502–32(c) through (h)(5)(ii).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

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

Par. 9. In § 602.101, paragraph (b) is amended by adding entries to the table in numerical order to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.337(d)–2T	1545–1774
* * * * *	
1.1502–20T	1545–1774
* * * * *	
1.1502–32T	1545–1774
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: February 27, 2002.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–5850 Filed 3–7–02; 3:17 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–004]

Drawbridge Operating Regulation; Three Mile Creek, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR part 117 governing the operation of the CSX Transportation railroad swing span drawbridge across Three Mile Creek, mile 0.3, at Mobile, Alabama. This deviation allows the draw of the railroad swing span bridge to remain closed to navigation from 10 a.m. until 3 p.m. on March 18 and 19, 2002. This temporary deviation will allow for conversion of the operating mechanism from mechanical to hydraulic.

DATES: This deviation is effective from 10 a.m. on Monday, March 18, 2002 until 3 p.m. on Tuesday, March 19, 2002.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obc), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The CSX Transportation railroad swing span drawbridge across Three Mile Creek, Baldwin County, Alabama has a vertical clearance in the closed-to-navigation position of 10 feet above mean high water and 12 feet above mean low water. The bridge provides unlimited vertical clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows and fishing vessels. Presently, the draw opens on signal.

CSX Transportation requested a temporary deviation for the operation of the drawbridge to accommodate maintenance work. The work involves replacement of the deficient mechanical operating system with a new hydraulic system. This work is essential for continued operation of the draw span of the bridge and is expected to eliminate

frequent breakdowns resulting in emergency bridge closures.

This deviation allows the draw of the CSX Transportation railroad swing span drawbridge to remain closed to navigation from 10 a.m. until 3 p.m. on March 18 and 19, 2002.

Dated: February 25, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–5805 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 81

[OH132–4; FRL–7155–2]

Designation of Areas for Air Quality Planning Purposes; Ohio; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The Cincinnati-Hamilton moderate ozone nonattainment area (Cincinnati-Hamilton area) was redesignated to attainment on June 19, 2000. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. On September 11, 2001, the United States Court of Appeals for the 6th Circuit (Court) vacated EPA's redesignation of the Cincinnati-Hamilton area, after concluding that EPA erred in one respect that pertained solely to the Ohio portion of the area. Therefore, pursuant to the Court's decision, EPA is making a technical amendment to the listing of the Ohio portion of the Cincinnati-Hamilton area to reflect the designation of Hamilton, Butler, Clermont, and Warren Counties, Ohio as nonattainment for ozone, with a classification of moderate nonattainment, effective as of July 5, 2000, the effective date of EPA's June 19, 2000 rulemaking. The status of the Kentucky portion of the Cincinnati-Hamilton area has been addressed in a separate rulemaking action.

DATES: This technical amendment is effective on April 11, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, EPA Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604; (312) 353–5954, (portanova.mary@epa.gov).

SUPPLEMENTARY INFORMATION:

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I. What Action Are We Taking?
II. What is the background for this action?
III. What is the effect of this action?
IV. Administrative requirements.

I. What Action Are We Taking?

In this technical amendment, EPA is amending 40 CFR 81.336 to designate the Ohio portion of the Cincinnati-Hamilton area as nonattainment for ozone, with a classification of moderate nonattainment. EPA is making this amendment in response to the September 11, 2001 Court decision in *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) which vacated EPA's June 19, 2000 (65 FR 37879) redesignation of the Cincinnati-Hamilton area to attainment and remanded to EPA for further proceedings consistent with the Court's opinion.

II. What Is the Background for This Action?

Under section 107(d) of the Clean Air Act (CAA) as amended in 1977, the Cincinnati metropolitan area was designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, the Cincinnati-Hamilton area was reaffirmed as nonattainment and classified as moderate, due to monitored violations of the National Ambient Air Quality Standard (NAAQS) for ozone that occurred during the 1987–1989 time frame.

For the 1996–1998 ozone seasons, Kentucky and Ohio recorded three years of complete, quality-assured, ambient air monitoring data for the Cincinnati-Hamilton area that demonstrated attainment with the 1-hour ozone NAAQS, making the area eligible for redesignation. Quality-assured ozone monitoring data for the 1999 and 2000 ozone seasons, and preliminary ozone monitoring data for the 2001 ozone season, show that the area continues to attain the 1-hour ozone NAAQS.

Kentucky and Ohio submitted separate requests to redesignate the Cincinnati-Hamilton area from nonattainment to attainment for the 1-hour ozone NAAQS in 1999. On January 24, 2000 (65 FR 3630) EPA proposed to approve the redesignation requests. This rulemaking also proposed to determine that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS by its extended attainment date, and proposed to approve an exemption for the area from nitrogen oxides (NO_X) requirements as provided for in section 182(f) of the CAA. After taking and considering public comments, EPA issued a final rulemaking (65 FR 37879, June 19, 2000), effective July 5, 2000, which determined that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS, and approved Kentucky's and Ohio's requests for the area's redesignation to attainment and their plans for maintaining the 1-hour ozone NAAQS. This final rulemaking action revised 40 CFR 81.336 to list the Cincinnati-Hamilton area as attainment for ozone.

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the United States Court of Appeals for the Sixth Circuit (Court) for review of EPA's redesignation of the Cincinnati-Hamilton area. On September 11, 2001, the Court concluded that EPA erred only on one element that pertained solely to the Ohio portion of the Cincinnati-Hamilton area. The Court thus upheld EPA's actions, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the Reasonably Available Control Technology (RACT) rules of Part D, Subpart 2 of the Clean Air Act. The Court vacated EPA's action in redesignating the Cincinnati-Hamilton area and remanded to EPA for further proceedings. See *Wall* v. *EPA,* (265 F.3d 426, 6th Circuit 2001). EPA is therefore amending 40 CFR 81.336 to reflect the Court's decision.

III. What Is the Effect of This Action?

This technical amendment amends the listing in 40 CFR 81.336 to indicate that Hamilton, Butler, Clermont, and Warren Counties, Ohio are designated as nonattainment for ozone, with a classification of moderate nonattainment. This technical amendment has no impact on the official designation of the Kentucky Counties of Boone, Campbell, and Kenton, as identified in 40 CFR 81.318. The attainment status of the Kentucky portion of the Cincinnati-Hamilton area has been addressed in a separate rulemaking action.

The other EPA actions taken in the June 19, 2000, redesignation rulemaking for the Cincinnati-Hamilton area which were upheld by the Court are unaffected by this amendment. EPA's approvals of Kentucky's and Ohio's maintenance plans have remained in place, since the Court upheld our approval of these plans. Similarly, EPA's determination of attainment for the area has remained in place. Thus the requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the

requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment continue to remain inapplicable to the area. Since the NO_X exemption was not affected by the Court's ruling, the area also remains exempt from section 182(f) NO_X requirements for moderate ozone nonattainment areas.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action is taken pursuant to a decision of the United States Court of Appeals for the Sixth Circuit and merely reflects the Court's action in reinstating the area's previous designation, an action that affects the attainment status of a geographical area. Under these circumstances, correcting the listing for the designation of the area as nonattainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on sources, including small entities. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely reflects the Court's decision, reinstating a prior existing designation, it does not impose any additional enforceable duty beyond that previously required and it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action corrects the listing of the area's nonattainment designation, pursuant to court decision. It does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements. Nor does it alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this action. This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects In 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 28, 2002.

Norman Niedergang,

Acting Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.336, the ''Ohio-Ozone (1-Hour Standard)'' table is amended by revising the entry for the ''Cincinnati-Hamilton Area'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE (1-HOUR STANDARD)

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	* *	*	
Cincinnati-Hamilton Area:				
Butler County		Nonattainment		Moderate.[2]
Clermont County		Nonattainment		Moderate.[2]
Hamilton County		Nonattainment		Moderate.[2]
Warren County		Nonattainment		Moderate.[2]
* * *	*	* *	*	

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

* * * * *

[FR Doc. 02–5865 Filed 3–12–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7157–3]

Unregulated Contaminant Monitoring Regulation for Public Water Systems; Establishment of Reporting Date

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Today's direct final rule establishes August 9, 2002, as a new, later date by which large water systems serving more than 10,000 persons must report all contaminant monitoring results they receive before May 13, 2002, for the Unregulated Contaminant Monitoring Regulation (UCMR) monitoring program. Monitoring results received on or after May 13, 2002, must be reported within thirty days following the month in which laboratory results are received, as specified in the current regulation for this program.

DATES: This rule is effective May 13, 2002, without further notice, unless EPA receives adverse comment by April 11, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. EST on May 13, 2002, as provided in 40 CFR 23.7.

ADDRESSES: Please send an original and three copies of your comments and enclosures (including references) to docket number W–00–01–IV, Comment Clerk, Water Docket (MC4101), USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Due to uncertainty of mail delivery in the Washington, DC area, in order to ensure that your comments are received, please also send a separate copy of your comments to Greg Carroll, USEPA, 26 West Martin Luther King Drive, MC–140, Cincinnati, Ohio 45268. Hand deliveries should be delivered to EPA's Water Docket at 401 M. St., SW., Room EB57, Washington, DC. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov.* Electronic comments must be submitted as a Word Perfect (WP) WP5.1, WP6.1 or WP8 file or as an ASCII file, avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–00–01-IV. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this rule may be filed online at many Federal Depository Libraries.

The record for this rulemaking has been established under docket number W–00–01-IV and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB 57, USEPA Headquarters, 401 M St., SW., Washington, DC. For access to docket materials, please call 202/260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Jeffrey Bryan (202) 564–3942, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC–4606-M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460. General information about UCMR may be obtained from the EPA Safe Drinking Water Hotline at (800) 426–4791. The Hotline operates Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. ET.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

The regulated entities are public water systems. All large community and non-transient non-community water systems serving more than 10,000 persons are required to monitor and report under the UCMR. A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Non-transient non-community water system (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. This rule does not apply to systems serving 10,000 or fewer persons that were randomly selected to participate in the unregulated contaminant monitoring program, since EPA arranges for testing and reporting for those systems. States, Territories, and Tribes, with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act, sometimes conduct analyses to measure for contaminants in water samples and are regulated by this action. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	NAICS
State, Territorial and Tribal Governments.	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Statutory Authority

SDWA section 1445 (a)(2), as amended in 1996, requires EPA to establish criteria for a program to monitor unregulated contaminants and to issue, by August 6, 1999, a list of contaminants to be monitored. In fulfillment of this requirement, EPA published Revisions to the UCMR for public water systems on September 17, 1999 (66 FR 46221), March 2, 2000 (65 FR 11372), and January 11, 2001 (66 FR 2273), which included lists of contaminants for which monitoring was required or would be required in the future. On September 4, 2001 (56 FR

46221), EPA published a rule delaying requirements for reporting of unregulated contaminant monitoring results until its electronic reporting system was ready to accept data. This rule provides the new reporting deadline.

II. Background

Today's action establishes August 9, 2002, as a new, later date by which all unregulated contaminant monitoring results received before May 13, 2002, must be reported to EPA. All monitoring results received on or after May 13, 2002, must be reported within thirty days following the month in which laboratory results are received, as currently specified in 40 CFR 141.35. Today's rule to establish the reporting date will not result in a major burden or impact on any affected party. Prior dates had been established in previous rules promulgated on September 17, 1999 (64 FR 50556), and January 11, 2001 (66 FR 2273), but changed because the EPA database was not ready to receive the data. The reporting date was delayed by rule on September 4, 2001 (66 FR 46221), to allow the initial version of the database to be completed and tested before operation. The database has now been in operation since October 1, 2001, and has been receiving data from water systems. Data resulting from unregulated contaminant monitoring and sample analysis received before May 13, 2002, must be reported by August 9, 2002. The establishment of this reporting date only affects community and non-transient non-community water systems serving more than 10,000 persons which are required to monitor for unregulated contaminants and report monitoring data to EPA.

III. Costs and Benefits of the Rule

Today's amendment to the UCMR does not require any additional costs that were not already considered in previous rulemakings related to this action. The only reason that the reporting date is being established in this rule at this time is that the previously established dates could not be implemented because the EPA database was not ready to receive the data. Through the public comment on the January 11, 2001 rulemaking for this program, commenters indicated that EPA should not require reporting of unregulated contaminant monitoring results until the database was ready. That database is now ready and has been receiving such data as of October 1, 2001.

IV. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(a) 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;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not ''economically significant'' under EO 12866; nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no additional enforceable duty on any State, local or Tribal governments or the private sector. This rule does not change the costs to State, local, or Tribal governments as estimated in the final revisions to the Unregulated Contaminant Monitoring Rule (64 FR 50556, September 17, 1999; 65 FR 11372, March 2, 2000; and 66 FR 2273, January 11, 2001). This rule merely establishes a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because this rule does not apply to small systems (i.e., systems serving a population of 10,000 or less), including those owned and operated by small governments. Thus today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et.seq.* This rule makes a minor revision to the Unregulated Contaminant Monitoring Rule to establish a new, later reporting deadline. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirement under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities for the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. secs. 601(3)–-(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA's) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition for all three categories of small entities in the **Federal Register**, (63 FR 7620, February 13, 1998) requested public comment, consulted with SBA regarding the alternative definition as it relates to small businesses, and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule makes a minor revision to the UCMR and imposes no additional enforceable duty on any State, local or Tribal governments or the private sector. It merely establishes a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported.

F. National Technology Transfer and Advancement Act

Section 12 (d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA's use of voluntary consensus standards in the UCMR program and approval of Method 515.4 were addressed in the September 1999 and January 2001 rulemakings (64 FR 50608 and 66 FR 2298). This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898—Environmental Justice Strategy

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Today's rule makes a minor change to the UCMR, and does not alter the regulatory impact of those regulations.

H. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule merely makes a minor change to the UCMR, establishing a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported. The rule imposes no cost on State and local governments, and does not preempt State law. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with

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

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule merely makes a minor change to the UCMR establishing a new, later date by which unregulated contaminant monitoring results received by large systems serving more than 10,000 persons before May 13, 2002, must be reported. The rule imposes no cost on Tribal governments and does not pre-empt Tribal law. Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

This rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

K. Administrative Procedure Act

EPA is publishing this rule without prior proposal because it views this as a noncontroversial amendment and anticipates no adverse comment. EPA does not anticipate adverse comment because this rule merely establishes a new, later reporting deadline for UCMR data collected before May 13, 2002. However, in the ''Proposed Rule'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this rule if adverse comments are filed. This rule will be effective on May 13, 2002, without further notice unless EPA receives adverse comment by April 11, 2002. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the companion proposed rule published elsewhere in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on May 13, 2002.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indian lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 7, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.35 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 141.35 Reporting of unregulated contaminant monitoring results.

* * * * *

(c) * * * Exception: Reporting to EPA of monitoring results received by public water systems prior to May 13, 2002, must occur by August 9, 2002.

* * * * *

[FR Doc. 02–6016 Filed 3–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

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

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472,

(202) 646–3461, or (e-mail) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Executive Associate Director has resolved any appeals resulting from this notification.

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

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

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

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

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

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

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida:					
Lee (FEMA Docket No. D–7517).	Unincorporated Areas.	September 27, 2001, October 4, 2001, *News-Press*.	Mr. Doug St. Cerny, Chairman of the Lee County Board of County Commissioners, P.O. Box 398, Fort Myers, Florida 33902.	Sept. 20, 2001	125124 B
Leon (FEMA Docket No. D–7517).	City of Tallahassee.	September 28, 2001, October 5, 2001, *Tallahassee Democrat*.	The Honorable Scott Maddox, Mayor of the City of Tallahassee, 300 South Adams Street, Tallahassee, Florida 32301–1731.	Jan. 4, 2002	120144 D
Georgia:					
Bibb and Jones (FEMA Docket No. D–7517).	City of Macon	September 25, 2001, October 4, 2001, *The Macon Telegraph*.	The Honorable Jack Ellis, Mayor of the City of Macon, 700 Poplar Street, Macon, Georgia 31201.	Jan. 1, 2002	130011 E
Gwinnett (FEMA Docket No. D–7515).	Unincorporated Areas.	August 23, 2001, August 30, 2001, *Gwinnett Daily Post*.	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Nov. 29, 2001	130322 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Gwinnett (FEMA Docket No. D–7517).	Unincorporated Areas.	September 27, 2001, October 4, 2001, *Gwinnett Daily Post*.	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Sept. 20, 2001	130322 B&C
Kentucky: Whitley (FEMA Docket No. D–7515).	City of Williamsburg.	August 17, 2001, August 24, 2001, *Times Tribune*.	The Honorable Bill Nighbert, Mayor of the City of Williamsburg, P.O. Box 119, Williamsburg, Kentucky 40769.	Aug. 10, 2001	210228 B
Maine:					
York (FEMA Docket No. D–7517).	Town of Alfred	September 27, 2001, October 4, 2001, *The Sanford News*.	Mr. Perley Yeaton, Chairperson of the Board of Selectmen for the Town of Alfred, P.O. Box 667, Alfred, Maine 04002.	Sept. 19, 2001	230191C
Knox (FEMA Docket No. D–7517).	Town of St. George.	October 18, 2001, October 25, 2001, *Courier-Gazette*.	Mr. John Falla, St. George Town Manager, P.O. Box 131, Tenants Harbor, Maine 04860.	Oct. 12, 2001	230229 C
Michigan: Wayne (FEMA Docket No. D–7517).	Township of Canton.	October 18, 2001, October 25, 2001, *The Observer & Eccentric*.	Mr. Thomas J. Yack, Township of Canton Supervisor, 1150 South Canton Center Road, Canton, Michigan 48188.	Jan. 24, 2002	260219 B
North Carolina: Gaston (FEMA Docket No. D–7515).	City of Gastonia ...	August 29, 2001, September 5, 2001, *The Gaston Gazette*.	Mayor of the City of Gastonia, P.O. Box 1748, 181 South Street, Gastonia, North Carolina 28053–1748.	Dec. 5, 2001	370100D
Ohio: Warren (FEMA Docket No. D–7517).	City of Mason	September 5, 2001, September 12, 2001, *Pulse-Journal*.	The Honorable John McCurley, Mayor of the City of Mason, 202 West Main Street, Mason, Ohio 45040.	Aug. 30, 2001	390559 C
Puerto Rico:					
(FEMA Docket No. D–7517).	Commonwealth	October 5, 2001, October 12, 2001, *The San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, Puerto Rico 00901.	Jan. 11, 2002	720000 D
(FEMA Docket No. D–7517).	Commonwealth	October 12, 2001, October 19, 2001, *San Juan Star*.	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, P.O. Box 82, La Fortaleza, San Juan, Puerto Rico 00901.	Jan. 18, 2002	720000 B&C
South Carolina:					
Florence (FEMA Docket No. D–7517).	Unincorporated Areas.	September 5, 2001, September 12, 2001, *The News Journal*.	Mr. Joe King, Florence County Administrator, 180 North Irby Street MSC–G, Florence, South Carolina 29501.	Dec. 12, 2001	450076 B
Florence (FEMA Docket No. D–7517).	City of Lake City ..	September 5, 2001, September 12, 2001, *The News Journal*.	Mr. George Simmons, Lake City Administrator, 202 Kelly Street, Lake City, South Carolina 29560.	Dec. 12, 2001	450079 C
Lexington (FEMA Docket No. D–7515).	Unincorporated Areas.	August 20, 2001, August 27, 2001, *The State*.	Mr. Bruce Rucker, Lexington County Council Chairman, 212 South Lake Drive, Lexington, South Carolina 29072.	Aug. 13, 2001	450129D
Tennessee: Sullivan (FEMA Docket No. D–7515).	Town of Kingsport	August 23, 2001, August 30, 2001, *Kingsport Times*.	The Honorable Jeanette Blazier, Mayor of the City of Kingsport, 225 West Center Street, City Hall, Kingsport, Tennessee 37660–4237.	Aug. 16, 2001	470184D
Virginia: Fauquier (FEMA Docket No. D–7517).	Unincorporated Areas.	October 18, 2001, October 25, 2001 *Fauquier Citizen*.	Mr. G. Robert Lee, Fauquier County Administrator, 40 Culpeper Street, Warrenton, Virginia 20186.	Jan. 24, 2002	510055 A

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5834 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7521]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

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

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Executive Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

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

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

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

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

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

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

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

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

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Autauga, Elmore, Lowndes, & Montgomery.	City of Montgomery.	January 15, 2002, January 22, 2002, *The Montgomery Advertiser*.	The Honorable Bobby N. Bright, Mayor of the City of Montgomery, P.O. Box 1111, Montgomery, Alabama 36101–1111.	Apr. 23, 2002	010174 D

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Fairfield.	Town of Greenwich.	February 11, 2002, February 18, 2002, *Greenwich Times*.	Mr. Richard Bergstresser, First Selectman for the Town of Greenwich, 101 Field Point Road, Greenwich, Connecticut 06830.	Feb. 4, 2002	090008 C
Florida:					
Manatee	Unincorporated Areas.	January 15, 2002, January 21, 2002, *Sarasota Herald Tribune*.	Mr. Ernie Padgett, County Administrator, 1112 Manatee Avenue West, P.O. Box 1000, Bradenton, Florida 34206.	Jan. 7, 2002	120153 E
Orange	Unincorporated Areas.	January 16, 2002, January 23, 2002, *The Orlando Sentinel*.	Dr. M. Krishnamurthy, P.E., Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, Florida 32839–9205.	Apr. 24, 2002	120179 D
Osceola	Unincorporated Areas.	December 14, 2001, December 21, 2001, *Osceola Sentinel*.	Mr. Robert Fernandez, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, Florida 34741–5488.	Dec. 7, 2001	120189 D
Santa Rosa	Unincorporated Areas.	December 4, 2001, December 11, 2001, *The Pensacola News Journal*.	Mr. Hunter Walker, Santa Rosa County Administrator, 6495 Caroline Street, Suite D, Milton, Florida 32570–4592.	Nov. 27, 2001	120274 D&E
Sarasota	City of Sarasota	December 5, 2001, December 12, 2001, *Sarasota Herald Tribute*.	The Honorable Carolyn Mason, Mayor of the City of Sarasota, P.O. Box 1058, Sarasota, Florida 34230.	Nov. 28, 2001	125150 E
Pinellas	City of St. Petersburg.	November 14, 2001, November 21, 2001, *St. Petersburg Times*.	The Honorable Rick Baker, Mayor of the City of St. Petersburg, P.O. Box 2842, St. Petersburg, Florida 33731–2842.	Nov. 7, 2001	125148 E
Leon	City of Tallahassee.	January 16, 2002, January 23, 2002, *Tallahassee Democrat*.	The Honorable Scott Maddox, Mayor of the City of Tallahassee, City Hall, 300 South Adams Street, Tallahassee, Florida 32301–1731.	Apr. 24, 2002	120144 D
Georgia:					
Fulton	City of Alpharetta.	October 11, 2001, October 18, 2001, *The Review & News*.	The Honorable Charles E. Martin, Jr., Mayor of the City of Alpharetta, City Hall, 2 South Main Street, Alpharetta, Georgia 30004.	Jan. 17, 2001	130084 D
Columbia	Unincorporated Areas.	October 25, 2001, November 1, 2001, *The Augusta Chronicle*.	Mr. Barry Fleming, Chairman of the Columbia County, Board of Commissioners, 630 Ronald Reagan Drive, Evans, Georgia 30809.	Oct. 18, 2001	130059 D
Columbia	Unincorporated Areas.	November 8, 2001, November 15, 2001, *The Augusta Chronicle*.	Mr. Barry Flemming, Chairman of the Board, 630 Ronald Reagan Drive, Evans, Georgia 30809.	Nov. 1, 2001	130054 D
Fulton	Unincorporated Areas.	October 25, 2001, November 8, 2001, *The Atlanta Daily World*.	Mr. Thomas Andrews, Fulton County Manager, 141 Pryor Street S.W., Fulton County Government Center, Atlanta, Georgia 30303.	Jan. 31, 2002	135160 D
Gwinnett	Unincorporated Areas.	November 8, 2001, November 15, 2001, *Gwinnett Daily Post*.	Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Nov. 1, 2001	130054 D
Harris	Unincorporated Areas.	January 2, 2002, January 9, 2002, *Harris County Journal*.	Ms. Carol Silva, Harris County Manager, P.O. Box 365, Hamilton, Georgia 31811.	Dec. 26, 2001	130338 D
Worth	Unincorporated Areas.	October 24, 2001, *Sylvester Local News*.	Mr. Dan Miller, Chairman of the Worth County Board of Commissioners, 201 North Main Street, 3rd Floor, Sylvester, Georgia 31791.	Nov. 16, 2001	130196 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Worth	Unincorporated Areas.	October 24, 2001, *Sylvester Local News*.	Mr. Dan Miller, Chairman of the Worth County Board of Commissioners, 201 North Main Street, 3rd Floor, Sylvester, Georgia 31791.	Nov. 16, 2001	130196 B
Illinois:					
Cook	Village of Arlington Heights.	November 2, 2001, November 9, 2001, *Daily Herald*.	The Honorable Arlene J. Mulder, Mayor of the Village of Arlington Heights, Arlington Heights Village Hall, 33 South Arlington Road, Arlington Heights, Illinois 60005.	Feb. 8, 2002	170056 F
Cook	Unincorporated Areas.	January 25, 2002, *The Daily Southtown*.	Mr. John H. Sroger, Jr., President, Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	Feb. 24, 2002	170054 F
Cook	Village of Willows Springs.	January 25, 2002, *The Daily Southtown*.	The Honorable Terrence Carr, Mayor of the Village of Willows Springs, 8156 South Archer Avenue, Willows Springs, Illinois 60480.	Feb. 24, 2002	170174 F
Indiana:					
Marion	City of Indianapolis.	*The Indianapolis Star,* February 5, 2002.	The Honorable Bart Peterson, Mayor of the City of Indianapolis, City/County Building, Suite 2501, 200 East Washington Street, Indianapolis, Indiana 46204.	Mar. 7, 2002	180159 E
DeKalb	Unincorporated Areas.	*The Evening Star,* February 26, 2002.	Ms. Connie Miles, President of the DeKalb County Board of Commissioners, 100 South Main Street, Auburn, Indiana 46706.	Mar. 7, 2002	180044 B
Noble	Unincorporated Areas.	*The Sun-News*, February 5, 2002, February 12, 2002.	Mr. Mark Pankap, President of the Noble County Board of Commissioners, Noble County Courthouse, 101 North Orange Street, Albion, Indiana 46701.	May 14, 2002	180183 A&B
Steuben	Unincorporated Areas.	*Herald Republican*, February 5, 2002.	Mr. Dale Hughes, Chairman of the Steuben County Board of Commissioners, Steuben County Community Center, 317 South Wayne Street, Suite 2J, Angola, Indiana 46703.	Mar. 7, 2002	180243 B
Kentucky: Jefferson.	Unincorporated Areas.	January 3, 2002, January 10, 2002, *Courier-Journal*.	The Honorable Rebecca Jackson, Jefferson County Judge Executive, Jefferson County Courthouse, 527 West Jefferson Street, Suite 400, Louisville, Kentucky 40202.	Apr. 11, 2001	210120 D
Maine: Cumberland.	Town of Scarborough.	November 30, 2001, December 7, 2001, *Portland Press Herald*.	Mr. Ronald W. Owens, Manager of the Town of Scarborough, P.O. Box 360, Scarborough, Maine 04070–0360.	Nov. 19, 2001	230052 D
Maryland: Frederick.	City of Frederick	November 19, 2001, November 26, 2001, *Frederick News Post*.	The Honorable James Grimes, Mayor of the City of Frederick, 101 North Court Street, Frederick, Maryland 21701.	Nov. 1, 2001	240030 B
Mississippi: Forrest and Lamar.	City of Hattiesburg.	January 24, 2002, January 30, 2002, *Hattiesburg American*.	The Honorable J. Ed Morgan, Mayor of the City of Hattiesburg, P.O. Box 1898, Hattiesburg, Mississippi 39403.	Jan. 16, 2002	280053 D
Massachusetts: Plymouth.	Town of Hanover.	December 12, 2001, December 19, 2001, *Hanover Mariner*.	Office of the Chairman of the Board of Selectmen, Town Hall, 550 Hanover Street, Hanover, Massachusetts 02339.	Mar. 13, 2002	250266 D
New York: Queensbury.	Town of Queensbury.	February 13, 2002, February 20, 2002, *The Post-Star*.	Mr. Dennis Brower, Supervisor for the Town of Queensbury, 742 Bay Road, Queensbury, New York 12804.	Aug. 6, 2002	360879 B
North Carolina:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Wake	Town of Cary	November 23, 2001, November 30, 2001, *The News and Observer*.	The Honorable Glenn D. Lang, Mayor of the Town of Cary, 318 North Academy Street, P.O. Box 8005, Cary, North Carolina 27512.	July 26, 2001	370238 D
Nash and Edgecomb.	City of Rocky Mount.	January 25, 2002, February 1, 2002, *Rocky Mount Telegram*.	Mr. Stephen W. Raper, Rocky Mount City Manager, P.O. Box 1180, Rocky Mount, North Carolina 27802–1180.	May 3, 2002	370092 D
Pennsylvania:					
Dauphin	Township of East Hanover.	November 30, 2001, December 7, 2001, *Patriot News*.	Mr. George Rish, Chairman, Township of East Hanover Board of Supervisors, 80848 Jonestown Road, Grantville, Pennsylvania 17028.	Nov. 14, 2001	420377 B
Carbon	Township of Lower Towamensing.	December 28, 2001, January 4, 2002, *Times News*.	Mr. Glen Hahn, Chairman, Township of Lower Towamensing Board of Supervisors, 595 Hahns Dairy Road, Palmerton, Pennsylvania 18701.	Apr. 5, 2002	421455 A
Carbon	Borough of Palmerton.	December 28, 2001, January 4, 2002, *Times News*.	Mr. John Vignone, Borough of Palmerton Council President, 443 Delaware Avenue, Palmerton, Pennsylvania 18701.	Apr 5, 2002	420253
Dauphin	Township of Swatara.	December 7, 2001, December 14, 2001, *Patriot News*.	Mr. Gregory J. Ricci, President of the Township of Swatara Board of Commissioners, 599 Eisenhower Boulevard, Swatara, Pennsylvania 17111–2397.	Mar. 15, 2002	420398 B
South Carolina:					
Richland	Unincorporated Areas.	December 26, 2001, January 2, 2002, *The State Newspaper*.	Mr. T. Cary McSwain, Richland County Administrator, P.O. Box 192, 2020 Hampton Street, Columbia, South Carolina 29202.	Dec. 19, 2001	450170 D
Richland	Unincorporated Areas.	December 17, 2001, December 24, 2001, *The State Newspaper*.	Mr. T. Cary McSwain, Richland County Administrator, P.O. Box 192, 2020 Hampton Street, Columbia, South Carolina 29202.	Dec. 10, 2001	450170 D
Tennessee:					
Williamson ..	City of Brentwood.	November 23, 2001, November 30, 2001, *The Review Appeal*.	The Honorable Joseph Reagan, Mayor of the City of Brentwood, 5211 Maryland Way, Brentwood, Tennessee 37024.	Nov. 16, 2001	470205 D
Shelby	City of Collierville.	October 18, 2001, October 25, 2001, *The Collierville Herald*.	The Honorable Linda Kerley, Mayor of the Town of Collierville, 101 Walnut Street, Collierville, Tennessee 38017–2671.	Jan. 31, 2002	470263 D
Sumner and Davidson.	City of Goodlettsville.	December 27, 2001, January 3, 2002, *The Tennessean*.	The Honorable Bobby T. Jones, Mayor of the City of Goodlettsville, City Hall, 105 South Main Street, Goodlettsville, Tennessee 37072.	Apr. 4, 2002	470287 D
McNairy	Unincorporated Areas.	January 16, 2002, January 23, 2002, *Independent Appeal*.	Mr. Mike Smith, McNairy County Executive, McNairy County Courthouse, 170 West Court Avenue, Selmer, Tennessee 38375.	Apr. 24, 2002	470127 C
Shelby	Unincorporated Areas.	Janaury 18, 2002, January 25, 2002, *Daily News*.	The Honorable Tim Rout, Mayor of Shelby County, 160 N. Main Street, Suite 850, Memphis, Tennessee 38103.	Apr. 24, 2002	470214 D
Virginia: Prince William.	Unincorporated Areas.	February 7, 2002, February 14, 2002, *Potomac News*.	Mr. Craig Gerhart, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.	May 16, 2002	510119 D

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5835 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

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

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

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

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

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

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

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

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NAVD) Elevation in feet (NAVD)
Alabama	
Elmore County (Unincorporated Areas) (FEMA Docket No.–D–7514)	
Tributary to Mill Creek:	
At a point approximately 1,000 feet upstream of the confluence with Mill Creek	*204
At a point approximately 2,500 feet upstream of the confluence with Mill Creek	*214
Alabama River:	
Approximately 950 feet downstream of Interstate 31	*161
Approximately 3,700 feet downstream of the confluence of Tallapoosa River	*168
Tallapoosa River:	
Approximately 2.6 miles upstream of the confluence of Gravel Pit Creek	*169
Approximately 4.6 miles downstream of the confluence of Chubbehatchee Creek	*176
Maps available for inspection at the Office of the Elmore County Engineer, 155 County Shop Road, Wetumpka, Alabama.	
New Jersey	
Deal (Borough), Monmouth County (FEMA Docket No. D–7514)	
Poplar Brook:	
Approximately 20 feet upstream of New York and Long Branch Railroad	*29
Approximately 480 feet downstream of Ocean Avenue	*11
Maps available for inspection at the Deal Borough Municipal Building, Durant Square, Deal, New Jersey.	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NAVD) Elevation in feet (NAVD)
Watchung (Borough), Somerset County (FEMA Docket No. D–7255)	
Stony Brook:	
Approximately 40 feet downstream of Johnston Drive	*115
Approximately 150 feet upstream of Somerset Street	*187
East Branch Stony Brook:	
Approximately 675 feet downstream of Valley Drive	*213
Approximately 20 feet downstream of Meadowlark Drive	*237
Green Brook:	
At Raymond Avenue	*128
Approximately 1,650 feet upstream of Apple Tree Road	*405
Maps available for inspection at the Watchung Borough Hall, 15 Mountain Boulevard, Watchung, New Jersey.	
New York	
Angola (Village), Erie County (FEMA Docket No. D–7514)	
Big Sister Creek:	
Downstream corporate limits.	
Approximately 150 feet upstream of upstream corporate limits	*644
Unnamed Tributary to Big Sister Creek:	
At confluence with Big Sister Creek	*643
Approximately 750 feet upstream of confluence with Big Sister Creek	*643
Maps available for inspection at the Angola Village Office, 41 Commercial Street, Angola, New York.	
East Aurora (Village), Erie County (FEMA Docket No. D–7514)	
Tannery Brook:	
At the confluence of East Branch Cazenovia Creek	*866
Approximately 710 feet upstream of Brooklea Drive	*944
Maps available for inspection at the East Aurora Village Hall, 571 Main Street, East Aurora, New York.	
Vermont	
Hardwick (Town/Village), Caledonia County (FEMA Docket No. D–7510)	
Lamoille River Divergence:	
Approximately 460 feet upstream of the confluence with Lamoille River	*794
At the divergence from Lamoille River	*804
Maps available for inspection at the Hardwick Town Hall, 20 Church Street, Hardwick, Vermont.	
West Virginia	
Berkeley County (Unincorporated Areas) (FEMA Docket No. D–7514)	
Evans Run:	
A point approximately 300 feet downstream of U.S. Route 11	*488
A point approximately 300 feet downstream of State Route 45	*556
Maps available for inspection at the Berkeley County Planning Commission, 119 West King Street, Martinsburg, West Virginia.	

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5833 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–500, MM Docket No. 01–222, RM–10240]

Digital Television Broadcast Service; Charleston, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WCIV, LLC, licensee of station WCIV(TV), NTSC channel 4, Charleston, South Carolina, substitutes DTV channel 34 for DTV channel 53. *See* 66 FR 47903, August 14, 2001. DTV channel 34 can be allotted to Charleston in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 32–55–28 N. and 79–41–58 W. with a power of 340, HAAT of 597 meters and with a DTV service population of 774 thousand. With is action, this proceeding is terminated.

DATES: Effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–222, adopted March 1, 2002, and released March 6, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by removing DTV channel 53 and adding DTV channel 34 at Charleston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–5849 Filed 3–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–501, MM Docket No. 01–332, RM–10334]

Television Broadcast Service; Pueblo, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Zavaletta Broadcasting of

Pueblo, an applicant for a construction permit for a new television station to operate on channel 26+ at Pueblo, Colorado, substitutes channel 48 for channel 26+ at Pueblo. *See* 66 FR 65873, December 21, 2001. TV channel 48 can be allotted to Pueblo, Colorado, in compliance with the principle community coverage requirements of Sections 73.610 and 73.698 at coordinates 38–21–30 N. and 104–33–24 W. with a zero offset.

With this action, this proceeding is terminated.

DATES: Effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–332, adopted March 1, 2002, and released March 6, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Colorado, is amended by removing TV channel 26+ and adding TV channel 48 at Pueblo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 02–5848 Filed 3–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AA48

Railroad Workplace Safety; Correction

AGENCY: Federal Railroad Administration (FRA), (DOT).

ACTION: Interim final rule; correction.

SUMMARY: In the **Federal Register** of Tuesday, January 15, 2002, (67 FR 1903), the FRA published an interim final rule prohibiting the use of body belts as permissible components of personal fall arrest systems and making technical changes. Inadvertently, §§ 214.105(b)(14) and 214.117(a) were incorrectly modified. This document corrects those modifications.

DATES: Effective on March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6320; or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6027.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 2002, (67 FR 1903), FRA incorrectly modified §§ 214.105(b)(14) and 214.117(a). This document corrects those modifications.

In rule FR Doc. 02–723 published on January 15, 2002 (67 FR 1903), amend the following sections.

1. On page 1907, in the second column, in § 214.105(b)(14), correct ''3,699'' to read ''3,000''.

2. On page 1908, in the second column, in § 214.117 correct paragraph (a) to read as follows:

(a) Railroad bridge workers shall be provided and wear eye and face protection equipment when potential eye or face injury may result from physical, chemical, or radiant agents.

* * * * *

Dated: March 6, 2002.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 02–5804 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 030602G]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the trip limit in the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, March 11, 2002, through June 30, 2002, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Mark.Godcharles@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65

FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota newly implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with hook-and-line gear and run-around gillnets (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B)(*2*), from the date that 75 percent of the southern Florida west coast subzone's quota has been harvested until a closure of the subzone's fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel for vessels using hook-and-line gear in the southern Florida west coast subzone will be reached on March 10, 2002. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the southern Florida west coast subzone effective 12:01 a.m., local time, March 11, 2002. The 500–lb (227–kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2002), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone which from November 1 through March 31 extends south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat.(a line directly west from the Lee/Collier County, FL boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8′ N. lat. and 25°48′ N. lat.(a line directly west from the Monroe/Collier County, FL, boundary), i.e., the area off Collier County.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to reduce the trip limit 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), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under Executive Order 12866.

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

Dated: March 6, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–5872 Filed 3–7–02; 2:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 48
Tuesday, March 12, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, and 134

RIN 3245–AE92

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its regulations governing proceedings before the Office of Hearings and Appeals (OHA). The regulation's last comprehensive revisions were in 1996, followed by additional revisions in 1998 and 2000. The SBA also proposes to make conforming changes to several sections of the regulations governing the Small Business Size Determination program and the 8(a) Business Development (8(a) BD) program.

The major goals of this proposed rule are to: Improve the appeals process by revising and clarifying procedures, particularly those on filing, service, and calculating deadlines that have proven to be ''stumbling blocks'' causing additional litigation and delays; expedite certain procedures; conform the regulations governing proceedings before OHA to other regulations and procedures developed by case law and prevailing practice; and make plain language revisions.

DATES: Comments must be received on or before April 11, 2002.

ADDRESSES: Address your comments to Gloria E. Blazsik, Acting Assistant Administrator for Hearings and Appeals, 409 Third Street, SW, Suite 5900, Washington, DC 20416 and electronic comments to *OHA@sba.gov.*

Electronic Access and Filing

You may submit comments and data by sending electronic mail (e-mail) to: *OHA@sba.gov.* Submit comments as Microsoft Word 97 or as ASCII files avoiding the use of special characters and any form of encryption. Identify all comments and data in electronic form with the title, ''Comment on Proposed Rules—Part 134.'' You may file electronic comments on this proposed rule online at many Federal Depository Libraries.

Public Review of Comments

Whether you comment on paper or electronically, your comments, including name, street address, or other contact information (such as e-mail address, facsimile, or phone number), will be available for public review at this address during regular business hours (8 a.m. to 5 p.m.), Monday through Friday, except federal holidays. You may request confidentiality. If you want us to consider withholding your contact information from public review or from disclosure under the Freedom of Information Act, 5 U.S.C. 552, you must state this request at the beginning of your comment. We will honor requests for confidentiality, to the extent the law allows, on a case-by-case basis. If you are an organization or business, or identify yourself as a representative or official of an organization or business, we will make your entire submission available for public inspection.

FOR FURTHER INFORMATION CONTACT: Michael J. Wolter, Attorney Advisor, Office of Hearings and Appeals, at (202) 401–1420. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339, 24 hours per day, 7 days per week. (If you have any problem using this number, call Customer Service at 1–800–877–0996.)

SUPPLEMENTARY INFORMATION: The SBA proposes to revise part 134, the rules of procedure governing cases before the Office of Hearings and Appeals. The SBA last comprehensively revised the regulations in 1996, then made additional revisions in 1998 and 2000. *See* 61 FR 2682 (January 29, 1996), 63 FR 35726 (June 30, 1998), 65 FR 57541 (September 25, 2000). These proposed revisions would improve and clarify various procedures to make the OHA appeals process more efficient and more understandable to non-lawyers. The SBA also proposes to revise those sections of part 121, the Small Business Size Regulations, and part 124, the 8(a) Business Development program, relating to OHA appeals.

Highlights of this Proposed Rule

As discussed in detail in the Section-by-Section Analysis, the proposed rule would make the following major revisions to OHA's procedures:

- establish the start date for the period for appealing an SBA determination to OHA as when the petitioner receives the SBA determination, rather than when the SBA serves it (134.202(a));
- establish the date of filing as when OHA receives the submission, if no later than 5:00 p.m. eastern time (§ 134.204(b));
- establish the date of service as when the submission is faxed, mailed, personally delivered to the party served, or given over to a delivery service (§ 134.204(c));
- establish that, when a party appeals an SBA determination, the SBA's burden is reduced to a mere response rather than an answer (§ 134.206), and change other sections (specifically, §§ 134.101, 134.205(b), 134.206 heading, 134.207(d), redesignated 134.211(e), and 134.406(d)) to conform to this new distinction;
- establish the start date for the period for filing the answer or response as when an appeal petition is filed, rather than the day it is served on the respondent (§ 134.206(a), (b));
- delete the provision denying an absolute right to appeal a size determination (§ 134.303);
- establish the start date for the 15-day or 30-day time period for filing a size appeal as when the appellant receives the size determination, rather than when the SBA serves it (§ 134.304(a)); and
- permit reconsideration of an initial or final decision of the Judge, on certain grounds, unless a statute or regulation otherwise prohibits it (§ 134.227(c)).

To clarify and simplify OHA's procedures, the proposed rule would:

- reorganize and thoroughly revise the provisions on filing, service, and the certificate of service for simplicity and clarity (§§ 134.204 and 134.304);
- reduce the number of rules governing the date of filing from three to one (§ 134.204(b));

To expedite and streamline OHA procedures, the part 134 proposed rule would:

• reduce from 20 to 15 days the time for respondent to file a motion for a more definite statement (§ 134.205(a));

• require a party moving to amend or supplement its pleadings to file and serve its proposed amendment or supplemental pleading with its motion (§ 134.207);

• permit intervention by the SBA only until 15 days after the close of record and intervention by other persons only until the close of record, rather than until final decision (§ 134.210);

• require a party filing a routine motion to obtain and to state the other parties' positions on the motion (§ 134.211(b));

• require that the answer or response be filed within 20 days of an order denying a motion to dismiss (§ 134.211(d));

• require a party seeking an extension of time to file its motion at least two days before the original deadline, except for good cause shown (§ 134.211(f));

• eliminate the need to file a settlement agreement if the parties file a joint motion to dismiss, unless the Judge has express authority under statute, regulation, or SOP to review the settlement agreement for legality and orders the agreement to be filed (§ 134.217); and

• require, in size and NAICS code appeals, that a party moving to submit new evidence file and serve its proposed new evidence with its motion (§ 134.308(a)(2)).

To conform part 134 to other SBA regulations, OHA case law, or prevailing practices, the proposed rule would:

• amend the list of cases over which OHA has jurisdiction to include appeals of certain Small Disadvantaged Business determinations, certain decisions relating to Women's Business Centers and Small Business Development Centers, certain matters involving debarments and suspensions, and decisions of the Appropriate Management Official in SBA Employee Dispute Resolution Process cases (134.102);

• clarify, when there is incomplete service or an amended appeal petition, that the Judge, by order, will set the deadline for the response or answer (134.206(c));

• clarify, in a competitive 8(a) BD contract, that an adversely affected entity may appeal a NAICS code (§ 134.302(b));

• clarify that OHA does not issue advisory opinions (§ 134.303);

• clarify that the 10-day time period for filing a NAICS code appeal begins anew whenever the contracting officer issues an amendment affecting the NAICS code (134.304(a)(3)); and

• clarify that certain 8(a) BD appeal regulations (§§ 134.402, 134.406(a), (b), and 134.407(a)) do not apply to 8(a) BD suspension appeals, to conform with § 124.305 and OHA's case law, such as *Matter of All American Meats, Inc.*, SBA No. BDP–107 (1998).

These proposed revisions are discussed in more detail in the Section-by-Section Analysis.

On May 15, 2000 (65 FR 30836), the SBA replaced the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) as the basis for the SBA's small business size standards.

This proposed rule would revise 13 CFR part 134 to conform it to the NAICS and part 121 by adding the definition for NAICS code to § 134.101 and by replacing the acronym ''SIC,'' wherever it appears in part 134, with the acronym ''NAICS.'' The sections affected are: § 134.102(k); redesignated § 134.201(a); Subpart C heading; § 134.301; § 134.302 (introductory text), (b); § 134.304(a) (introductory text), (a)(3); § 134.305(a)(1), (a)(3), (c); redesignated § 134.306(b); § 134.310; § 134.311; and § 134.314.

Plain Language Revisions

To further enhance readability of these regulations, the SBA proposes to make several ''plain language'' revisions. These include providing a simple fill-in-the-blanks sample format for certificates of service (§ 134.204(d)). SBA also has broken down some sections into designated paragraphs and reorganized or reworded others to aid public understanding.

Section-by-Section Analysis

The following is a section-by-section analysis of each provision of SBA's regulations that would be affected by this proposed rule, other than the nomenclature change of SIC to NAICS, changes conforming to redesignated § 134.206(b), and non-substantive improvements of language. OHA's current regulations and much of its case law are available on the Internet at *www.sba.gov/oha.*

Part 121

Section 121.1009(h), on reopening size determinations, would be amended to conform to the revision, in proposed § 121.1101, making appeal to OHA a matter of right, rather than a matter of OHA's discretion.

Section 121.1101, on appeals of size determinations, would be amended to delete the provision that denies an absolute right to an OHA appeal from a size determination. Current § 121.1101, issued in 1996, makes an appeal of a size determination a matter of OHA's discretion, rather than an absolute right of a party adversely affected by a size determination. This provision has caused confusion on the issue of the exhaustion of administrative remedies, and so SBA proposes to revert to the pre-1996 rule. The proposed rule also would clarify, in the case of size determinations, that administrative remedies include an OHA appeal, and that judicial review may not be sought until after the OHA appeal has been exhausted.

Section 121.1102, on appeals of NAICS code designations, also would be amended to include the clarifying language on administrative remedies.

Part 124

Sections 124.206(c), 124.304(b), 124.304(e), 134.305(c), and 124.515(i) contain the time periods (deadlines) for filing 8(a) appeals with OHA. Currently, these time periods begin when the SBA ''serves'' the determination being appealed. These service-based rules have caused much confusion and uncertainty in calculating the deadline for filing an 8(a) appeal, and no small amount of additional litigation to determine the date the determination has been ''served.'' The proposed rule would replace the service-based rules with receipt-based rules, so that all time periods for filing 8(a) appeals would begin when the 8(a) applicant or participant receives the determination being appealed.

Part 134, Subpart A

Section 134.101, definitions, would be amended to add definitions for ''appeal petition'' and ''NAICS code''; to delete the definition for ''SIC code''; and to revise the existing definitions for ''party,'' ''petition,'' and ''pleadings.'' Additionally, the amendments would clarify that the procuring activity contracting officer (CO) who issued a solicitation is a party to any appeal of the NAICS code; therefore, the OHA Judge may order the CO to file a response.

Section 134.102, on jurisdiction, lists the types of cases in which OHA has authority to conduct proceedings, but omits some appeals mandated elsewhere. The proposed rule would add cases involving: (1) Certain Small Disadvantaged Business (SDB) certification and decertification determinations (subpart B of part 124); (2) certain decisions relating to Women's Business Centers and Small Business Development Centers (sections 21(1) and 29(h) of the Small Business

Act, 15 U.S.C. 648(1) and 656(i)); (3) certain matters involving debarments and suspensions (part 145); and (4) in SBA Employee Dispute Resolution Process (Employee Dispute) cases, the decision of the Appropriate Management Official (SBA's Standard Operating Procedure (SOP) 37 71 02). The proposed rule also would conform existing § 134.102(d) with part 120, which grants OHA appeal rights not only to lenders, but also to other entities, such as pool assemblers, subject to SBA enforcement actions related to SBA loan programs.

The proposed rule would delete the last sentence of current § 134.103(b), to conform that regulation to proposed new § 134.211(f), regarding motions to extend time.

Part 134, Subpart B

Section 134.202, commencement of cases, contains the deadlines for commencing OHA litigation. The proposed rule would reorganize this section by listing separately cases that a party other than the SBA may commence by filing an appeal petition (§ 134.202(a)) and cases that the SBA may commence by issuing an order to show cause (§ 134.202(b), (c)).

Proposed § 134.202(a)(1) would set time limits for all cases commenced by appeal petition, except for debt collection cases, applications for fee awards, 8(a) program suspension cases, and SBA Employee Dispute cases, which would be contained in § 134.202(a)(2)–(a)(5), and for size and NAICS code appeals, which are contained in subpart C. Currently, the time for filing an appeal petition begins when the SBA ''serves'' the determination being appealed (service-based rule), except in debt collection cases, in which time starts when the petitioner receives the SBA's notice (receipt-based rule), and in size appeals, in which OHA has used a receipt-based rule since 1984.

The service-based rule for determining the deadline for filing an appeal petition has caused unnecessary confusion and litigation. On the contrary, the receipt-based rule has had a long, successful track record. After careful consideration of both methods, SBA concludes the receipt-based rule is better and should extend to all appeals commenced by appeal petition.

Proposed new § 134.202(a)(5) would refer to SOP 37 71 02 (available at *www.sba.gov/library/soproom.html*), which contains special procedures, including deadlines, governing Employee Dispute cases.

Section 134.203, the petition, lists the general requirements for all appeal petitions. The proposed rule additionally would require the petitioner to provide its facsimile number, to facilitate service by facsimile; and to state when it received the determination being appealed, to help OHA determine timeliness.

Proposed § 134.203(a)(2) would clarify that an appeal petition must include a copy of the SBA determination. Proposed new § 134.203(a)(6) would clarify that an appeal petition must include a certificate of service. Proposed new § 134.203(a)(7) would require the petitioner in debt cases to state when it received the notice initiating the debt collection proceeding. Finally, proposed § 134.203(b) would reference other requirements relating to particular types of appeal petitions located elsewhere in part 134 or in the applicable SBA program regulations.

Section 134.204 contains the filing and service requirements for all pleadings and other submissions to OHA. The current rule has proven very confusing to litigants. Accordingly, the SBA proposes to reorganize the rule and to simplify certain procedures.

Proposed § 134.204(a) would state the acceptable methods of filing and service, with the proviso that the Judge may, for good cause, order filing or service by a particular method. These methods are first-class mail (including certified and registered mail), express mail, and priority mail; hand delivery; and facsimile. The generic term ''delivery'' would include forms of non-mail delivery, such as: personal delivery by the person certifying service; or delivery by a messenger, courier service, or other commercial delivery service, such as United Parcel Service, Federal Express, or Airborne. Delivery does not include electronic mail.

Proposed § 134.204(b) and (b)(1), on filing, would define filing as receipt of pleadings and other submissions at OHA; establish the filing date as when OHA receives a submission, provided OHA receives it on or before 5:00 p.m. eastern time; and give OHA's suite, telephone, and facsimile numbers.

Proposed § 134.204(b)(2) would reduce from three to one the number of rules for determining the date an OHA submission is filed. Current § 134.204(e) specifies the date of filing as the date of transmission if filed by facsimile; the date of postmark if filed by first-class mail; and the date of OHA's receipt if filed by express mail, personal delivery, or commercial delivery. Current § 134.204(b)(2) requires filings by personal or commercial delivery to be made between 8:30 a.m. and 5:00 p.m. without reference to time zone.

The proposed rule would set the filing date as when OHA receives a submission, regardless of the method used, if OHA receives it on or before 5:00 p.m. eastern time. Thus, proposed § 134.204(b)(1) would change the current rules in two ways: (1) For filings by first-class mail, change the filing date from the postmark date to the receipt date; and (2) for filings by facsimile received at OHA after 5:00 p.m., change the filing date from that day to the next.

Proposed § 134.204(b)(3) would explain better the requirement, in current § 134.204(c), to authenticate exhibits. Proposed § 134.204(b)(4) would state when the Judge would not accept a copy of an exhibit instead of the original.

Proposed § 134.204(c), service (current § 134.204(a), (e)), would define service; state the service requirement; state the rules for determining the service date; and, regarding the address for serving the SBA, refer to other subparts of part 134 or to other SBA regulations that might apply to particular types of appeals.

As with the filing date, the current rules set the service date as the transmission date for service by facsimile; the postmark date for service by first-class mail; and the receipt date for service by express mail, personal delivery, or commercial delivery.

Proposed § 134.204(c)(2) would set the service date of a document as follows: for service by facsimile, when sent; for personal delivery by the person certifying service, when given to the party served; for commercial delivery, when given to the delivery service; and for service by mail, when mailed (postmarked). The proposed rule would treat all forms of mail consistently and retain the current rule's rebuttable presumption that a piece was mailed (and thus served) five days before its receipt, absent a postmark or other evidence of mailing date.

Thus, proposed § 134.204(c) would alter the current rules in two ways: (1) for service by Express Mail, change the service date from receipt date to postmark date; and (2) for service by commercial delivery service, change the service date from receipt date to the date the document is given to the delivery service.

Proposed § 134.204(d), certificate of service, would give greater detail and include a fill-in-the-blanks format.

Current § 134.204(e), on filing and service dates, would be eliminated as obsolete.

Current § 134.204(f), confidential information, would be redesignated as paragraph (e).

Proposed § 134.205(a), motion for a more definite statement, would reduce the respondent's time period for filing this motion from 20 to 15 days, the same time period that existed before March 1, 1996. *See* 13 CFR 134.11(c) (1995). This revision would help all parties to clarify and join the issues in an appeal at the earliest possible time.

Proposed § 134.206, the answer, would be revised to include two separate procedures. If the case involves an appeal from an SBA determination, the respondent's pleading would be called the response, and proposed § 134.206(b), (c), and (d) would apply. In all other cases (including debt collection cases and cases commenced by an order to show cause), the respondent's pleading would continue to be called the answer, and proposed § 134.206(a), (c), and (d) would apply. Proposed § 134.206(a) would refer to SOP 37 71 02 (available at *www.sba.gov/library/soproom.html*) for the deadlines that apply to Employee Dispute cases.

Proposed § 134.206(a), on the answer, would be revised to include the substance of current § 134.206(a), (b), and (c); however, the time period (deadline) for filing the answer would run from the day the appeal petition is filed, rather than the day it is served on the respondent. In cases commenced by an order to show cause, the time period for filing the answer would continue to run from the time SBA served the order to show cause.

Proposed § 134.206(b), on the response, would conform to current practice by requiring OHA to inform all known parties of the date an appeal petition was filed. The deadline for and content of the response would be the same as for the answer, except that the respondent would not need to respond to the factual allegations in the petition and would not admit any allegation by failing to deny it, but must set forth the respondent's positions in support of the SBA determination.

Proposed § 134.206(c) would provide, in the event of incomplete service or an amended order to show cause or appeal petition, for the Judge to order the deadline for filing the answer or the response. In the case of incomplete service, that deadline would not be less than 45 days after petitioner serves respondent. This provision would conform this section to OHA's current practice under § 134.103(b).

Current § 134.206(d) and (e) would be combined into proposed § 134.206(d), and rewritten more concisely. The scope of the provision for the filing of the administrative record upon a default, which currently applies only to 8(a) cases, would be expanded to include any case in which the SBA is required to file an administrative record.

Current § 134.207, amendments and supplemental pleadings, would be revised, in § 134.207(a) and (b), to include the additional requirement that a party moving to amend or supplement its pleadings must file and serve its proposed amendment or supplemental pleading along with its motion. The proposed rule would conform these procedures to prevailing practices.

Proposed § 134.208, on representation before OHA, would be revised, in § 134.208(a), to clarify that an officer of any type of entity except a partnership may represent that party.

Proposed § 134.210, intervention, would be revised to limit the time in which additional parties may intervene. Current § 134.210(a), on intervention by the SBA, and current § 134.210(b), on intervention by interested parties, permit intervention at any time until the Judge issues a final decision. The proposed rule would permit intervention by the SBA only until 15 days after close of record or until the issuance of a decision, whichever comes first, and intervention by other parties only until the close of record. Because intervention can change the entire course of a case, the public interest in conservation of judicial resources and efficient, speedy resolution of the issues mandates aligning the parties in a case earlier, rather than later.

Proposed § 134.210(b) also would limit the definition of ''interested person'' to include only those individuals, business entities, or government agencies that have a direct stake in the outcome of the appeal. Thus, this proposed rule would permit only a small group of persons to intervene, in contrast to proposed § 134.309(a), which would permit any person with a ''general interest'' in an issue raised by the appeal to respond to the appeal. Proposed § 134.210(b) also would clarify that the Judge may grant leave to intervene upon such terms as he or she deems appropriate.

Current § 134.211, motions, would be revised substantively in three places. Proposed § 134.211(b) would require the moving party, in most motions, to obtain and to state, in the motion itself, the other parties' positions on the motion. This change would eliminate ex parte telephone calls by OHA staff to ascertain the parties' positions and, for unopposed motions, the need to wait out the 20-day response period.

Current § 134.211(d), now entitled ''Stay,'' would be renamed ''Motion to dismiss.'' It would explicitly allow filing of a motion to dismiss any time before the decision is issued. It also would require that the answer or response, if not already filed, be filed within 20 days after an order denying the motion.

Proposed new § 134.211(f) would establish a special procedure for motions to extend time. It would require the party seeking to extend a filing deadline to file its motion at least two days before the original deadline. This proposed rule would prevent the awkward situation in which a motion to extend time is filed just before the original deadline, and the Judge is unable to rule on it until the next day, rendering the moving party in technical default. The proposed rule also would provide for a good-cause exception to the two-day time period.

Proposed § 134.212, summary decision, would include a new paragraph (e) clarifying, in a case involving an appeal petition from a non-8(a) SBA determination based on two or more grounds, that the SBA could move for a summary decision dismissing the appeal based on one or more grounds. If the Judge finds, as to any such ground, no genuine issue of material fact and that the SBA is entitled to judgment as a matter of law, the Judge would grant the motion and dismiss the appeal.

Proposed § 134.214, on subpoenas, would clarify that subpoenas are not authorized for proceedings relating to internal Agency determinations, such as Employee Disputes.

Current § 134.217, settlement, would be revised to simplify the settlement procedure. In contrast to the current requirement to submit the entire settlement agreement, the proposed rule would require only the filing of a joint motion to dismiss the appeal; however, when statute, SBA regulation, or SBA SOP expressly authorizes the Judge to review a settlement agreement for legality, the Judge may order the settlement agreement to be submitted.

Current § 134.226, the decision, specifies a deadline for rendering a decision only for debt cases. The proposed rule would add a sentence clarifying that applicable SBA program regulations or other subparts of part 134 might contain time limits for rendering decisions in other types of cases.

Current § 134.227, finality of decisions, would be reorganized with a new provision authorizing reconsideration of an initial or final decision of the Judge. Proposed § 134.227(a), initial decisions (current § 134.227(b)), would restate the general rule that, unless otherwise provided in part 134, all OHA decisions are initial decisions. Further, all initial decisions become final decisions 30 days later,

absent either a request for review under § 134.228(a) or a request for reconsideration under § 134.227(c).

Proposed § 134.227(b), final decisions (current § 134.227(a)), would list the types of appeal proceedings in which OHA's decision on the merits is SBA's final decision upon issuance. The list would include debt cases, 8(a) BD program appeals, size appeals, NAICS code appeals, and any other proceeding for which either the applicable program regulations or another subpart of part 134 provides for a final decision.

Proposed § 134.227(c), reconsideration, would be new. It would state a general rule that any initial or final decision of the Judge may be reconsidered unless a statute, the applicable program regulations, or part 134 specifically prohibits reconsideration. The proposed rule also would specify that a request for reconsideration must be filed with the Judge within 20 days after service of the decision, and must demonstrate a clear showing of an error of fact or law material to the decision. The proposed rule also would permit an OHA Judge to reconsider a decision of a Judge on his or her own initiative. This proposed rule would restore the Judge's authority, which existed between 1990 and 1996 in size cases, to reconsider a decision of a Judge to correct a clear error. *See* 13 CFR 121.1721 (1995).

Current § 134.228(a) would be amended to clarify that a party could seek review by the Administrator of a Judge's initial decision, whether or not the decision had been reconsidered.

Current § 134.229, termination of jurisdiction, would be revised to state that, except where a case is being reconsidered or has been remanded, OHA's jurisdiction terminates on issuance of a decision resolving all material issues. This revision would conform this regulation to proposed new § 134.227(c).

Part 134, Subpart C

Current § 134.302, who may appeal, would be revised to permit an entity that is adversely affected by the NAICS code in a competitive 8(a) BD contract to appeal that NAICS code. This proposed rule would conform this section to the 1998 revision to § 121.1103(a), which permits only the Associate Administrator for 8(a) Business Development (AA/8(a)BD) to appeal the NAICS code for an 8(a) sole source contract. *See* 63 FR 35739.

Current § 134.303, no absolute right to an appeal from a size determination, would be deleted to conform to proposed § 121.1101. In its place, proposed new § 134.303, advisory opinions, would clarify that OHA does not issue advisory opinions, including decisions on issues that are or have become moot. This proposed rule would codify long-standing OHA case law, including *Size Appeal of Lightcom International, Inc.*, SBA No. SIZ–4118 (1995).

Current § 134.304, on commencement of size and NAICS code appeals, sets the time period for filing size and NAICS code appeals. Section 134.304(a)(1), the ''15-day rule,'' applies to appeals of size determinations in pending procurements or sales. Section 134.304(a)(2), the ''30-day rule,'' applies to appeals of size determinations where there is no pending procurement or sale. The current rules, in effect since April 1, 1996 (61 FR 2687), begin both time periods when the SBA served its size determination. The prior rules, in effect 1984–1996, began both time periods when the appellant received the size determination. *See* 13 CFR 121.1705(a)(1), (a)(2) (1995).

The proposed rules would restore the prior method of determining when the time periods for filing size appeal petitions begin. Thus, the 15-day or 30-day time period would begin on the appellant's receipt, rather than SBA's service, of the size determination.

Under the prior, receipt-based rules, OHA determined when the filing time period began (and thus whether an appeal was timely) using the return receipt card (Postal Service Form 3811) contained in the Area Office file. Under the current, service-based rules, OHA needs the postmark on the mailing envelope as evidence of the date of service. The mailing envelope, however, is not in the Area Office file; it either has been destroyed or is in the appellant's hands. Thus, OHA cannot determine when the filing time period began and, thus, whether a size appeal is timely, without first requiring proof of timeliness and then adjudicating that issue. These additional steps cause delays. To avoid this problem, OHA Judges consistently have used the prior, receipt-based method as a ''rule of convenience.'' *See Size Appeal of Prose, Inc.*, SBA No. SIZ–4196 (1996); *Size Appeal of DTH Management JV*, SBA No. SIZ–4376 (1999). The proposed rule would conform the regulation to this long-standing practice.

Current § 134.304(a)(3), on NAICS code appeals, would be revised to clarify that the 10-day time period for filing an appeal begins anew whenever the procuring activity contracting officer issues an amendment affecting the NAICS code. This revision would conform the regulation to OHA's long-standing case law. *See SIC Appeal of Madison Services, Inc.*, SBA No. SIC–4223 (1996).

Current § 134.305, the appeal petition, lists the requirements for appeal petitions in size and NAICS code appeals. Proposed § 134.305(a)(4) would also require the appellant's facsimile number, thus facilitating service by facsimile. Proposed § 134.305(d), on certificate of service, would contain a reference to § 134.204(d), which describes the general requirements for certificates of service.

Proposed § 134.306, transmission of the case file and solicitation, would clarify that in both size and NAICS code appeals, the procuring activity contracting officer must send OHA a paper copy of the original solicitation and all amendments. This proposed rule would ensure that OHA receives the complete solicitation and eliminate the problem of incompatible electronic formats.

Current § 134.308, on new evidence, would be revised to include the additional requirement that a party moving to submit new evidence in an appeal must file and serve its proposed new evidence along with its motion. The proposed rule would conform the regulation to prevailing practices.

Section 134.309, response to an appeal petition, would be revised to broaden the category of persons who may respond to an appeal and to conform the time limits for responses to long-standing OHA practices. Current § 134.309(a) permits only ''interested persons,'' that is, those who are or could be parties, to file a response to an appeal. Proposed § 134.309(a) would permit, besides ''interested persons,'' any person who has a ''general interest'' in an appeal to file a response. Thus, this revision would remove the regulatory barrier to responses from such persons; however, the Judge would have to determine whether a particular response is relevant before admitting it into the record.

Current § 134.309(b) permits a respondent to file a response within 10 days after service of the appeal petition, unless the Judge otherwise specifies. Consistent with OHA's long-standing practices, the proposed rule would require OHA to issue a Notice and Order informing the parties when OHA received the appeal, setting the close of record as 15 days after service of the Notice and Order, and requiring any responses to the appeal to be received at OHA no later than the close of record.

Current § 134.313, applicability of subpart B provisions, would be revised to state, simply, that the provisions of subpart B, OHA's general rules of practice, apply to size and NAICS code

appeals, except where inconsistent. Current § 134.313 lists specific sections of subpart B; however, practice has shown this list to be incomplete and confusing. The Judge should be able to determine when a particular subpart B provision conflicts with the subpart C regulations governing size or NAICS code appeals.

Section 134.316, the decision, would be revised to clarify that the Area Office's size determination remains in effect if OHA dismisses the appeal from it. The proposed rule would clarify that the decision in a NAICS code appeal may not be reconsidered.

Current § 134.317, termination of jurisdiction, would be deleted as unnecessary and current § 134.318, return of the case file, would be redesignated as § 134.317.

Part 134, Subpart D

Current § 134.402, appeal petition, conflicts with § 124.305(d), which places the burden in suspension appeals on the SBA, not the petitioner. Revised § 134.402 would clarify that it does not apply to suspension appeals.

Current § 134.403, on service, would be revised to delete § 134.403(a)(3), which is unnecessary.

Current § 134.406(a) limits review to the written administrative record, but § 124.305(c) contemplates a hearing in a suspension appeal. Current § 134.406(b) limits review to the issue of whether the SBA's determination is arbitrary, capricious, or contrary to law, but § 124.305(d) establishes the issue in suspension appeals as whether the SBA has produced adequate evidence to show that suspension is necessary to protect the Government's interest. Revised § 134.406(a) and (b) would clarify that they do not apply to suspension appeals. Proposed § 134.406(c) would specify that the administrative record also must include documents relied upon by SBA officials who made recommendations regarding the SBA determination and clarify that the administrative record submitted by SBA would be deemed complete unless the petitioner objects to its completeness or the Judge finds the record insufficiently complete, under § 134.406(e), to permit a decision on the merits. Current § 134.406(e) permits the Judge to order a remand to the SBA if, due to the absence of the reasons upon which the SBA determination was based, the administrative record is insufficiently complete to decide whether the SBA determination is arbitrary, capricious, or contrary to law. Then the SBA responds to the order, and the Judge decides the case. Proposed § 134.406(e) would state that the SBA, when responding to the remand order, need not supplement the administrative record except to supply any reasons for the determination or any documents it received or considered in connection with any reconsideration during the remand period. If, however, the Judge found, from the SBA's response to the remand order, that the supplemented record still did not contain the reasons upon which the determination was based, the Judge could not require the SBA to further supplement the administrative record and thus provide the SBA another opportunity to provide the reasons upon which the determination was based, but must find the SBA determination arbitrary, capricious, or contrary to law. However, nothing in the rules prevents the SBA from filing, or the Judge from granting, a meritorious motion to dismiss on other grounds. Finally, proposed § 134.406(e) would permit the Judge to set a reasonable period for remand, because the current period of 10 working days has proven to be unreasonable.

Current § 134.407(a) limits the admission of evidence beyond that in the written administrative record, but § 124.305(c) contemplates a hearing in suspension appeals. Revised § 134.407(a) would clarify that it does not apply to suspension appeals.

Section 134.212 allows motions for summary decision in all cases under this part. Proposed § 134.408(a) merely refers to the general provisions of § 134.212. Proposed § 134.408(b), summary decision based on fewer than all grounds, would extend the general provision for summary decision on fewer than all grounds (proposed § 134.212(e)). If the SBA moves for summary decision on one or more grounds and the Judge finds no genuine issue of material fact as to whether the SBA determination meets the required standard of review and that the SBA is entitled to judgment as a matter of law, the Judge would grant the motion and dismiss the appeal.

Current § 134.408, decision on appeal, would be redesignated as § 134.409 and revised to delete the second sentence of paragraph (b), which is unnecessary.

Compliance With the Regulatory Flexibility Act (5 U.S.C. 601–612), the Paperwork Reduction Act (44 U.S.C. Ch. 35), and Executive Orders 12866, 12988, and 13132

SBA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule would revise some of the rules of practice for SBA administrative proceedings to simplify those rules and to make them easier for the few small businesses that engage in administrative litigation with the SBA to understand and to use. Accordingly, the proposed rule is purely procedural and would not affect the operations of small entities.

For purposes of the Paperwork Reduction Act (44 U.S.C. ch. 35), SBA certifies that this proposed rule would impose no new reporting or record-keeping requirements on firms. This proposed rule would make revisions to certain procedures for administrative litigation, and those revisions would not necessitate any additional reports to SBA and would not require the maintenance of any additional records beyond those that firms currently make or maintain.

OMB has determined that this proposed rule is not a ''significant'' regulatory action within the meaning of Executive Order 12866. The proposed rule is merely procedural and, therefore, it would not have an annual economic effect of $100 million or more, and it would have no adverse effect on any sector of the economy or on State, local, or tribal governments or communities.

For purposes of Executive Order 12988, SBA certifies that it has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order. This proposed action does not have retroactive or preemptive action.

For purposes of Executive Order 13132, SBA certifies that this proposed rule would have no federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

13 CFR Part 121

Government procurement, government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 124

Government procurement, Hawaiian Natives, Minority businesses, Reporting and recordkeeping requirements, Technical assistance, and Tribally owned concerns.

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, SBA proposes to amend parts 121, 124, and 134 of Title 13, Code of Federal Regulations (CFR) as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.1009, revise paragraph (h) to read as follows:

§ 121.1009 What are the procedures for making the size determination?

* * * * *

(h) *Limited reopening of size determinations.* In cases where the size determination contains clear administrative error or a clear mistake of fact, SBA may, in its sole discretion, reopen the size determination to correct the error or mistake, provided no appeal has been filed with OHA.

3. Revise § 121.1101 to read as follows:

§ 121.1101 Are formal size determinations subject to appeal?

A formal size determination made by a Government Contracting Area Office or by a Disaster Area Office may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

4. Revise § 121.1102 to read as follows:

§ 121.1102 Are NAICS code designations subject to appeal?

A NAICS code designation made by a procuring activity contracting officer may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a NAICS code designation may be sought in a court.

PART 124

5. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

6. In § 124.206, revise paragraph (c) to read as follows:

§ 124.206 What appeal rights are available to an applicant that has been denied admission?

* * * * *

(c) The applicant may initiate an appeal by filing a petition in accordance with part 134 of this title with OHA within 45 days after the applicant receives the Agency decision.

* * * * *

7. Amend § 124.304 as follows:

a. Revise the second sentence of paragraph (b) and remove the last sentence; and

b. Revise the last sentence of paragraph (e).

The revisions read as follows:

§ 124.304 What are the procedures for early graduation and termination?

* * * * *

(b) * * * The Letter of Intent to Terminate or Graduate Early will set forth the specific facts and reasons for SBA's findings, and will notify the concern that it has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify termination or early graduation.

* * * * *

(e) * * * If a Participant does not appeal a Notification of Early Graduation or Termination within 45 days after the Participant receives the Notification, the decision of the AA/8(a)BD is the final agency decision effective on the date the appeal right expired.

* * * * *

8. In § 124.305, revise the first sentence of paragraph (c) to read as follows:

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

* * * * *

(c) The applicant concern may appeal a Notice of Suspension by filing a petition in accordance with part 134 of this title with OHA within 45 days after the concern receives the Notice of Suspension pursuant to paragraph (b) of this section. * * *

* * * * *

9. In § 124.515, revise paragraph (i) to read as follows:

§ 124.515 Can a Participant change its ownership or control and continue to perform an 8(a) contract, and can it transfer performance to another firm?

* * * * *

(i) The 8(a) contractor may appeal SBA's denial of a waiver request by filing a petition with OHA pursuant to part 134 of this title within 45 days after the contractor receives the Administrator's decision.

PART 134

10. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370.

11. Amend § 134.101 as follows:

a. Add new definitions for ''Appeal petition'' and ''NAICS code'' in alphabetical order;

b. Revise the definitions for ''Party,'' ''Petition,'' and ''Pleading'; and

c. Remove the definition for ''SIC code.''

The revisions and additions read as follows:

§ 134.101 Definitions.

* * * * *

Appeal petition has the same meaning as *petition.*

* * * * *

NAICS code means North American Industry Classification System code.

* * * * *

Party means the petitioner, appellant, respondent, or intervenor, and the contracting officer in a NAICS code appeal.

* * * * *

Petition (or appeal petition) means a written complaint, a written appeal from an SBA determination, or a written request for the initiation of proceedings before OHA.

Pleading means a petition, an order to show cause commencing a case, an appeal petition, an answer, a response, or any amendment or supplement to those documents.

* * * * *

12. Amend § 134.102 as follows:

a. Revise paragraph (d);

b. In paragraph (k), remove the acronym ''SIC'' and replace it with the acronym ''NAICS''; and

c. In paragraph (m), delete the last word ''and''; redesignate existing paragraph (n) as paragraph (r); and add new paragraphs (n) through (q).

The revisions and additions read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(d) The eligibility of any bank or non-bank lender to continue to participate in SBA loan programs under the Act and part 120 of this chapter, or to do so with preferred or certified status, and any other appeal that is specifically authorized by part 120 of this chapter;

* * * * *

(n) Appeals from the following small disadvantaged business (SDB) determinations under part 124 of this chapter:

(1) SBA's determination that an applicant firm does not qualify for certification, or that a certified SDB no longer qualifies for the program; and

(2) A Private Certifier's ownership and control determination made on a firm's application for certification;

(o) The suspension, termination, or non-renewal of cooperative agreements with Women's Business Centers and Small Business Development Centers under the Act and part 130 of this chapter;

(p) Certain matters involving debarments and suspensions under part 145 of this chapter;

(q) The decision of the Appropriate Management Official in SBA Employee Dispute Resolution Process cases (Employee Disputes) under Standard Operating Procedure 37 71 02 (available at *http://www.sba.gov*); and

* * * * *

§ 134.103 [Amended]

13. In § 134.103, paragraph (b), remove the last sentence.

14. Amend § 134.201 as follows:

a. Designate the first two sentences of the existing undesignated text as paragraph (a);

b. Designate the last sentence of the existing undesignated text as paragraph (b); and

c. In the first sentence of redesignated paragraph (a), remove the acronym ''SIC'' and add in its place the acronym ''NAICS.''

15. Revise § 134.202 to read as follows:

§ 134.202 Commencement of cases.

(a) A party other than the SBA may commence a case by filing a written petition within the following time periods:

(1) Except as provided by paragraphs (a)(2) through (a)(5) of this section, no later than 45 days from the date of receipt of the SBA action or determination to which the petition relates;

(2) In debt collection proceedings under part 140 of this chapter, no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset;

(3) In applications for an award of fees pursuant to subpart E of this part, no later than 30 days after the decision to which it applies becomes final;

(4) For 8(a) program suspension proceedings, see § 124.305 of this chapter;

(5) For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at *www.sba.gov/library/soproom.html*.

(b) The SBA may commence a case by issuing to the respondent an appropriate written order to show cause and filing the order to show cause with OHA.

(c) Cases concerning Small Business Investment Company license suspensions and revocations and cease and desist orders must be commenced with an order to show cause containing a statement of the matters of fact and law asserted by the SBA, the legal authority and jurisdiction under which a hearing is to be held, a statement that a hearing will be held, and the time and place for the hearing.

16. Revise § 134.203 to read as follows:

§ 134.203 The petition.

(a) A petition must contain the following:

(1) The basis of OHA's jurisdiction;

(2) A copy of the SBA determination being appealed, if applicable, and date received;

(3) A clear and concise statement of the factual basis of the case;

(4) The relief being sought;

(5) The name, address, telephone number, facsimile number, and signature of the petitioner or its attorney;

(6) A certificate of service (see § 134.204(d)); and

(7) In a debt collection case, a statement showing when the petitioner received the SBA notice initiating the debt collection proceeding (see § 140.3 of this chapter).

(b) A petition also must contain additional information or documents as required by the applicable program regulations or by other subparts of this part 134. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02.

(c) A petition which does not contain all of the information required by paragraphs (a) and (b) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of the respondent.

17. Amend § 134.204 as follows:

a. Revise the heading of the section;

b. Revise paragraphs (a) through (d); and

c. Remove paragraph (e) and redesignate existing paragraph (f) as paragraph (e).

The revisions read as follows:

§ 134.204 Filing and service requirements.

(a) *Methods of filing and service.* Pleadings or other submissions must be filed and served by mail, delivery, or facsimile. Mail includes first class (including certified and registered), express, and priority mail. For good cause, the Judge may order that filing or service be effected by one of these methods.

(b) *Filing.* Filing is the receipt of pleadings and other submissions at OHA.

(1) OHA accepts filings between the hours of 8:30 a.m. and 5:00 p.m. eastern time at the following address: Office of Hearings and Appeals, Small Business Administration, 409 Third Street, SW., Suite 5900, Washington, DC 20416. OHA's telephone number is (202) 401–8203. The number for OHA's facsimile machine is (202) 205–7059.

(2) The date of filing for pleadings and other submissions filed by mail, delivery, or facsimile is the date the filing is received at OHA. Any filing received at OHA after 5:00 p.m. eastern time is considered filed as of the next day.

(3) *Exhibits.* An exhibit, whether an original or a copy, must be authenticated or identified to be what it purports to be.

(4) *Copies.* No extra copies of pleadings or other submissions need be filed. If a document is offered as an exhibit, a copy of the document will be accepted by the Judge unless:

(i) A genuine question is raised as to whether it is a true and accurate copy or

(ii) It would be unfair, under the circumstances, to admit the copy instead of the original.

(c) *Service.* Service is the mailing, delivery, or facsimile to all other parties of a copy of each pleading or other submission filed with OHA.

(1) Complete copies of all pleadings and other submissions filed with OHA must be served upon all other parties or, if represented, their authorized representatives or their attorneys, at their record addresses.

(2) The date of service is as follows: for facsimile, the date the facsimile is sent; for personal delivery by the party, its employee, or its attorney, the date the document is given to the party served; for commercial delivery, the date the document is given to the delivery service; for mail, the date of mailing. The date of mailing is the date of a U.S. Postal Service postmark or any other proof of mailing. If there is insufficient proof of mailing, there is a rebuttable presumption that the mailing was made five days before receipt.

(3) If the SBA is a party, the SBA must be served, as required by the applicable program regulations or by other subparts of this part 134. If the SBA office for service is not specified elsewhere, serve: Office of General Counsel, Small Business Administration, 409 Third Street, SW., Washington, DC 20416. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02.

(d) *Certificate of service.* A certificate of service shows how, when, and to whom service was made. Every pleading and other submission filed with OHA

and served on the other parties must include a certificate of service. The certificate should state: ''I certify that on [date], I caused the foregoing document to be served by [either ''placing a copy in the mail,'' ''sending a copy by facsimile,'' ''personally delivering a copy,'' or ''giving a copy to a delivery service,''] upon the following: [list name, address, telephone number, and facsimile number of each party served].'' The certificate must be signed and include the typed name and title of the individual serving the pleading or other submission.

* * * * *

18. Revise § 134.205 to read as follows:

§ 134.205 Motion for a more definite statement.

(a) *Procedure.* No later than 15 days after service of the petition or order to show cause, the respondent may file and serve a motion requesting a more definite statement of particular allegations in the petition.

(b) *Stay.* The filing and service of a motion for a more definite statement stays the time for filing and serving an answer or response. The Judge will establish the time for filing and serving an answer or response.

19. Revise § 134.206 to read as follows:

§ 134.206 The answer or response.

(a)(1) Except in a case involving a petition appealing from an SBA determination, a respondent must file and serve an answer within 45 days after the filing of a petition or the service of an order to show cause, except that in debt collection cases, answers are due within 30 days. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at *www.sba.gov/library/soproom.html.*

(2) The answer must contain the following:

(i) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(ii) Any affirmative defenses; and

(iii) The name, address, telephone number, facsimile number, and signature of the respondent or its attorney.

(3) Allegations in the petition or order to show cause which are not answered in accordance with paragraph (a)(2)(i) of this section will be deemed admitted unless injustice would occur.

(b) Upon the filing of a petition appealing from an SBA determination, the Judge or the AA/OHA will issue an order informing all known parties of the date the appeal was filed. The respondent must file and serve a response to such a petition within 45 days after the filing of such a petition. The response need not admit or deny the allegations in the petition but shall set forth the respondent's positions in support of the SBA determination. The response must also set forth the name, address, telephone number, facsimile number, and signature of the respondent or its attorney.

(c) If a petition or order to show cause is amended or if respondent is not properly served, the Judge will order the time to file an answer or response extended and will specify the date such answer or response is due. If respondent is not properly served with a petition appealing from an SBA determination, the Judge will issue an order directing that the petitioner serve respondent within a specified time and directing respondent to file and serve a response within 45 days after petitioner timely serves respondent in accordance with the order.

(d) If the respondent fails to timely file and serve an answer or response, that failure will constitute a default. Following such a default, the Judge may prohibit the respondent from participating further in the case. If SBA, as respondent to a petition appealing from an SBA determination, fails to timely file and serve its response or the administrative record (where required), the Judge will issue an order directing SBA to file and serve the administrative record by a specified date.

20. Amend § 134.207 to read as follows:

a. In paragraph (a), revise the first sentence and add a new sentence at the end;

b. Revise paragraph (b); and

c. Revise paragraph (d).

The revisions read as follows:

§ 134.207 Amendments and supplemental pleadings.

(a) *Amendments.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of amendments to pleadings. * * * The proposed amendment must be filed and served with the motion.

(b) *Supplemental pleadings.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading. The proposed supplemental pleading must be filed and served with the motion.

* * * * *

(d) *Answer or Response.* In an order permitting the filing and service of an amended or supplemented petition or order to show cause, the Judge will establish the time for filing and serving an answer or response.

21. Revise § 134.208 to read as follows:

§ 134.208 Representation in cases before OHA.

(a) A party may represent itself, or be represented by an attorney. A partner may represent a partnership, and an officer may represent a corporation, trust, association, or other entity.

(b) An attorney for a party who did not appear on behalf of that party in the party's first filing with OHA must file and serve a written notice of appearance.

(c) An attorney seeking to withdraw from a case must file and serve a motion for the withdrawal of his or her appearance.

22. Revise § 134.210 to read as follows:

§ 134.210 Intervention.

(a) *By SBA.* SBA may intervene as of right at any time in any case until 15 days after the close of record, or the issuance of a decision, whichever comes first.

(b) *By interested persons.* Any interested person may move to intervene at any time until the close of record by filing and serving a motion to intervene containing a statement of the moving party's interest in the case and the necessity for intervention to protect such interest. An interested person is any individual, business entity, or governmental agency that has a direct stake in the outcome of the appeal. The Judge may grant leave to intervene upon such terms as he or she deems appropriate.

23. Amend § 134.211 as follows:

a. Redesignate existing paragraphs (b) through (d) as paragraphs (c) through (e);

b. Add a new paragraph (b);

c. Revise redesignated paragraph (e); and

d. Add a new paragraph (f).

The revisions and additions read as follows:

§ 134.211 Motions.

* * * * *

(b) Except when a party is filing a motion to dismiss or a motion for summary decision, a party must make reasonable efforts to contact all non-moving parties prior to filing the motion

to determine whether they oppose the motion, and must set forth in the motion all non-moving parties' positions. If the moving party is unable to determine a non-moving party's position, the moving party must describe in the motion the efforts made to contact such non-moving party.

* * * * *

(e) *Motion to dismiss.* A respondent may file a motion to dismiss any time before a decision is issued. If an answer or response has not been filed, the motion to dismiss stays the time to answer or respond. If the Judge denies the motion, and an answer or response has not been filed, the respondent must file the answer or response within 20 days after the order deciding the motion.

(f) *Motion for an extension of time.* Except for good cause shown, a motion for an extension of time must be filed at least two days before the original deadline.

24. Amend § 134.212 as follows:

a. In paragraph (c), remove the words ''serve and file'' and add in their place the words ''file and serve';

b. In paragraph (d), remove the words ''serving and filing'' and add in their place the words ''filing and serving'; and

c. Add a new paragraph (e), to read as follows:

§ 134.212 Summary Decision.

* * * * *

(e) *Appeal petitions from SBA determinations (other than 8(a) determinations).* In a case involving an appeal petition, except as provided in subpart D of this part, if SBA has provided multiple grounds for the determination being appealed, SBA may move for summary decision on one or more grounds. If the Judge finds that there is no genuine issue of material fact and the SBA is entitled to a decision in its favor as a matter of law as to any such ground, the Judge will grant the motion for summary decision and dismiss the appeal.

25. In § 134.213, paragraph (d), remove the words ''serve and file'' and add in their place the words ''file and serve.''

26. Amend § 134.214 as follows:

a. In paragraph (a), add a new sentence at the end; and

b. In paragraph (d), revise the first two sentences.

The revisions and additions read as follows:

§ 134.214 Subpoenas.

(a) * * * Subpoenas are not authorized for proceedings relating to internal Agency determinations, such as Employee Disputes.

* * * * *

(d) *Motion to quash.* A motion to limit or quash a subpoena must be filed and served within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be filed and served within 10 days after service of the motion, unless a shorter time is specified by the Judge. * * *

§ 134.215 [Amended]

27. In § 134.215, paragraph (b), remove the words ''serve and file'' and add in their place the words ''file and serve.''

28. In § 134.217, revise the first sentence and add two new sentences after the first sentence, to read as follows:

§ 134.217 Settlement.

At any time during the pendency of a case, the parties may submit a joint motion to dismiss the appeal if they have settled the case, and may file with such motion a copy of the settlement agreement. If the Judge has express authority, under statute, SBA regulation or SBA standard operating procedures, to review the contents of a settlement agreement for legality, the Judge may order the parties to file a copy of the settlement agreement. Otherwise, upon the filing of a joint motion to dismiss, the Judge will issue an order dismissing the case. * * *

29. In § 134.226, paragraph (b), add a sentence at the end to read as follows:

§ 134.226 The decision.

* * * * *

(b) * * * Time limits for decisions in other types of cases, if any, are indicated either in the applicable program regulations or in other subparts of this part 134.

* * * * *

30. Revise § 134.227 to read as follows:

§ 134.227 Finality of decisions.

(a) *Initial decisions.* Except as otherwise provided in paragraph (b) of this section, a decision by the Judge on the merits is an initial decision. However, unless a request for review is filed pursuant to § 134.228(a), or a request for reconsideration is filed pursuant to paragraph (c) of this section, an initial decision shall become the final decision of the SBA 30 days after its service.

(b) *Final decisions.* A decision by the Judge on the merits shall be a final decision in the following proceedings:

(1) Collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter;

(2) Appeals from SBA 8(a) program determinations under the Act and part 124 of this chapter;

(3) Appeals from size determinations and NAICS code designations under part 121 of this chapter; and

(4) In other proceedings as provided either in the applicable program regulations or in other subparts of this part 134.

(c) *Reconsideration.* Except as otherwise provided by statute, the applicable program regulations, or this part 134, an initial or final decision of the Judge may be reconsidered. Any party may request reconsideration by filing with the Judge and serving a petition for reconsideration within 20 days after service of the written decision, upon a clear showing of an error of fact or law material to the decision. The Judge also may reconsider a decision on his or her own initiative.

31. Amend § 134.228 as follows:

a. In paragraph (b), remove the words ''serve and file with OHA'' and add in their place the words ''file and serve'';

b. Revise paragraph (a).

The revisions read as follows:

§ 134.228 Review of initial decisions.

(a) *Request for review.* Within 30 days after the service of an initial decision or a reconsidered initial decision of a Judge, any party, or SBA's Office of General Counsel, may file and serve a request for review by the Administrator. A request for review must set forth the filing party's specific objections to the initial decision, and any alleged support for those objections in the record, or in case law, statute, regulation, or SBA policy. A party must serve its request for review upon all other parties and upon SBA's Office of General Counsel.

* * * * *

32. Revise § 134.229 to read as follows:

§ 134.229 Termination of jurisdiction.

Except when the Judge reconsiders a decision or remands the case, the jurisdiction of OHA will terminate upon the issuance of a decision resolving all material issues of fact and law. If the Judge reconsiders a decision, OHA's jurisdiction terminates when the Judge issues the decision after reconsideration. If the Judge remands the case, the Judge may retain jurisdiction at his or her own discretion, and the remand order may include the terms and duration of the remand.

33. Revise the heading for subpart C to read as follows:

Subpart C—Rules of Practice for Appeals From Size Determinations and NAICS Code Designations

§ 134.301 [Amended]

34. In § 134.301, paragraph (b), remove the acronym ''SIC'' and add in its place the acronym ''NAICS.''

35. In § 134.302, revise the introductory text and paragraph (b) to read as follows:

§ 134.302 Who may appeal.

Appeals from size determinations and NAICS code designations may be filed with OHA by the following, as applicable:

* * * * *

(b) Any person adversely affected by a NAICS code designation. However, with respect to a particular sole source 8(a) contract, only the AA/8(a)BD may appeal a NAICS code designation;

* * * * *

36. Revise § 134.303 to read as follows:

§ 134.303 Advisory opinions.

The Office of Hearings and Appeals does not issue advisory opinions.

37. In § 134.304, revise the heading and paragraph (a) to read as follows:

§ 134.304 Commencement of appeals from size determinations and NAICS code designations.

(a) Appeals from size determinations and NAICS code designations must be commenced by filing and serving an appeal petition as follows:

(1) If the appeal is from a size determination in a pending procurement or pending Government property sale, then the appeal petition must be filed and served within 15 days after appellant receives the size determination;

(2) If appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the appeal petition must be filed and served within 30 days after appellant receives the size determination;

(3) If appeal is from a NAICS code designation, then the appeal petition must be filed and served within 10 days after the issuance of the initial solicitation. If the appeal relates to an amendment affecting the NAICS code, then the appeal petition must be filed and served within 10 days after the issuance of the amendment.

* * * * *

38. Amend § 134.305 as follows:

a. In paragraphs (a)(1), (a)(3), and (c), remove the acronym ''SIC'' wherever it appears and add in its place the acronym ''NAICS';

b. In paragraph (a)(4), before the word ''and,'' add the words ''facsimile number,'' ; and

c. Revise paragraph (d) to read as follows:

§ 134.305 The appeal petition.

* * * * *

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d) of this part.

* * * * *

39. Amend § 134.306 as follows:

a. Revise the section heading;

b. Designate as paragraph (a) the first sentence of the existing undesignated text;

c. Remove the last sentence of the existing undesignated text; and

d. Add a new paragraph (b), to read as follows:

§ 134.306 Transmission of the case file and solicitation.

* * * * *

(b) Upon receipt of an appeal petition pertaining to a NAICS code designation, or a size determination made in connection with a particular procurement, the procuring agency contracting officer must immediately send to OHA a paper copy of both the original solicitation relating to that procurement and all amendments.

40. In § 134.308, revise paragraph (a)(2) to read as follows:

§ 134.308 Limitation on new evidence and adverse inference from non-submission in appeals from size determinations.

(a) * * *

(2) A motion is filed and served establishing good cause for the submission of such evidence. The offered new evidence must be filed and served with the motion.

* * * * *

41. In § 134.309, revise paragraph (a) and paragraph (b) to read as follows:

§ 134.309 Response to an appeal petition.

(a) *Who may respond.* Any person served with an appeal petition, any intervenor, or any person with a general interest in an issue raised by the appeal may file and serve a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits.* The Judge will issue a Notice and Order informing the parties of the filing of the appeal petition, establishing the close of record as 15 days after service of the Notice and Order, and informing the parties that OHA must receive any responses to the appeal petition no later than the close of record.

* * * * *

42. In § 134.310, remove the acronym ''SIC'' and add in its place the acronym ''NAICS.''

43. In § 134.311, remove the acronym ''SIC'' and add in its place the acronym ''NAICS.''

44. Revise § 134.313 to read as follows:

§ 134.313 Applicability of subpart B provisions.

Although the provisions of subpart B of this part and this subpart C apply to appeals from size determinations and NAICS code designations, the provisions of this subpart shall govern.

§ 134.314 [Amended]

45. In § 134.314, remove the acronym ''SIC'' and replace it with the acronym ''NAICS.''

46. In § 134.316, add a new sentence at the end of paragraph (b); and add new paragraph (d) to read as follows:

§ 134.316 The decision.

* * * * *

(b) * * * Where a size appeal is dismissed, the Area Office size determination remains in effect.

* * * * *

(d) *Reconsideration.* The decision in a NAICS code appeal may not be reconsidered.

47. Remove existing § 134.317, and redesignate existing § 134.318 as § 134.317 and revise it, to read as follows:

§ 134.317 Return of the case file.

Upon issuance of the decision, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

48. In § 134.402, add two sentences at the end, to read as follows:

§ 134.402 Appeal petition.

* * * This section does not apply to suspension appeals. For suspensions, see § 124.305.

49. Amend § 134.403 as follows:

a. Remove paragraph (a)(3); and

b. In paragraph (b), remove the words ''Service should be addressed to'' and add in their place the word ''Serve.''

50. Amend § 134.406 as follows:

a. Revise paragraph (a);

b. In paragraph (b), revise the first sentence;

c. In paragraph (c), revise the first sentence; and add two new sentences at the end;

d. Revise paragraph (d); and

e. Revise paragraph (e).

The revisions and additions read as follows:

§ 134.406 Review of the administrative record.

(a) Any proceeding conducted under § 134.401(a) through (d) shall be decided solely on a review of the written administrative record, except as provided in § 134.407 and in suspension appeals. For suspension appeals under § 134.401(e), see § 124.305(d).

(b) Except in suspension appeals, the Administrative Law Judge's review is limited to determining whether the Agency's determination is arbitrary, capricious, or contrary to law. * * *

(c) The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge and upon which the SBA decision-maker, and those SBA officials that either recommended for or against the decision, relied. * * * The petitioner may object to the absence of a document, previously submitted to, or sent by, SBA, which the petitioner believes was erroneously omitted from the administrative record. In the absence of any objection by the petitioner or a finding by the Judge pursuant to paragraph (e) of this section that the record is insufficiently complete to decide whether the determination was arbitrary, capricious, or contrary to law, the administrative record submitted by SBA shall be deemed complete.

(d) Where the Agency files its response to the appeal petition after the date specified in § 134.206, the Administrative Law Judge may decline to consider the response and base his or her decision solely on a review of the administrative record.

(e) The Administrative Law Judge may remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this title, to the Administrator) for further consideration if he or she determines that, due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide whether the determination is arbitrary, capricious or contrary to law. In the event of such a remand, the Judge will not require the SBA to supplement the administrative record other than to supply the reason or reasons for the determination and any documents submitted to, or considered by, SBA in connection with any reconsideration permitted by regulation that occurs during the remand period. After such a remand, in the event the Judge finds that the reasons upon which the determination is based are absent from any supplemented record, the Judge will find the SBA determination to be arbitrary, capricious, or contrary to law. The Administrative Law Judge may also remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this title, to the Administrator) for further consideration where it is clearly apparent from the record that SBA made an erroneous factual finding (*e.g.,* SBA double counted an asset of an individual claiming disadvantaged status) or a mistake of law (*e.g.,* SBA applied the wrong regulatory provision in evaluating the case). A remand under this section will be for a reasonable period.

§ 134.407 [Amended]

51. In § 134.407, paragraph (a), remove the word ''The'' at the beginning and replace it with the words ''Except in suspension appeals, the.''

§ 134.408 [Redesignated as § 134.409]

52. Redesignate existing § 134.408 as § 134.409.

53. Add a new § 134.408 as follows:

§ 134.408 Summary decision.

(a) *Generally.* In any appeal under this subpart D, either party may move or cross-move for summary decision, as provided in § 134.212 of this chapter.

(b) *Summary decision based on fewer than all grounds.* If SBA has provided multiple grounds for the 8(a) determination being appealed, SBA may move for summary decision on one or more grounds.

(1) *Non-suspension cases.* Except in suspension appeals, if the Judge finds that there is no genuine issue of material fact as to whether SBA acted arbitrarily, capriciously, or contrary to law as to any such ground or grounds, and that the SBA is entitled to a decision in its favor as a matter of law, the Judge will grant the motion for summary decision and dismiss the appeal.

(2) *Suspension cases.* In suspension appeals, if the Judge finds that there is no genuine issue of material fact as to whether adequate evidence exists that protection of the Federal Government's interest requires suspension, as to any such ground or grounds for the proposed suspension, the SBA is entitled to a decision in its favor as a matter of law, and the Judge will grant the motion for summary decision and dismiss the appeal.

§ 134.409 [Amended]

54. In redesignated § 134.409, paragraph (b), remove the second sentence.

Hector V. Barreto,

Administrator.

[FR Doc. 02–5613 Filed 3–11–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–4]

Proposed Establishment of Class D Airspace; Greenville Donaldson Center, SC, Proposed Amendment of Class E2 Airspace; Greer, Greenville-Spartanburg Airport, SC, and Proposed Amendment of Class E5 Airspace; Greenville, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace at Greenville Donaldson Center, SC, and amend Class E5 airspace at Greenville, SC. A Federal contract tower with a weather reporting system is being constructed at the Donaldson Center Airport. Therefore, the airport will meet the criteria for establishment of Class D Airspace. Class D surface area airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the Donaldson Center Airport. A regional evaluation has determined the existing Class E5 airspace area should be amended to contain the Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 5 SIAP. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) southwest of Donaldson Center Airport is needed to contain the SIAP. This action would also make a technical amendment to the Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and the Class E5 airspace description at Greenville, SC, by changing the name of the Greenville-Spartanburg Airport to the Greenville-Spartanburg International Airport.

DATES: Comments must be received on or before April 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Docket No. 02–ASO–4, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Greenville Donaldson Center, SC, and amend Class E5 airspace at Greenville, SC. This proposal would also make a technical amendment to Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and the Class E5 airspace description at Greenville, SC, by changing the name of the Greenville-Spartanburg Airport to the Greenville-Spartanburg International Airport. This name change was effective on October 31, 1995. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as surface areas and airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6002, and 6005 respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO SC D Greenville Donaldson Center Airport, SC [NEW]

Greenville, Donaldson Center Airport, SC
(Lat. 34°45′30, long. 80°22′35″ W)
Greenville Downtown Airport
(Lat. 34°50′52, long. 82°21′00″ W)
Greenville-Spartanburg International Airport
(Lat. 34°53′56, long. 82°12′49″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Donaldson Center Airport, excluding that airspace within the Greenville Downtown Airport Class D airspace area, and excluding that airspace within the Greenville-Spartanburg International Airport Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO SC E2 Greer, Greenville-Spartanburg International Airport, SC [REVISED]

Greenville-Spartanburg International Airport, SC
(Lat. 34°53′56, long. 82°12′49″ W)

Within a 5-mile radius of the Greenville-Spartanburg International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time

will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO SC E5 Greenville, SC [REVISED]

Greenville Downtown Airport, SC
(Lat. 34°50′52, long. 82°21′00″ W)
Greenville-Spartanburg International Airport
(Lat. 34°53′56, long. 82°12′49″ W)
Donaldson Center Airport
(Lat. 34°45′30, long. 80°22′35″ W)
DYANA NDB
(Lat. 34°41′28, long. 82°26′37″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Greenville Downtown Airport and within a 10 mile radius of Greenville-Spartanburg International Airport and within a 6.7-mile radius of Donaldson Center Airport and within 4 miles northwest and 8 miles southeast of 224° bearing from the DYANA NDB extending from the 6.7-mile radius to 16 miles southwest of the Donaldson Center Airport.

* * * * *

Issued in College Park, Georgia, on March 5, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–5877 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102740–02]

RIN 1545–BA52

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document contains proposed regulations under sections 337(d) and 1502 of the Internal Revenue Code. These regulations permit certain losses recognized on sales of subsidiary stock by members of a consolidated group. The regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 10, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for July 17, 2002, at 10 a.m., must be received by June 26, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–102740–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 6 p.m. to CC:ITA:RU (REG–102740–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in the Internal Revenue Service Auditorium, in the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sean P. Duffley, (202) 622–7530, or Lola L. Johnson, (202) 622–7550; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by May 6, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start up-costs and the costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.337(d)–2T, 1.1502–20T, and 1.1502–32T. The collection of information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)–2T, § 1.1502–20 as currently in effect, or under § 1.1502–20 modified so that the amount of allowable loss determined pursuant to § 1.1502–20(c)(1) is computed by taking into account only the amounts computed under § 1.1502–20(c)(1)(i) and (ii); to allow the taxpayer to reapportion a section 382 limitation in certain cases; to allow the taxpayer to waive certain loss carryovers; and to ensure that loss is not disallowed under § 1.337(d)–2T and basis is not reduced under § 1.337(d)–2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset. The collection of information is required to obtain a benefit. The likely respondents are corporations that file consolidated income tax returns.

Estimated total annual reporting burden: 30,000 hours.

Estimated average annual burden hours per respondent: 2 hours.

Estimated number of respondents: 15,000.

Estimated annual frequency of responses: once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating

to sections 337(d) and 1502. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

The IRS and Treasury are undertaking a study of the various approaches that could be implemented to give full effect to section 337(d) and to reflect the single entity principles of the consolidated return rules. Among the approaches the IRS and Treasury are studying is one that would deny positive investment adjustments for gain recognized and income attributable to the disposition or consumption of built-in gain assets held by the subsidiary at the time it joined the consolidated group. In addition, the IRS and Treasury are considering allowing selling groups to deduct subsidiary stock losses that would otherwise reflect duplicated loss, if the subsidiary reduces its attributes (including net operating loss carryovers and asset basis) immediately prior to the disposition. Comments are requested concerning any approaches that may be employed to allow appropriate losses in a manner that is administrable for both taxpayers and the government.

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing has been scheduled for July 17, 2002, at 10 a.m., in the IRS Auditorium, IRS Building, 1111 Constitution, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

Drafting Information

The principal authors of these regulations are Sean P. Duffley and Lola L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.337(d)–2 is added to read as follows:

§ 1.337(d)–2 Loss limitation window period.

[The text of this proposed section is the same as the text of § 1.337(d)-2T published elsewhere in this issue of the **Federal Register**].

Par. 3. In § 1.1502–20, paragraph (i) is added to read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

[The text of this proposed section is the same as the text of § 1.1502–20T(i) published elsewhere in this issue of the **Federal Register**].

Par. 4. In § 1.1502–32, paragraph (b)(4)(v) is added to read as follows:

§ 1.1502–32 Investment adjustments.

[The text of this proposed section is the same as the text of § 1.1502–32T(b)(4)(v) published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–5851 Filed 3–7–02; 3:17 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7157–4]

Unregulated Contaminant Monitoring Regulation for Public Water Systems; Establishment of Reporting Date

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This action proposes to establish August 9, 2002, as a new, later date by which large public water systems serving more than 10,000 persons must report all contaminant monitoring laboratory results they receive before May 13, 2002, for the unregulated contaminant monitoring Regulation (UCMR) monitoring program. Monitoring results received on or after May 13, 2002, would have to be reported within 30 days following the month in which laboratory results are received, as specified in the current regulation for this program.

DATES: Comments must be received in writing by April 11, 2002.

ADDRESSES: Please send an original and three copies of your comments and enclosures (including references) to docket number W–00–01–IV, Comment Clerk, Water Docket (MC4101), USEPA, 1200 Pennsylvania Ave., NW Washington, DC 20460. Due to the uncertainty of mail delivery in the Washington DC area, in order to ensure that your comments are received, please also send a separate copy of your comments to Greg Carroll, USEPA, 26 West Martin Luther King Drive, MC–140, Cincinnati, Ohio 45268. Hand deliveries should be delivered to EPA's Water Docket at 401 M. St., Room EB57, Washington, DC. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov.* Electronic comments must be submitted as a Word Perfect (WP), WP5.1, WP6.1 or WP8 file or as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–00–01-IV. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

The record for this proposed rulemaking has been established under

docket number W–00–01–IV and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M. St., SW, Washington, DC. For access to docket materials, please call 202/260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Jeffrey Bryan (202) 564–3942, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC–4606–M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about UCMR may be obtained from the EPA Safe Drinking Water Hotline at (800) 426–4791. The Hotline operates Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. ET.

SUPPLEMENTARY INFORMATION:

EPA is proposing to approve a revision to the UCMR for Public Water Systems. In the ''Rules and Regulations'' section of today's **Federal Register**, EPA is approving a revision to the Unregulated Contaminant Monitoring Regulation for Public Water Systems as a direct final rule without prior proposal because EPA views this as noncontroversial revision and anticipates no adverse comment. EPA has explained our reasons for this approval in the preamble to the direct final rule. If EPA receives no adverse comment, it will not take further action on this proposed rule. If EPA receives adverse comment, the Agency will withdraw the direct final rule and it will not take effect. EPA would then address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the direct final rule titled ''Unregulated Contaminant Monitoring Regulation for Public Water Systems; Establishment of Reporting Date'' that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. For the various statutes and executive orders that require findings for rulemaking, EPA incorporates the findings from the direct final rule into this companion proposal for the purpose of providing public notice and opportunity for comment.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indian lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 7, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–6017 Filed 3–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7526]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
ILLINOIS Cook County (Unincorporated Areas).				
Addison Creek	Approximately 360 feet upstream of 21st Street.	*620	*621	Village of Bellwood, Village of Broadview, Cook County.
	Approximately 180 feet upstream of Tri-State Tollway.	None	*656	(Unincorporated Areas), Village of Hillside, Village of Maywood, Village of Melrose Park, City of Northlake, Village of Stone Park, Village of Westchester.

Village of Broadview

Maps available for inspection at the Broadview Village Hall, 2350 South 25th Avenue, Broadview, Illinois.

Send comments to The Honorable Henry Vicenik, Mayor of the Village of Broadview, 2350 South 25th Avenue, Broadview, Illinois 60155.

Village of Hillside

Maps available for inspection at the Hillside Department of Public Works and Building Services, 4151 May Street, Hillside, Illinois.

Send comments to The Honorable Joseph T. Tamburino, Mayor of the Village of Hillside, 30 North Wolf Road, Hillside, Illinois 60162.

Village of Westchester

Maps available for inspection at the Westchester Village Hall, 10300 Roosevelt Road, Westchester, Illinois.

Send comments to Mr. John Sinde, Westchester Village President, 10300 Roosevelt Road, Westchester, Illinois 60154.

Unincorporated Areas of Cook County

Maps available for inspection at the Cook County Department of Building and Zoning, 69 West Washington Street, Chicago, Illinois.

Send comments to Mr. John H. Stroger, Jr., 118 North Clark Street, Room 537, Chicago, Illinois 60602.

City of Northlake

Maps available for inspection at the Northlake City Hall, Building Department, 55 East North Avenue, Northlake, Illinois.

Send comments to The Honorable Jeffrey Sherwin, Mayor of the City of Northlake, 55 East North Avenue, Northlake, Illinois 60164.

Village of Maywood

Maps available for inspection at the Maywood Village Hall, 40 Madison Street, Maywood, Illinois.

Send comments to The Honorable Ralph Conner, Mayor of the Village of Maywood, 40 Madison Street, Maywood, Illinois 60153.

Village of Bellwood

Maps available for inspection at the Bellwood Village Hall, Building Department, 3200 Washington Boulevard, Bellwood, Illinois.

Send comments to The Honorable Frank Pasquale, Mayor of the Village of Bellwood, 3200 Washington Boulevard, Bellwood, Illinois 60104.

Village of Melrose Park

Maps available for inspection at the Melrose Park Village Hall, 1000 North 25th Avenue, Melrose Park, Illinois.

Send comments to The Honorable Ronald M. Serpico, Mayor of the Village of Melrose Park, 1000 North 25th Avenue, Melrose Park, Illinois 60160.

Village of Stone Park

Maps available for inspection at the Stone Park Village Hall, 1629 North Mannheim Road, Stone Park, Illinois.

Send comments to The Honorable Beniamino Mazzulla, Mayor of the Village of Stone Park, 1629 North Mannheim Road, Stone Park, Illinois 60165.

NORTH CAROLINA Onslow County (Unincorporated Areas)				
Atlantic Ocean	At Intracoastal Waterway and Salliers Bay confluence.	•7	•8	Onslow County (Unincorporated Areas).
	Approximately 2,000 feet east of River Drive and New River Inlet Road intersection.	•15	•18	
Bachelor's Delight Swamp.	At the confluence with New River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence of Bachelor's Delight Swamp Tributary 2.	None	•29	
Bachelor's Delight Swamp Tributary.	Approximately 0.5 mile upstream of the confluence with Bachelor's Delight Swamp.	None	•30	Onslow County (Unincorporated Areas).
	Approximately 1,150 feet upstream of Timothy Road.	None	•34	
Bachelor's Delight Swamp Tributary 2.	At the confluence with Bachelor's Delight Swamp.	None	•21	Onslow County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1,400 feet upstream of the confluence with Bachelor's Delight Swamp.	None	•26	
Bear Creek	Approximately 150 feet downstream of NC 172.	None	•9	Onslow County (Unincorporated Areas).
	Approximately 1.4 miles upstream of NC 172.	None	•31	
Bearhead Creek ..	Approximately 0.8 mile upstream of the confluence with Wallace Creek.	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 1.3 miles upstream of Holcomb Boulevard.	None	•21	
Bell Swamp	Approximately 800 feet upstream of NC 172.	None	•10	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Hubert Boulevard.	None	•32	
Blue Creek	Approximately 1.4 miles upstream of Richlands Highway.	None	•18	Onslow County (Unincorporated Areas).
	Approximately 300 feet upstream of Pony Farm Road.	None	•44	
Brick Kiln Branch (at White Oak River).	At the confluence with White Oak River	None	•11	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with White Oak River.	None	•17	
Cartwheel Branch	At the confluence with Holland Mill Creek.	None	•8	Onslow County (Unincorporated Areas).
	Approximately 125 feet upstream of Swansboro Loop Road.	None	•10	
Chinkapin Branch	At the confluence with White Oak River	None	•38	Onslow County (Unincorporated Areas).
	Approximately 1.7 miles upstream of confluence with White Oak River.	None	•42	
Cogdels Creek	Approximately 100 feet upstream of the confluence with New River.	•2	•3	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Sneads Ferry Road.	None	•24	
Cowford Branch ..	At the confluence with New River	None	•39	Onslow County (Unincorporated Areas).
	Approximately 0.56 mile upstream of State Route 24.	None	•51	
Cowhead Creek ..	Approximately 0.6 mile upstream of the confluence with Frenchs Creek.	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Sneads Ferry Road	None	•35	
Cowhorn Swamp	Approximately 50 feet upstream of the confluence with Jenkins Swamp.	•31	•32	Onslow County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Hoffmann Forest Road.	None	•52	
Deep Run	At the confluence with Southwest Creek	None	•27	Onslow County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Ben Williams Road.	None	•51	
Freemans Creek	At the confluence with White Oak River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with White Oak River.	None	•9	
Frenchs Creek	At the confluence of Jumping Run	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.6 mile upstream of Marine Road.	None	•16	
Gibson Branch	At the confluence with White Oak River	None	•24	Onslow County (Unincorporated Areas).
	Approximately 1.1 miles upstream of White Oak River Road.	None	•41	
Grants Creek	At the confluence with White Oak River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 700 feet upstream of the confluence of Halls Branch (Cummins Creek).	None	•14	
Half Moon Creek	At the confluence with New River	None	•9	Onslow County (Unincorporated Area), City of Jacksonville.
	Approximately 1.3 miles upstream of Ramsey Road.	None	•44	
Half Moon Creek Tributary 1.	At the confluence with Half Moon Creek	None	•24	Onslow County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1,830 feet upstream of the confluence with Half Moon Creek.	None	•28	
Hargetts Creek	Approximately 1.4 miles upstream of the confluence with White Oak River.	None	•9	Onslow County (Unincorporated Areas).
	Approximately 1,100 feet downstream of Sloan Farm Road.	None	•15	
Harris Creek	At the confluence with Southwest Creek	None	•24	Onslow County (Unincorporated Areas).
	Approximately 1,900 feet upstream of Harris Creek Road.	None	•42	
Harris Creek Tributary 1.	At the confluence with Harris Creek	None	•32	Onslow County (Unincorporated Areas).
	Approximately 500 feet upstream of Burgaw Highway.	None	•39	
Haws Run	At the confluence with Southwest Creek	None	•18	Onslow County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Haws Run Road.	None	•40	
Haws Run Tributary 1.	At the confluence with Haws Run	None	•23	Onslow County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence with Haws Run.	None	•23	
Haws Run Tributary 2.	At the confluence with Haws Run	None	•27	Onslow County Unincorporated Areas).
	Approximately 200 feet upstream of Harris Creek Road.	None	•33	
Hicks Run	At the confluence with Southwest Creek	•2	•6	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.9 mile upstream of High Hill Road.	None	•46	
Holland Mill Creek	Approximately 1.9 miles upstream of the confluence with White Oak river.	None	•8	Onslow County (Unincorporated Areas).
	Approximately 1,250 feet upstream of Belgrade Swansboro Road.	None	•21	
Horse Swamp	At the confluence with Little Northeast Creek.	None	•14	Onslow County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Rocky Run Road.	None	•36	
Jenkins Swamp ...	At confluence with New River	•25	•24	Onslow County (Unincorporated Areas).
	Approximately 0.4 miles upstream of SR 1003.	None	•55	
Jumping Run	At the confluence with French Creek	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 1.2 miles upstream of Sneads Ferry Road.	None	•26	
Little Northeast Creek.	At the confluence with Northeast Creek	None	•2	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 3.0 miles upstream of the confluence with Horse Swamp.	None	•28	
Mill Run	At the confluence with Southwest Creek	•2	•3	Onslow County (Unincorporated Areas).
	Approximately 2.3 miles upstreat of Verona Road.	None	•37	
Mill Swamp	At the confluence with New River	•25	•24	Onslow County (Unincorporated Areas), Twn of Richlands.
	Approximately 1,000 feet upstream of North Wilmington Street.	None	•35	
New River	Approximately 0.4 mile upstream of the confluence with Blue Creek.	None	•7	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.5 mile upstream of State Route 1235.	None	•73	
New River Tributary.	At the confluence with New River	None	•50	Onslow County (Unincorporated Areas).
	Approximately 50 feet upstream of Al Taylor Road.	None	•74	
New River Tributary 2.	At the confluence with New River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Richlands Highway.	None	•45	
New River Tributary 3.	At the confluence with New River Tributary 2.	None	•16	Onslow County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.0 mile upstream of the confluence with New River Tributary 2.	None	•33	
New River Tributary 4.	At the confluence with New River	None	•19	Onslow County (Unincorporated Areas).
	Approximately 150 feet upstream of Richlands Highway.	None	•44	
New River Tributary 5.	At the confluence with New River	None	•22	Onslow County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Duffy Field Road.	None	•42	
New River Tributary 6.	At the confluence with New River Tributary 5.	None	•25	Onslow County (Unincorporated Areas).
	Approximately 1,700 feet upstream of the confluence with New River Tributary 5.	None	•27	
New River Tributary 7.	At the confluence with New River Tributary 5.	None	•26	Onslow County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with New River Tributary 5.	None	•44	
Northeast Creek ..	At the confluence of Little Northeast Creek.	None	•2	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.6 mile upstream of North Marine Boulevard.	None	•27	
Northeast Creek Tributary.	At the confluence with Northeast Creek	None	•9	City of Jacksonville.
	Approximately 0.4 mile upstream of the confluence with Northeast Creek.	None	•10	
Northeast Creek Tributary 2.	At the confluence with Northeast Creek	None	•7	City of Jacksonville.
	Approximately 0.6 mile upstream of the confluence with Northeast Creek.	None	•9	
North Branch at Lauradale Subdivision.	At confluence with New River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 0.7 mile upstream of confluence with New River.	None	•9	
Parrot Swamp	Approximately 1,850 feet upstream of Queens Creek Road.	•9	•10	Onslow County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Queens Creek Road.	None	•20	
Poplar Creek	At the confluence Little Northeast Creek	None	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.4 mile upstream of Water Road.	None	•26	
Queen Creek	Approximately 1.2 miles upstream of NC 24.	None	•10	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Camp Lejeune Railroad.	None	•25	
Rocky Run	At confluence with Little Northeast Creek	None	•8	Onslow County (Unincorporated Areas).
	Approximately 1,400 feet upstream of confluence with Little Northeast Creek.	None	•13	
South Branch at Lauradale Subdivision.	At the confluence with North Branch at Lauradale Subdivision.	None	•9	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 1.0 mile upstream of the confluence with North Branch at Lauradale Subdivision.	None	•36	
Southwest Creek	Approximately 2.5 miles upstream of the confluence with New River.	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.6 mile upstream of Five Mile Road.	None	•65	
Southwest Creek Tributary 2.	At the confluence with Southwest Creek	None	•46	Onslow County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Red Lane.	None	•56	
Southwest Creek Tributary 3.	At the confluence with Southwest Creek	None	•54	Onslow County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with Southwest Creek.	None	•68	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Southwest Creek Tributary 4.	At the confluence with Southwest Creek Tributary 3.	None	•61	Onslow County (Unincorporated Areas).
	Approximately 1,700 feet upstream of Five Mile Road.	None	•70	
Starkys Creek	At confluence with White Oak River	None	•10	Onslow County (Unincorporated Areas).
	Approximately 1,750 feet upstream of I–17.	None	•44	
Stump Sound	At the intersection of Chadwick Acres Road and Carroll Street.	•6	•8	Onslow County (Unincorporated Areas).
	Approximately 1,000 feet south of the intersection of Harbor Point Road and Ocracoke Road.	•7	•11	
Wallace Creek	At the upstream side of Norfolk Southern Railway.	•2	•3	Onslow County (Unincorporated Areas).
	Approximately 4.2 miles upstream of Holcomb Boulevard.	None	•22	
Wallace Creek	At the confluence with Wallace Creek	None	•14	Onslow County (Unincorporated Areas).
Tributary 1	Approximately 500 feet downstream of Lejeune Boulevard.	None	•;27	
Webb Creek	At the confluence with White Oak River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 1,200 feet downstream of Parkertown Road.	None	•20	
White Oak River ..	Approximately 500 feet upstream of the confluence of Webb Creek.	None	•9	Onslow County (Unincorporated Areas).
	At the confluence of Chinkapin Branch ...	None	•38	
Wolf Swamp	At North Marine Boulevard	None	•22	Onslow County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Ramsey Road.	None	•42	

Onslow County (Unincorporated Areas).

Maps available for inspection at the Onslow County Floodplain Administration, 604 College Street, Jacksonville, North Carolina.

Send comments to Mr. Ron Lewis, Onslow County Manager, 118 Old Bridge Street, Jacksonville, North Carolina 28540.

City of Jacksonville

Maps available for inspection at the Jacksonville City Hall, 211 Johnson Boulevard, Jacksonville, North Carolina.

Send comments to The Honorable George Jones, Mayor of the City of Jacksonville, P.O. Box 128, Jacksonville, North Carolina 28541.

Town of Richlands

Maps available for inspection at the Richlands Town Hall, 106 North Wilmington Street, Jacksonville, North Carolina.

Send comments to Mr. Greg Whitehead, Town of Richlands Administrator, P.O. Box 245, Richlands, North Carolina 28574.

PENNSYLVANIA

(Westmoreland County, Borough of Scottdale, Township of Mt. Pleasant, Township of East Huntingdon)

Jacobs Creek	At State Route 819	•1,021	•1,020	Township of East Huntingdon.
	A point approximately 0.82 mile upstream of State Route 982.	•1,286	•1,288	Borough of Scottdale, Township of Mt. Pleasant.
Stauffer Run	Approximately 340 feet upsteam of confluence with Jacobs Creek (Lower Reach).	•1,036	•1,031	Borough of Scottdale.
	Approximately 1,100 feet upstream of State Route 819.	•1,038	•1,040	
Laurel Run	At the confluence with Jacobs Creek	•1,214	•1,219	Township of Mt. Pleasant.
	Approximately 1,530 feet upstream of Jacobs Creek.	•1,236	•1,244	
Shupe Run	At the confluence with Jacobs Creek	None	•1,040	Township of East Huntingdon.
	Approximately 42 feet downstream of the CONRAIL bridge.	•1,045	•1,046	Township of Mt. Pleasant.

Borough of Scottdale

Maps available for inspection at the Scottdale Borough Municipal Building, 10 Mount Pleasant Road, Scottdale, Pennsylvania.

Send comments to Mr. Barry D. Whoric, Scottdale Borough Manager, 10 Mount Pleasant Road, Scottdale, Pennsylvania 15683.

Township of Mt. Pleasant.

Maps available for inspection at the Mt. Pleasant Township Building, Poker Road, Mammoth, Pennsylvania.

Send comments to Mr. Don Scott, Mt. Pleasant Township Supervisor, P.O. Box 158, Mammoth, Pennsylvania 15664.

Township of East Huntingdon

Maps available for inspection at the East Huntingdon Township Building, Route 981, Alverton, Pennsylvania.

Send comments to Mr. Joe Suter, Chairman of the Township of East Huntingdon Board of Supervisors, P.O. Box 9, Alverton, Pennsylvania 15612.

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5837 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7524]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Connecticut	East Haven (Town), New Haven County.	Maloney Brook	Approximately 10 feet upstream of the confluence with Farm River Approximately 50 feet upstream of Foxon Hill Road.	*34 None	*36 *105
Maps available for inspection at the East Haven Public Works Building, 461 North High Street, East Haven, Connecticut.					
Send comments to The Honorable Joseph Maturo, Jr., Mayor of the Town of East Haven, Town Hall, 250 Main Street, East Haven, Connecticut 06512.					
Florida	Belleair (Town), Pinellas County.	Gulf of Mexico	Approximately 1,100 feet northwest of the intersection of Corbett Street and Druid Road.	• 13	• 16

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 300 feet south of the intersection of Bellevue Boulevard and Druid Road.	• 9	• 12
Maps available for inspection at the Belleair Town Hall, 901 Ponce De Leon Boulevard, Belleair, Florida. Send comments to Mr. Stephen Cottrell, Belleair Town Manager, 9091 Ponce De Leon Boulevard, Belleair, Florida 33756.					
Florida	Belleair Beach (City), Pinellas County.	Gulf of Mexico	At the intersection of Donato Drive and Altea Drive.	• 9	• 11
			Approximately 300 feet west of the intersection of Harrison Avenue and Gulf Boulevard.	• 14	• 16
Maps available for inspection at the Belleair Beach City Hall, 444 Causeway Boulevard, Belleair Beach, Florida. Send comments to The Honorable William L. Atteberry, Mayor of the City of Belleair Beach, 444 Causeway Boulevard, Belleair Beach, Florida 33786.					
Florida	Belleair Bluffs (City), Pinellas County.	Gulf of Mexico	Approximately 300 feet west of the intersection of Renatta Drive and Bluff View Drive.	• 10	• 12
			Approximately 1,700 feet west of the intersection of Lentz Road and Los Gatos Drive.	• 12	• 14
Maps available for inspection at the Belleair Bluffs City Hall, 115 Florence Drive, Belleair Bluffs, Florida. Send comments to The Honorable David Coyner, Mayor of the City of Belleair Bluffs, 115 Florence Drive, Belleair Bluffs, Florida 33770–1978.					
Florida	Belleair Shore (Town), Pinellas County.	Gulf of Mexico	Approximately 300 feet west of the intersection of 13th Street and Gulf Boulevard.	• 12	• 12
			Approximately 50 feet west of the intersection of 1st Street and gulf Boulevard.	• 9	• 12
Maps available for inspection at the Belleair shore Town Hall, 1200 Gulf Boulevard, Belleair Shore, Florida. Send comments to The Honorable George Jirotka, Mayor of the Town of Belleair Shore, 1200 Gulf Boulevard, Belleair Shore, Florida 33786.					
Florida	Clearwater (City), Pinellas County.	Gulf of Mexico	At the intersection of Fulton Avenue and Harbor Drive.	• 10	• 15
			Approximately 0.4 mile northwest of intersection of Bay Esplanade and Eldorado Avenue.	• 15	• 12
		Joe's Creek	Approximately 500 feet downstream of 49th Street North.	None	• 24
			Downstream side of 49th Street North	None	• 25
Maps available for inspection at the city of Clearwater Central Permitting Department, 100 South Myrtle Avenue, Clearwater, Florida. Send comments to Mr. Michael Roberto, Clearwater City Manger, P.O. Box 4748, Clearwater, Florida 33758–4748.					
Florida	Collier County (Unincorporated Areas).	Gulf of Mexico	Approximately 300 feet west of the intersection of Commerce Street and Gulf Shore Drive.	• 14	• 18
			At the intersection of Seagull Avenue and Vanderbilt Drive.	• 10	• 13
			Approximately 350 feet east of the intersection of Heights Court and South Barfield Drive.	• 10	• 13
			At the intersection of Guava Drive and Coconut Circle South.	None	• 6
Maps available fro inspection at the Floodplain Management Coordinator's Office, 295 Riverside Circle, Naples, Florida. Send comments to Mr. Tom Olliff, Collier County Manager, 3301 East Tamiami Trail, Naples, Florida 34112.					
Florida	Dunedin (City), Pinellas County.	Curlew Creek	At confluence with Intracoastal Waterway	• 14	• 17
			Approximately 0.34 mile upstream of County Road 1.	None	• 25
		Jerry Branch	At confluence with Curlew Creek	None	• 25
			Approximately 0.4 mile upstream of Main Street.	None	• 47
		Gulf of Mexico	Approximately 1.0 mile northwest of the intersection of Edinburgh Drive and Causeway Boulevard.	• 15	• 17

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 300 feet west of the intersection of Douglas Avenue and Lyndhurst Street.	• 10	• 11
Maps available for inspection at the City of Dunedin Engineering Department, 737 Louden Street, Dunedin, Florida.					
Send comments to Mr. John Lawrence, Dunedin City Manager, P.O. Box 1348, Dunedin, Florida 34697–1348.					
Florida	Everglades (City), Collier County.	Gulf of Mexico	At the intersection of Jasmine Street and Storter Avenue.	• 10	• 8
			At the intersection of Evergreen Street and Copeland Avenue.	• 9	• 7
			At end of Airport Road, where it meets Everglade Airport.	• 12	• 10
			At intersection of Begonia Street and Buckner Avenue.	• 8	• 7
Maps available for inspection at the Everglades City Clerk's Office, 102 Broadway, Everglades, Florida.					
Send comments to The Honorable Sammy Hamilton, Mayor of the City of Everglades City, P.O. Box 110, Everglades, Florida 34139.					
Florida	Gulfport (City), Pinellas County.	Gulf of Mexico Boca Ciega Bay.	Approximately 1,500 feet southeast of the intersection of Seabreeze Point Boulevard and Seabird Road.	• 12	• 6
			Approximately 300 feet east of the intersectionof Pompano Place and Dolphin Boulevard East.	• 10	• 12
Maps available for inspection at the City of Gulfport Public Services Department, 5330 23rd Avenue South, Gulfport, Florida.					
Send comments to Mr. Robert E. Lee, Gulfport City Manager, 2401 53rd Street South, Gulfport, Florida 33707.					
Florida	Indian Rocks Beach (City), Pinellas County.	Gulf of Mexico	Approximately 200 feet west of the intersection of Gulf Boulevard and 27th Avenue.	• 9	• 11
			At the intersection of 20th Avenue and Bay Boulevard.	• 12	• 15
Maps available for inspection at the Indian Rocks Beach City Hall, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.					
Send comments to The Honorable Robert Dinicola, Mayor of the City of Indian Rocks Beach, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida 33785.					
Florida	Indian Shores (Town), Pinellas County.	Gulf of Mexico	Approximately 200 feet east of the intersection of 200th Avenue and Gulf Boulevard.	• 9	• 11
			Approximately 250 feet west of the intersection of 199th Avenue and Gulf Boulevard.	• 12	• 15
Maps available for inspection at the Indian Shores Town Hall, 19305 Gulf Boulevard, Indian Shores, Florida.					
Send comments to The Honorable Robert G. McEwen, Mayor of the Town of Indian Shores, 19305 Gulf Boulevard, Indian Shores, Florida 33785.					
Florida	Kenneth City (Town), Pinellas County.	Joe's Creek	Upstream side of 66th Street	• 16	• 15
			Approximately 23 miles upstream of 58th Street.	• 23	• 21

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the Kenneth City Town Hall, 6000 54th Avenue North, Kenneth City, Florida. Send comments to The Honorable Maurice Knox, Mayor of the Town of Kenneth City, 6000 54th Avenue North, Kenneth City, Florida 33709.					
Florida	Largo (City), Pinellas County.	Gulf of Mexico	At the intersection of Indian Rocks Road and Dryer Avenue.	• 9	• 10
			Approximately 1,200 feet northwest of the intersection of Indian Rocks Road and Kent Drive.	• 11	• 13
Maps available for inspection at the Largo City Hall, Engineering Department, 225 1st Avenue, SW, Largo, Florida. Send comments to Mr. Steve Stanton, Largo City Manager, P.O. Box 296, Largo, Florida 33779–0296.					
Florida	Madeira Beach (City), Pinellas County.	Gulf of Mexico	Approximately 100 feet east of the intersection of 154th Avenue and Second Street East.	• 9	• 11
			Approximately 600 feet southwest of the intersection of 132nd Avenue and Gulf Boulevard.	• 15	• 16
Maps available for inspection at the Madeira Beach Building Department, 300 Municipal Drive, Madeira Beach, Florida. Send comments to Mr. Kim Leinbach, Madeira Beach City Manager, 300 Municipal Drive, Madeira Beach, Florida 33708.					
Florida	Marco Island (City), Collier County.	Gulf of Mexico	At intersection of Crescent Street and Thrush Court.	• 10	• 8
			At the intersection of Honduras Avenue and Stillwater Court.	• 9	• 7
			At the intersection of Huron Court and Swallow Avenue.	• 14	• 16
				• 10	• 16
			Approximately 900 feet southwest of intersection of South Barfield Drive and Heights Court.		
Maps available for inspection at the City of Marco Island Manager's Office, 50 Bald Eagle Drive, Marco Island, Florida. Send comments to Mr. A. William Moss, Manager of the City of Marco Island, 50 Bald Eagle Drive, Marco Island, Florida 34145.					
Florida	Naples (City), Collier County.	Gulf of Mexico	Approximately 600 feet west of intersection of Yucca Road and Gulf Shore Boulevard North.	• 14	• 6
			At the intersection of Gordon Drive and Champney Bay Court.	• 0	• 13
			At the intersection of Yucca Road and Banyan Boulevard.	None	• 10
Maps available for inspection at City of Naples and Collier County FEMA Coordinator's Office, 13th Street North, Naples, Florida. Send comments to Mr. Kevin Rambosk, Manager of the City of Naples, 735 Eighth Street South, Naples, Florida 34102.					
Florida	North Redington Beach (Town), Pinellas County.	Gulf of Mexico	At the intersection of Rosa Lee Way and 173rd Avenue.	• 9	• 11
			Approximately 450 feet west of the intersection of 173rd Avenue and Gulf Boulevard.	• 12	• 16
Maps available for inspection at the North Redington Beach Town Hall, 190 173rd Avenue, North Redington Beach, Florida. Send comments to The Honorable Harold Radcliffe, Mayor of the Town of North Redington Beach, 190 173rd Avenue, North Redington Beach, Florida 33708.					
Florida	Pinellas County (Unincorporated Areas).	Brooker Creek Tributary A	At East Lake Road	None	• 6
			Approximately 0.42 mile upstream of Ridgemoor Boulevard.	None	• 16
		Brooker Creek Tributary B	At confluence with Brooker Creek Tributary A.	None	• 8
			At Eastlake Woodlands Parkway	None	• 9
		Joe's Creek Tributary No. 4.	At confluence with Joe's Creek	• 12	• 10
			Approximately 0.25 mile upstream of 53rd Street.	• 18	• 17
		Joe's Creek Tributary No. 5.	At 74th Avenue (Park Boulevard)	None	• 10
			Approximately 0.26 mile upstream of Park Boulevard.	None	• 10

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
		Miles Creek	At confluence with Joe's Creek	• 15	• 13
			Approximately 700 feet downstream of 38th Avenue.	• 15	• 13
		Hollin Creek Tributary A	Approximately 0.06 mile downstream of Old East Lake Road.	None	• 9
			Approximately 0.29 mile upstream of Crescent Oaks Boulevard.	None	• 22
		Hollin Creek Tributary A–2	At confluence with Hollin Creek Tributary A.	None	• 19
			At Dirt Road	None	• 19
		Hollin Creek Tributary B	At confluence with Hollin Creek Tributary A.	None	• 12
			At Trinity Boulevard	None	• 21
		Jerry Branch	At Brady Drive	None	• 25
			At the weir on north end of Indigo Drive	None	• 47
		Joe's Creek	Approximately 1.250 feet downstream of 54th Avenue North.	• 11	• 10
			At 28th Street North	None	• 45
		Curlew Creek	Approximately 0.7 mile upstream of CSX Transportation.	• 11	• 12
			Approximately 750 feet upstream of County Road 1/Palm Harbor Road.	None	• 21
		Gulf of Mexico/Boca Ciega Bay.	At the intersection of Gulfwinds Drive West and Crosswinds Drive.	• 10	• 11
			Approximately 300 feet southwest of the intersection of Curlew Place and Florida Avenue.	• 16	• 18
Maps available for inspection at the Pinellas County Zoning Department, 310 Court Street, Clearwater, Florida.					
Send comments to Mr. Fred E. Marquis, Pinellas County Administrator, 315 Court Street, Clearwater, Florida 33756.					
Florida	Pinellas Park (City), Pinellas County.	Joe's Creek Tributary No. 4.	At 62nd Avenue North	• 11	• 14
			Approximately 0.25 mile upstream of 53rd Street North.	• 18	• 17
		Joe's Creek Tributary No. 5.	Approximately 0.26 mile upstream of Park Boulevard.	None	• 10
			Approximately 0.02 mile upstream of 61st Street North.	None	• 16
Maps available for inspection at the City of Pinellas Park Technical Services Building, 6051–78th Avenue North, Pinellas Park, Florida.					
Send comments to Mr. Robert Bray, Jr., AICP, City of Pinellas Park Floodplain Manager/Planning Director, P.O. Box 1100, Pinellas Park, Florida 33780–1100.					
Florida	Redington Beach (Town), Pinellas County.	Gulf of Mexico	At the intersection of East 3rd Street and Redington Drive.	• 9	• 11
			Approximately 500 feet west of the intersection of Gulf Boulevard and 164th Avenue.	• 15	• 16
Maps available for inspection at the Redington Beach Town Hall, 105 164th Avenue, Redington Beach, Florida.					
Send comments to The Honorable Mark Deighton, Mayor of the Town of Redington Beach, 105 164th Avenue, Redington Beach, Florida 33708.					
Florida	Redington Shores (Town), Pinellas County.	Gulf of Mexico	Approximately 100 feet north of the intersection of 1st Street and Long Point Drive.	• 9	• 11
			Approximately 600 feet west of intersection of Gulf Boulevard and Coral Avenue.	• 14	• 16
Maps available for inspection at the Redington Shores Town Hall, 17798 Gulf Boulevard, Redington Shores, Florida.					
Send comments to The Honorable J. J. Beyrouti, Mayor of the Town of Redington Shores, 17798 Gulf Boulevard, Redington Shores, Florida 33708.					
Florida	Seminole (City), Pinellas County.	Gulf of Mexico/Boca Ceiga Bay.	At the intersection of 94th Street and 46th Avenue North.	• 10	• 11
			Approximately 400 feet southeast of the intersection of Woodlawn Drive and Seminole Boulevard.	• 10	• 15

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the City of Seminole Technical Services Department, 7464 Ridge Road, Seminole, Florida. Send comments to The Honorable Dottie Reeder, Mayor of the City of Seminole, 7464 Ridge Road, Seminole, Florida 33772.					
Florida	South Pasadena (City), Pinellas County.	Gulf of Mexico/Boca Ceiga Bay.	At the intersection of Gulfport Boulevard and Pasadena Avenue.	• 10	• 12
			Approximately 500 feet west of the intersection of Sunset Drive and Bigonia Way.	• 12	• 15
Maps available for inspection at the South Pasadena City Hall, 7047 Sunset Drive South, South Pasadena, Florida. Send comments to The Honorable Fred G. Held, Jr., Mayor of the City of South Pasadena, 7047 Sunset Drive, South Pasadena, Florida 33707.					
Florida	Springfield (City), Bay County.	Watson Bayou Tributary ...	Approximately 300 feet south of the intersection of East 2nd Street and Springfield Avenue.	None	• 8
Maps available for inspection at the Springfield City Hall, 3529 East Third Street, Springfield, Florida.					
Florida	St. Pete Beach (City), Pinellas County.	Gulf of Mexico	At the intersection of 80th Way and Blind Pass Road.	• 10	• 11
			Approximately 600 feet southwest of the intersection of 72nd Avenue and Sunset Avenue.	• 15	• 16
Maps available for inspection at the St. Pete Beach City Hall, 7701 Boca Ciega Drive, St. Pete Beach, Florida. Send comments to Mr. Carl L. Schwing, St. Pete Beach City Manager, 7701 Boca Ciega Drive, St. Pete Beach, Florida 33706.					
Florida	St. Petersburg (City), Pinellas County.	Miles Creek	Approximately 700 feet downstream of 38th Avenue.	•16	•13
			Approximately 0.05 mile upstream of 22nd Avenue and 58th Street.	•18	•19
		Gulf of Mexico/Boca Ciega Bay.	Approximately 50 feet west of the intersection of Park Street and 24th Avenue North.	•10	•12
			Approximately 200 feet southwest of the intersection of Sunset Drive North and 31st Terrace North.	•13	•15
Maps available for inspection at the City of St. Petersburg Municipal Services Center, Permit Division, 14th Street North, St. Petersburg, Florida. Send comments to The Honorable David Fischer, Mayor of the City of St. Petersburg, P.O. Box 2842, St. Petersburg, Florida 33731–2842.					
Florida	Tarpon Springs (City), Pinellas County.	Gulf of Mexico	Approximately 300 feet south of the intersection of Castleworks Lane and Coldstream Court.	•10	•11
			Approximately 1,000 feet west of the intersection of Harbor Watch Circle and North Pointe Alexis Drive.	•17	•18
Maps available for inspection at the Tarpon Springs City Hall, 324 East Pine Street, Tarpon Springs, Florida. Send comments to Mr. Costa F. Vatikiotis, Tarpon Springs City Manager, P.O. Box 5004, Tarpon Springs, Florida 33688–5004.					
Florida	Treasure Island (City), Pinellas County.	Gulf of Mexico	Approximately 1,000 feet west of the intersection of Dolphin Drive and Paradise Boulevard.	•10	•11
			Approximately 900 feet west of the intersection of 125th Avenue and Gulf Boulevard.	•15	•17
Maps available for inspection at the Treasure Island City Hall, Building Department, 120 108th Avenue, Treasure Island, Florida. Send comments to Mr. Charles Coward, Treasure Island City Manager, 120 108th Avenue, Treasure Island, Florida 33706.					
Indiana	Hamilton (Town), DeKalb and Steuben Counties.	Fish Creek	Approximately 2,750 feet downstream of Bellfountain Road.	None	*888
			Approximately 740 feet upstream of South Wayne Street.	None	*891

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the Hamilton Town Hall, 7750 South Wayne Street, Hamilton, Indiana.					
Send comments to Mr. Brent Shull, President of the Town of Hamilton Council, P.O. Box 310, Hamilton, Indiana 46742.					
Illinois	Carbon Cliff (Village), Rock Island County.	Unnamed Creek	Approximately 1,750 feet upstream of the Chicago, Rock Island and Pacific Railroad.	*476	*477
			Approximately 560 feet upstream of the confluence of Tributary 3 to Unnamed Creek.	None	*657
		Tributary 1 to Unnamed Creek.	At the confluence with Unnamed Creek ...	None	*594
			Approximately 0.6 mile upstream of the confluence with Unnamed Creek.	None	*636
		Tributary 2 to Unnamed Creek.	At the confluence with Unnamed Creek ...	None	*622
			Approximately 960 feet upstream of the confluence with Unnamed Creek.	None	*640
		Tributary 3 to Unnamed Creek.	At the confluence with Unnamed Creek ...	None	*650
			Approximately 800 feet upstream of the confluence with Unnamed Creek.	None	*662
		Shallow Flooding Area	Approximately 400 feet southeast of intersection of 1st Avenue and 5th Street.	*576	#1
			Approximately 200 feet southwest of intersection of 1st Avenue and 5th Street.	None	#1
Maps available for inspection at Carbon Cliff Village Hall, 106 First Avenue, Carbon Cliff, Illinois.					
Send comments to Mr. Kenneth Williams, Carbon Cliff Village President, 106 First Avenue, P.O. Box 426, Carbon Cliff, Illinois 61239.					
Massachusetts	Worcester (City), Worcester County.	Broad Meadow Brook	Approximately 240 feet downstream of U.S. Highway 20	None	*450
			Approximately 1.6 miles upstream of U.S. Highway 20	None	*484
		Beaver Brook	Approximately 175 feet downstream of Mill Street bridge.	*482	*480
			At Maywood Street	*484	*481
Maps available for inspection at the Worcester Environmental/Land Use Planner's Office, 25 Meade Street, Worcester, Massachusetts.					
Send comments to Mr. Thomas R. Hoover, Worcester City Manager, Worcester City Hall, 455 Main Street, Worcester, Massachusetts 01608.					
Mississippi	Gulfport (City), Harrison County.	Flat Branch	Approximately 525 feet upstream of Dedeaux Road.	*19	*20
			Downstream side of U.S. Highway 49	*45	*50
Maps available for inspection at the Gulfport City Hall, 2309 15th Street, Gulfport, Mississippi.					
Send comments to The Honorable Ken Combs, Mayor of the City of Gulfport, P.O. Box 1780, Gulfport, Mississippi 39502.					
New Jersey	Florham Park (Borough), Morris County.	Spring Garden Brook	Approximately 200 feet downstream of Brooklake Road.	*176	*175
			At the upstream corporate limits	*188	*182
Maps available for inspection at the Florham Park Municipal Building, Public Works Office, 111 Ridgedale Avenue, Florham Park, New Jersey.					
Send comments to The Honorable Barbara B. Doyle, Mayor of the Borough of Florham Park, Municipal Building, 111 Ridgedale Avenue, Florham Park, New Jersey 07932.					
New Jersey	Rahway (City), Union County.	Rahway River	At the downstream corporate limits	*12	*9
			Approximately 30 feet upstream of Monroe Street.	*12	*11
		South Branch	At the confluence with the Rahway River	*12	*11
			Approximately 528 feet upstream of East Inman Avenue.	*12	*11

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the Rahway City Hall, Department of Engineering, City Hall Plaza, Rahway, New Jersey. Send comments to The Honorable James Kennedy, Mayor of the City of Rahway, City Hall Plaza, Rahway, New Jersey 07065.					
New Jersey	Weymouth (Township), Atlantic County.	Tuckahoe River	At the downstream corporate limits	None	*56
			At the upstream corporate limits	None	*77
		Great Egg Harbor River	At teh confluence of the South River	None	*9
			At the upstream corporate limits	None	*9
		South River	At Walkers Forge Avenue	None	*16
			Approximately 500 feet upstream of upstream corporate limits.	None	*38
Maps available for inspection at the Weymouth Township Hall, 45 South Jersey Avenue, Dorothy, New Jersey. Send comments to The Honorable Amelia A. Messina, Mayor of the Township of Weymouth, P.O. Box 53, Dorothy, New Jersey 08317.					
New York	Mina (Town), Chautauqua County.	Findley Lake	Entire shoreline of Findley Lake	None	*1,423
Maps available for inspection at Mina Town Community Center, 2883 North Road, Findley Lake, New York. Send comments to Ms. Rebecca Brumagin, Mina Town Supervisor, P.O. Box 38, 2883 North Road, Findley Lake, New York 14736.					
North Carolina	Cramerton (Town), Gaston County.	Duharts Creek	Approximately 0.86 mile upstream of confluence with South Fork Catawba River.	*577	*578
			Approximately 1.31 miles upstream of 8th Avenue.	*601	*611
Maps available for inspection at the Cramerton Town Hall, 155 North Main Street, Cramerton, North Carolina. Send comments to The Honorable Cathy Biles, Mayor of the Town of Cramerton, 155 North Main Street, Cramerton, North Carolina 28032.					
Pennsylvania	Bullskin (Township), Fayette County.	Jacobs Creek	At the downstream corporate limits	*1,039	*1,037
			At a point approximately 250 feet upstream of State Route 31.	*1,143	*1,142
Maps available for inspection at the Bullskin Township Municipal Building, 178 Shenandoah Road, Connellsville, Pennsylvania. Send comments to Mr. Robert Butler, Chairman of the Township of Bullskin Board of Supervisors, 178 Shenandoah Road, Connellsville, Pennsylvania 15425.					
Pennsylvania	Everson (Borough), Fayette County.	Jacobs Creek	Approximately 2,400 feet downstream of 5th Avenue.	*1,027	*1,025
			Upstream corporate limits	*1,031	*1,029
Maps available for inspection at Everson Borough Building, Brown Street, Everson, Pennsylvania. Send comments to The Honorable Timothy Shoemaker, Mayor of the Borough of Everson, Municipal Building, Brown Street, Everson, Pennsylvania 15631.					
Pennsylvania	Upper Tyrone (Township), Fayette County.	Jacobs Creek	At State Route 819	*1,021	*1,020
			At upstream corporate limits	*1,039	*1,037
		Stauffer Run	At confluence with Jacobs Creek	*1,034	*1,030
			At upstream corporate limits	*1,034	*1,031
Maps available for inspection at the Upper Tyrone Township Building, 259 Montgomery Road, Scottdale, Pennsylvania. Send comments to Mr. Jack E. Fullem, Upper Tyrone Township Supervisor, 509 Hickory Square Road, Connellsville, Pennsylvania 15425.					
Tennessee	Fairview (City), Williamson County.	Hunting Camp Creek	At upstream side of Fernvale Road	None	*703
			A point approximately 0.75 miles upstream of Chester Creek Road.	None	*822
		Hunting Camp Creek Tributary No. 2.	At Fernvale Road	None	*701
			Approximately 30 feet upstream of Chester Road.	None	*794
		Hunting Camp Creek Tributary No. 3.	At Fernvale Road	None	*701
			Approximately 275 feet upstream of State Route 100.	None	*804

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
		Hunting Camp Creek Tributary 4.	At the confluence with Hunting Camp Creek Tributary No. 3.	None	*721
			Approximately 200 feet upstream of Chester Road.	None	*798
		Hunting Camp Creek Tributary No. 5.	At the confluence with Hunting Camp Creek Tributary No. 2.	None	*790
			Approximately 2 feet upstream of Chester Road.	None	*794
Maps available for inspection at the City of Fairview Codes Administration Building, 216 Highway 96 North, Fairview, Tennessee.					
Tennessee	Goodlettsville (City), (Davidson and Sumner Counties).	Slaters Creek	At the confluence with Mansker Creek	*454	*452
			Approximately 1,640 feet upstream of Long Drive.	*476	*475
		Pattens Branch	At the confluence of Madison Creek	None	*466
			Approximately 1,640 feet upstream of most upstream crossing of Pattens Branch Road.	None	*521
		Goodlettsville Outlet Ditch	At the confluence with Mansker Creek	*436	*437
			At the downstream side of Old Long Hollow Pike.	*436	*437
		Madison Creek	At the confluence with Mansker Creek	*430	*432
			Approximately 1.51 miles upstream of Pattens Branch.	None	*535
		Mansker Creek	At the confluence of Madison	*430	*432
			Approximately 1,450 feet upstream of the most upstream crossing of U.S. Route 41.	*486	*485
		Willis Branch	At the confluence with Madison Creek	*430	*432
			Approximately 0.12 mile upstream of the confluence with Madison Creek.	*431	*432
Maps available for inspection at Goodlettsville City Hall, 105 South Main Street, Goodlettsville, Tennessee.					
Send comments to The Honorable Bobby T. Jones, Mayor of the City of Goodlettsville, City Hall, 105 South Main Street, Goodlettsville, Tennessee 37072.					
Tennessee	Murfreesboro (City), Rutherford County.	Lytle Creek	At the confluence with West Fork Stones River.	*575	*571
			At a point approximately 200 feet upstream of Country Club Drive.	*604	*602
		Sinking Creek	At the confluence with West Fork Stones River.	*548	*547
			Approximately 0.6 mile upstream of Thompson Lane.	*548	*547
		Unnamed Tributary of West Fork of West Fork Stones River.	At the confluence with West Fork Stones River.	*589	585
			Approximately 0.54 mile upstream of confluence with West Fork Stones River.	*589	585
		West Fork Stones River	Approximately 0.7 mile upstream of I–840	*544	*543
			At the confluence of Middle Fork Stones River.	*597	*595
		Middle Fork Stones River	At the confluence with West Fork Stones River.	*597	*595
			Approximately 0.52 mile upstream of confluence with West Fork Stones River.	*597	*595
		Sink Hole #2	Entire perimeter of the sink	None	*595
		Sink Hole #3	Entire perimeter of the sink hole	None	*585
Maps available for inspection at the City of Murfreesboro Planning Department, City Hall, 111 West Vine Street, Murfreesboro, Tennessee.					
Send comments to The Honorable Richard Reeves, Mayor of the City of Murfreesboro, P.O. Box 1139, Murfreesboro, Tennessee 37133.					
Tennessee	Rutherford County (Unincorporated Areas).	Lytle Creek	At a point approximately 455 feet upstream of Sanbyrn Drive.	*601	*599

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
			At a point approximately 1.26 miles upstream of Dilton-Mankin Road.	*657	*656
		West Fork Stones River ...	At a point approximately 0.35 mile upstream of Sulphur Springs Road.	*526	*525
			At a point approximately 1.28 miles upstream of Stones River Road.	*676	*675
		Sinking Creek	At the confluence with West Fork Stones River.	*548	*547
			Approximately 250 feet downstream of Thompson Lane.	*548	*547
		Lees Spring Branch	At the confluence with Lytle Creek	*621	*620
			Approximately 500 feet upstream of confluence with Lytle Creek.	*621	*620
		Unnamed Tributary of West Fork Stones River.	Approximately 0.54 mile upstream of confluence with West Fork Stones River.	*589	*585
			Approximately 106 feet upstream of State Highway 99.	*589	*588
		Todds Lake	Entire shoreline within the community	None	*613
		Middle Fork Stones River	At the confluence with West Fork Stones River.	*597	*595
			Approximately 0.52 upstream of confluence with West Fork Stones River.	*597	*596
Maps available for inspection at Rutherford County Planning Department, #1 Southside Square, Murfreesboro, Tennessee.					
Send comments to Ms. Nancy Allen, Rutherford County Executive, County Courthouse, Public Square, Room 101, Murfreesboro, Tennessee 37130.					
Tennessee	Williamson County (Unincorporated Areas).	Hunting Camp Creek	Approximnately 55 feet downstream of the confluence of Hunting Camp Creek Tributary No. 3.	None	*680
			At upstream side of Fernvale Road	None	*703
		Hunting Camp Creek Tributary.	At the confluence with Hunding Camp Creek.	None	*684
			At Fernvale Road	None	*701
		Hunting Camp Creek Tributary No. 3.	At the confluence with Hunting Camp Creek.	None	*681
			At upstream side of Fernvale Road	None	*702
Maps available for inspection at the Williamson County Emergency Management Agency, 1320 West Main Street, Suite B30, Franklin Tennessee.					
Send comments to Mr. Clint Callicott, Williamson County Executive, 1320 West Main Street, Suite 125, Franklin, Tennessee 37064.					
Virginia	Grottoes (Town), Augusta and Rockingham Counties.	Miller Run	Approximately 160 feet downstream of 21st Street.	None	*1,090
			Approximately 60 feet upstream of Cary Street.	None	*1,152
Maps available for inspection at the Grottoes Town Office, 601 Dogwood Avenue, Grottoes, Virginia.					
Send comments to Mr. Timothy E. Crider, Grottoes Town Superintendent, P.O. Box 146, Grottoes, Virginia 24441.					

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5836 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

Proposed Rules

Federal Register
Vol. 67, No. 48
Tuesday, March 12, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, and 134

RIN 3245–AE92

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its regulations governing proceedings before the Office of Hearings and Appeals (OHA). The regulation's last comprehensive revisions were in 1996, followed by additional revisions in 1998 and 2000. The SBA also proposes to make conforming changes to several sections of the regulations governing the Small Business Size Determination program and the 8(a) Business Development (8(a) BD) program.

The major goals of this proposed rule are to: Improve the appeals process by revising and clarifying procedures, particularly those on filing, service, and calculating deadlines that have proven to be ''stumbling blocks'' causing additional litigation and delays; expedite certain procedures; conform the regulations governing proceedings before OHA to other regulations and procedures developed by case law and prevailing practice; and make plain language revisions.

DATES: Comments must be received on or before April 11, 2002.

ADDRESSES: Address your comments to Gloria E. Blazsik, Acting Assistant Administrator for Hearings and Appeals, 409 Third Street, SW, Suite 5900, Washington, DC 20416 and electronic comments to *OHA@sba.gov.*

Electronic Access and Filing

You may submit comments and data by sending electronic mail (e-mail) to: *OHA@sba.gov.* Submit comments as Microsoft Word 97 or as ASCII files avoiding the use of special characters and any form of encryption. Identify all comments and data in electronic form with the title, ''Comment on Proposed Rules—Part 134.'' You may file electronic comments on this proposed rule online at many Federal Depository Libraries.

Public Review of Comments

Whether you comment on paper or electronically, your comments, including name, street address, or other contact information (such as e-mail address, facsimile, or phone number), will be available for public review at this address during regular business hours (8 a.m. to 5 p.m.), Monday through Friday, except federal holidays. You may request confidentiality. If you want us to consider withholding your contact information from public review or from disclosure under the Freedom of Information Act, 5 U.S.C. 552, you must state this request at the beginning of your comment. We will honor requests for confidentiality, to the extent the law allows, on a case-by-case basis. If you are an organization or business, or identify yourself as a representative or official of an organization or business, we will make your entire submission available for public inspection.

FOR FURTHER INFORMATION CONTACT: Michael J. Wolter, Attorney Advisor, Office of Hearings and Appeals, at (202) 401–1420. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339, 24 hours per day, 7 days per week. (If you have any problem using this number, call Customer Service at 1–800–877–0996.)

SUPPLEMENTARY INFORMATION: The SBA proposes to revise part 134, the rules of procedure governing cases before the Office of Hearings and Appeals. The SBA last comprehensively revised the regulations in 1996, then made additional revisions in 1998 and 2000. *See* 61 FR 2682 (January 29, 1996), 63 FR 35726 (June 30, 1998), 65 FR 57541 (September 25, 2000). These proposed revisions would improve and clarify various procedures to make the OHA appeals process more efficient and more understandable to non-lawyers. The SBA also proposes to revise those sections of part 121, the Small Business Size Regulations, and part 124, the 8(a) Business Development program, relating to OHA appeals.

Highlights of this Proposed Rule

As discussed in detail in the Section-by-Section Analysis, the proposed rule would make the following major revisions to OHA's procedures:

- establish the start date for the period for appealing an SBA determination to OHA as when the petitioner receives the SBA determination, rather than when the SBA serves it (134.202(a));
- establish the date of filing as when OHA receives the submission, if no later than 5:00 p.m. eastern time (§ 134.204(b));
- establish the date of service as when the submission is faxed, mailed, personally delivered to the party served, or given over to a delivery service (§ 134.204(c));
- establish that, when a party appeals an SBA determination, the SBA's burden is reduced to a mere response rather than an answer (§ 134.206), and change other sections (specifically, §§ 134.101, 134.205(b), 134.206 heading, 134.207(d), redesignated 134.211(e), and 134.406(d)) to conform to this new distinction;
- establish the start date for the period for filing the answer or response as when an appeal petition is filed, rather than the day it is served on the respondent (§ 134.206(a), (b));
- delete the provision denying an absolute right to appeal a size determination (§ 134.303);
- establish the start date for the 15-day or 30-day time period for filing a size appeal as when the appellant receives the size determination, rather than when the SBA serves it (§ 134.304(a)); and
- permit reconsideration of an initial or final decision of the Judge, on certain grounds, unless a statute or regulation otherwise prohibits it (§ 134.227(c)).

To clarify and simplify OHA's procedures, the proposed rule would:

- reorganize and thoroughly revise the provisions on filing, service, and the certificate of service for simplicity and clarity (§§ 134.204 and 134.304);
- reduce the number of rules governing the date of filing from three to one (§ 134.204(b));

To expedite and streamline OHA procedures, the part 134 proposed rule would:

• reduce from 20 to 15 days the time for respondent to file a motion for a more definite statement (§ 134.205(a));

• require a party moving to amend or supplement its pleadings to file and serve its proposed amendment or supplemental pleading with its motion (§ 134.207);

• permit intervention by the SBA only until 15 days after the close of record and intervention by other persons only until the close of record, rather than until final decision (§ 134.210);

• require a party filing a routine motion to obtain and to state the other parties' positions on the motion (§ 134.211(b));

• require that the answer or response be filed within 20 days of an order denying a motion to dismiss (§ 134.211(d));

• require a party seeking an extension of time to file its motion at least two days before the original deadline, except for good cause shown (§ 134.211(f));

• eliminate the need to file a settlement agreement if the parties file a joint motion to dismiss, unless the Judge has express authority under statute, regulation, or SOP to review the settlement agreement for legality and orders the agreement to be filed (§ 134.217); and

• require, in size and NAICS code appeals, that a party moving to submit new evidence file and serve its proposed new evidence with its motion (§ 134.308(a)(2)).

To conform part 134 to other SBA regulations, OHA case law, or prevailing practices, the proposed rule would:

• amend the list of cases over which OHA has jurisdiction to include appeals of certain Small Disadvantaged Business determinations, certain decisions relating to Women's Business Centers and Small Business Development Centers, certain matters involving debarments and suspensions, and decisions of the Appropriate Management Official in SBA Employee Dispute Resolution Process cases (134.102);

• clarify, when there is incomplete service or an amended appeal petition, that the Judge, by order, will set the deadline for the response or answer (134.206(c));

• clarify, in a competitive 8(a) BD contract, that an adversely affected entity may appeal a NAICS code (§ 134.302(b));

• clarify that OHA does not issue advisory opinions (§ 134.303);

• clarify that the 10-day time period for filing a NAICS code appeal begins anew whenever the contracting officer issues an amendment affecting the NAICS code (134.304(a)(3)); and

• clarify that certain 8(a) BD appeal regulations (§§ 134.402, 134.406(a), (b), and 134.407(a)) do not apply to 8(a) BD suspension appeals, to conform with § 124.305 and OHA's case law, such as *Matter of All American Meats, Inc.*, SBA No. BDP–107 (1998).

These proposed revisions are discussed in more detail in the Section-by-Section Analysis.

On May 15, 2000 (65 FR 30836), the SBA replaced the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS) as the basis for the SBA's small business size standards.

This proposed rule would revise 13 CFR part 134 to conform it to the NAICS and part 121 by adding the definition for NAICS code to § 134.101 and by replacing the acronym ''SIC,'' wherever it appears in part 134, with the acronym ''NAICS.'' The sections affected are: § 134.102(k); redesignated § 134.201(a); Subpart C heading; § 134.301; § 134.302 (introductory text), (b); § 134.304(a) (introductory text), (a)(3); § 134.305(a)(1), (a)(3), (c); redesignated § 134.306(b); § 134.310; § 134.311; and § 134.314.

Plain Language Revisions

To further enhance readability of these regulations, the SBA proposes to make several ''plain language'' revisions. These include providing a simple fill-in-the-blanks sample format for certificates of service (§ 134.204(d)). SBA also has broken down some sections into designated paragraphs and reorganized or reworded others to aid public understanding.

Section-by-Section Analysis

The following is a section-by-section analysis of each provision of SBA's regulations that would be affected by this proposed rule, other than the nomenclature change of SIC to NAICS, changes conforming to redesignated § 134.206(b), and non-substantive improvements of language. OHA's current regulations and much of its case law are available on the Internet at *www.sba.gov/oha.*

Part 121

Section 121.1009(h), on reopening size determinations, would be amended to conform to the revision, in proposed § 121.1101, making appeal to OHA a matter of right, rather than a matter of OHA's discretion.

Section 121.1101, on appeals of size determinations, would be amended to delete the provision that denies an absolute right to an OHA appeal from a size determination. Current § 121.1101, issued in 1996, makes an appeal of a size determination a matter of OHA's discretion, rather than an absolute right of a party adversely affected by a size determination. This provision has caused confusion on the issue of the exhaustion of administrative remedies, and so SBA proposes to revert to the pre-1996 rule. The proposed rule also would clarify, in the case of size determinations, that administrative remedies include an OHA appeal, and that judicial review may not be sought until after the OHA appeal has been exhausted.

Section 121.1102, on appeals of NAICS code designations, also would be amended to include the clarifying language on administrative remedies.

Part 124

Sections 124.206(c), 124.304(b), 124.304(e), 134.305(c), and 124.515(i) contain the time periods (deadlines) for filing 8(a) appeals with OHA. Currently, these time periods begin when the SBA ''serves'' the determination being appealed. These service-based rules have caused much confusion and uncertainty in calculating the deadline for filing an 8(a) appeal, and no small amount of additional litigation to determine the date the determination has been ''served.'' The proposed rule would replace the service-based rules with receipt-based rules, so that all time periods for filing 8(a) appeals would begin when the 8(a) applicant or participant receives the determination being appealed.

Part 134, Subpart A

Section 134.101, definitions, would be amended to add definitions for ''appeal petition'' and ''NAICS code''; to delete the definition for ''SIC code''; and to revise the existing definitions for ''party,'' ''petition,'' and ''pleadings.'' Additionally, the amendments would clarify that the procuring activity contracting officer (CO) who issued a solicitation is a party to any appeal of the NAICS code; therefore, the OHA Judge may order the CO to file a response.

Section 134.102, on jurisdiction, lists the types of cases in which OHA has authority to conduct proceedings, but omits some appeals mandated elsewhere. The proposed rule would add cases involving: (1) Certain Small Disadvantaged Business (SDB) certification and decertification determinations (subpart B of part 124); (2) certain decisions relating to Women's Business Centers and Small Business Development Centers (sections 21(1) and 29(h) of the Small Business

Act, 15 U.S.C. 648(1) and 656(i)); (3) certain matters involving debarments and suspensions (part 145); and (4) in SBA Employee Dispute Resolution Process (Employee Dispute) cases, the decision of the Appropriate Management Official (SBA's Standard Operating Procedure (SOP) 37 71 02). The proposed rule also would conform existing § 134.102(d) with part 120, which grants OHA appeal rights not only to lenders, but also to other entities, such as pool assemblers, subject to SBA enforcement actions related to SBA loan programs.

The proposed rule would delete the last sentence of current § 134.103(b), to conform that regulation to proposed new § 134.211(f), regarding motions to extend time.

Part 134, Subpart B

Section 134.202, commencement of cases, contains the deadlines for commencing OHA litigation. The proposed rule would reorganize this section by listing separately cases that a party other than the SBA may commence by filing an appeal petition (§ 134.202(a)) and cases that the SBA may commence by issuing an order to show cause (§ 134.202(b), (c)).

Proposed § 134.202(a)(1) would set time limits for all cases commenced by appeal petition, except for debt collection cases, applications for fee awards, 8(a) program suspension cases, and SBA Employee Dispute cases, which would be contained in § 134.202(a)(2)–(a)(5), and for size and NAICS code appeals, which are contained in subpart C. Currently, the time for filing an appeal petition begins when the SBA ''serves'' the determination being appealed (service-based rule), except in debt collection cases, in which time starts when the petitioner receives the SBA's notice (receipt-based rule), and in size appeals, in which OHA has used a receipt-based rule since 1984.

The service-based rule for determining the deadline for filing an appeal petition has caused unnecessary confusion and litigation. On the contrary, the receipt-based rule has had a long, successful track record. After careful consideration of both methods, SBA concludes the receipt-based rule is better and should extend to all appeals commenced by appeal petition.

Proposed new § 134.202(a)(5) would refer to SOP 37 71 02 (available at *www.sba.gov/library/soproom.html*), which contains special procedures, including deadlines, governing Employee Dispute cases.

Section 134.203, the petition, lists the general requirements for all appeal petitions. The proposed rule additionally would require the petitioner to provide its facsimile number, to facilitate service by facsimile; and to state when it received the determination being appealed, to help OHA determine timeliness.

Proposed § 134.203(a)(2) would clarify that an appeal petition must include a copy of the SBA determination. Proposed new § 134.203(a)(6) would clarify that an appeal petition must include a certificate of service. Proposed new § 134.203(a)(7) would require the petitioner in debt cases to state when it received the notice initiating the debt collection proceeding. Finally, proposed § 134.203(b) would reference other requirements relating to particular types of appeal petitions located elsewhere in part 134 or in the applicable SBA program regulations.

Section 134.204 contains the filing and service requirements for all pleadings and other submissions to OHA. The current rule has proven very confusing to litigants. Accordingly, the SBA proposes to reorganize the rule and to simplify certain procedures.

Proposed § 134.204(a) would state the acceptable methods of filing and service, with the proviso that the Judge may, for good cause, order filing or service by a particular method. These methods are first-class mail (including certified and registered mail), express mail, and priority mail; hand delivery; and facsimile. The generic term ''delivery'' would include forms of non-mail delivery, such as: personal delivery by the person certifying service; or delivery by a messenger, courier service, or other commercial delivery service, such as United Parcel Service, Federal Express, or Airborne. Delivery does not include electronic mail.

Proposed § 134.204(b) and (b)(1), on filing, would define filing as receipt of pleadings and other submissions at OHA; establish the filing date as when OHA receives a submission, provided OHA receives it on or before 5:00 p.m. eastern time; and give OHA's suite, telephone, and facsimile numbers.

Proposed § 134.204(b)(2) would reduce from three to one the number of rules for determining the date an OHA submission is filed. Current § 134.204(e) specifies the date of filing as the date of transmission if filed by facsimile; the date of postmark if filed by first-class mail; and the date of OHA's receipt if filed by express mail, personal delivery, or commercial delivery. Current § 134.204(b)(2) requires filings by personal or commercial delivery to be made between 8:30 a.m. and 5:00 p.m. without reference to time zone.

The proposed rule would set the filing date as when OHA receives a submission, regardless of the method used, if OHA receives it on or before 5:00 p.m. eastern time. Thus, proposed § 134.204(b)(1) would change the current rules in two ways: (1) For filings by first-class mail, change the filing date from the postmark date to the receipt date; and (2) for filings by facsimile received at OHA after 5:00 p.m., change the filing date from that day to the next.

Proposed § 134.204(b)(3) would explain better the requirement, in current § 134.204(c), to authenticate exhibits. Proposed § 134.204(b)(4) would state when the Judge would not accept a copy of an exhibit instead of the original.

Proposed § 134.204(c), service (current § 134.204(a), (e)), would define service; state the service requirement; state the rules for determining the service date; and, regarding the address for serving the SBA, refer to other subparts of part 134 or to other SBA regulations that might apply to particular types of appeals.

As with the filing date, the current rules set the service date as the transmission date for service by facsimile; the postmark date for service by first-class mail; and the receipt date for service by express mail, personal delivery, or commercial delivery.

Proposed § 134.204(c)(2) would set the service date of a document as follows: for service by facsimile, when sent; for personal delivery by the person certifying service, when given to the party served; for commercial delivery, when given to the delivery service; and for service by mail, when mailed (postmarked). The proposed rule would treat all forms of mail consistently and retain the current rule's rebuttable presumption that a piece was mailed (and thus served) five days before its receipt, absent a postmark or other evidence of mailing date.

Thus, proposed § 134.204(c) would alter the current rules in two ways: (1) for service by Express Mail, change the service date from receipt date to postmark date; and (2) for service by commercial delivery service, change the service date from receipt date to the date the document is given to the delivery service.

Proposed § 134.204(d), certificate of service, would give greater detail and include a fill-in-the-blanks format.

Current § 134.204(e), on filing and service dates, would be eliminated as obsolete.

Current § 134.204(f), confidential information, would be redesignated as paragraph (e).

Proposed § 134.205(a), motion for a more definite statement, would reduce the respondent's time period for filing this motion from 20 to 15 days, the same time period that existed before March 1, 1996. *See* 13 CFR 134.11(c) (1995). This revision would help all parties to clarify and join the issues in an appeal at the earliest possible time.

Proposed § 134.206, the answer, would be revised to include two separate procedures. If the case involves an appeal from an SBA determination, the respondent's pleading would be called the response, and proposed § 134.206(b), (c), and (d) would apply. In all other cases (including debt collection cases and cases commenced by an order to show cause), the respondent's pleading would continue to be called the answer, and proposed § 134.206(a), (c), and (d) would apply. Proposed § 134.206(a) would refer to SOP 37 71 02 (available at *www.sba.gov/library/soproom.html*) for the deadlines that apply to Employee Dispute cases.

Proposed § 134.206(a), on the answer, would be revised to include the substance of current § 134.206(a), (b), and (c); however, the time period (deadline) for filing the answer would run from the day the appeal petition is filed, rather than the day it is served on the respondent. In cases commenced by an order to show cause, the time period for filing the answer would continue to run from the time SBA served the order to show cause.

Proposed § 134.206(b), on the response, would conform to current practice by requiring OHA to inform all known parties of the date an appeal petition was filed. The deadline for and content of the response would be the same as for the answer, except that the respondent would not need to respond to the factual allegations in the petition and would not admit any allegation by failing to deny it, but must set forth the respondent's positions in support of the SBA determination.

Proposed § 134.206(c) would provide, in the event of incomplete service or an amended order to show cause or appeal petition, for the Judge to order the deadline for filing the answer or the response. In the case of incomplete service, that deadline would not be less than 45 days after petitioner serves respondent. This provision would conform this section to OHA's current practice under § 134.103(b).

Current § 134.206(d) and (e) would be combined into proposed § 134.206(d), and rewritten more concisely. The scope of the provision for the filing of the administrative record upon a default, which currently applies only to 8(a) cases, would be expanded to include any case in which the SBA is required to file an administrative record.

Current § 134.207, amendments and supplemental pleadings, would be revised, in § 134.207(a) and (b), to include the additional requirement that a party moving to amend or supplement its pleadings must file and serve its proposed amendment or supplemental pleading along with its motion. The proposed rule would conform these procedures to prevailing practices.

Proposed § 134.208, on representation before OHA, would be revised, in § 134.208(a), to clarify that an officer of any type of entity except a partnership may represent that party.

Proposed § 134.210, intervention, would be revised to limit the time in which additional parties may intervene. Current § 134.210(a), on intervention by the SBA, and current § 134.210(b), on intervention by interested parties, permit intervention at any time until the Judge issues a final decision. The proposed rule would permit intervention by the SBA only until 15 days after close of record or until the issuance of a decision, whichever comes first, and intervention by other parties only until the close of record. Because intervention can change the entire course of a case, the public interest in conservation of judicial resources and efficient, speedy resolution of the issues mandates aligning the parties in a case earlier, rather than later.

Proposed § 134.210(b) also would limit the definition of ''interested person'' to include only those individuals, business entities, or government agencies that have a direct stake in the outcome of the appeal. Thus, this proposed rule would permit only a small group of persons to intervene, in contrast to proposed § 134.309(a), which would permit any person with a ''general interest'' in an issue raised by the appeal to respond to the appeal. Proposed § 134.210(b) also would clarify that the Judge may grant leave to intervene upon such terms as he or she deems appropriate.

Current § 134.211, motions, would be revised substantively in three places. Proposed § 134.211(b) would require the moving party, in most motions, to obtain and to state, in the motion itself, the other parties' positions on the motion. This change would eliminate ex parte telephone calls by OHA staff to ascertain the parties' positions and, for unopposed motions, the need to wait out the 20-day response period.

Current § 134.211(d), now entitled ''Stay,'' would be renamed ''Motion to dismiss.'' It would explicitly allow filing of a motion to dismiss any time before the decision is issued. It also would require that the answer or response, if not already filed, be filed within 20 days after an order denying the motion.

Proposed new § 134.211(f) would establish a special procedure for motions to extend time. It would require the party seeking to extend a filing deadline to file its motion at least two days before the original deadline. This proposed rule would prevent the awkward situation in which a motion to extend time is filed just before the original deadline, and the Judge is unable to rule on it until the next day, rendering the moving party in technical default. The proposed rule also would provide for a good-cause exception to the two-day time period.

Proposed § 134.212, summary decision, would include a new paragraph (e) clarifying, in a case involving an appeal petition from a non-8(a) SBA determination based on two or more grounds, that the SBA could move for a summary decision dismissing the appeal based on one or more grounds. If the Judge finds, as to any such ground, no genuine issue of material fact and that the SBA is entitled to judgment as a matter of law, the Judge would grant the motion and dismiss the appeal.

Proposed § 134.214, on subpoenas, would clarify that subpoenas are not authorized for proceedings relating to internal Agency determinations, such as Employee Disputes.

Current § 134.217, settlement, would be revised to simplify the settlement procedure. In contrast to the current requirement to submit the entire settlement agreement, the proposed rule would require only the filing of a joint motion to dismiss the appeal; however, when statute, SBA regulation, or SBA SOP expressly authorizes the Judge to review a settlement agreement for legality, the Judge may order the settlement agreement to be submitted.

Current § 134.226, the decision, specifies a deadline for rendering a decision only for debt cases. The proposed rule would add a sentence clarifying that applicable SBA program regulations or other subparts of part 134 might contain time limits for rendering decisions in other types of cases.

Current § 134.227, finality of decisions, would be reorganized with a new provision authorizing reconsideration of an initial or final decision of the Judge. Proposed § 134.227(a), initial decisions (current § 134.227(b)), would restate the general rule that, unless otherwise provided in part 134, all OHA decisions are initial decisions. Further, all initial decisions become final decisions 30 days later,

absent either a request for review under § 134.228(a) or a request for reconsideration under § 134.227(c).

Proposed § 134.227(b), final decisions (current § 134.227(a)), would list the types of appeal proceedings in which OHA's decision on the merits is SBA's final decision upon issuance. The list would include debt cases, 8(a) BD program appeals, size appeals, NAICS code appeals, and any other proceeding for which either the applicable program regulations or another subpart of part 134 provides for a final decision.

Proposed § 134.227(c), reconsideration, would be new. It would state a general rule that any initial or final decision of the Judge may be reconsidered unless a statute, the applicable program regulations, or part 134 specifically prohibits reconsideration. The proposed rule also would specify that a request for reconsideration must be filed with the Judge within 20 days after service of the decision, and must demonstrate a clear showing of an error of fact or law material to the decision. The proposed rule also would permit an OHA Judge to reconsider a decision of a Judge on his or her own initiative. This proposed rule would restore the Judge's authority, which existed between 1990 and 1996 in size cases, to reconsider a decision of a Judge to correct a clear error. *See* 13 CFR 121.1721 (1995).

Current § 134.228(a) would be amended to clarify that a party could seek review by the Administrator of a Judge's initial decision, whether or not the decision had been reconsidered.

Current § 134.229, termination of jurisdiction, would be revised to state that, except where a case is being reconsidered or has been remanded, OHA's jurisdiction terminates on issuance of a decision resolving all material issues. This revision would conform this regulation to proposed new § 134.227(c).

Part 134, Subpart C

Current § 134.302, who may appeal, would be revised to permit an entity that is adversely affected by the NAICS code in a competitive 8(a) BD contract to appeal that NAICS code. This proposed rule would conform this section to the 1998 revision to § 121.1103(a), which permits only the Associate Administrator for 8(a) Business Development (AA/8(a)BD) to appeal the NAICS code for an 8(a) sole source contract. *See* 63 FR 35739.

Current § 134.303, no absolute right to an appeal from a size determination, would be deleted to conform to proposed § 121.1101. In its place, proposed new § 134.303, advisory opinions, would clarify that OHA does not issue advisory opinions, including decisions on issues that are or have become moot. This proposed rule would codify long-standing OHA case law, including *Size Appeal of Lightcom International, Inc.*, SBA No. SIZ–4118 (1995).

Current § 134.304, on commencement of size and NAICS code appeals, sets the time period for filing size and NAICS code appeals. Section 134.304(a)(1), the ''15-day rule,'' applies to appeals of size determinations in pending procurements or sales. Section 134.304(a)(2), the ''30-day rule,'' applies to appeals of size determinations where there is no pending procurement or sale. The current rules, in effect since April 1, 1996 (61 FR 2687), begin both time periods when the SBA served its size determination. The prior rules, in effect 1984–1996, began both time periods when the appellant received the size determination. *See* 13 CFR 121.1705(a)(1), (a)(2) (1995).

The proposed rules would restore the prior method of determining when the time periods for filing size appeal petitions begin. Thus, the 15-day or 30-day time period would begin on the appellant's receipt, rather than SBA's service, of the size determination.

Under the prior, receipt-based rules, OHA determined when the filing time period began (and thus whether an appeal was timely) using the return receipt card (Postal Service Form 3811) contained in the Area Office file. Under the current, service-based rules, OHA needs the postmark on the mailing envelope as evidence of the date of service. The mailing envelope, however, is not in the Area Office file; it either has been destroyed or is in the appellant's hands. Thus, OHA cannot determine when the filing time period began and, thus, whether a size appeal is timely, without first requiring proof of timeliness and then adjudicating that issue. These additional steps cause delays. To avoid this problem, OHA Judges consistently have used the prior, receipt-based method as a ''rule of convenience.'' *See Size Appeal of Prose, Inc.*, SBA No. SIZ–4196 (1996); *Size Appeal of DTH Management JV*, SBA No. SIZ–4376 (1999). The proposed rule would conform the regulation to this long-standing practice.

Current § 134.304(a)(3), on NAICS code appeals, would be revised to clarify that the 10-day time period for filing an appeal begins anew whenever the procuring activity contracting officer issues an amendment affecting the NAICS code. This revision would conform the regulation to OHA's long-standing case law. *See SIC Appeal of Madison Services, Inc.*, SBA No. SIC–4223 (1996).

Current § 134.305, the appeal petition, lists the requirements for appeal petitions in size and NAICS code appeals. Proposed § 134.305(a)(4) would also require the appellant's facsimile number, thus facilitating service by facsimile. Proposed § 134.305(d), on certificate of service, would contain a reference to § 134.204(d), which describes the general requirements for certificates of service.

Proposed § 134.306, transmission of the case file and solicitation, would clarify that in both size and NAICS code appeals, the procuring activity contracting officer must send OHA a paper copy of the original solicitation and all amendments. This proposed rule would ensure that OHA receives the complete solicitation and eliminate the problem of incompatible electronic formats.

Current § 134.308, on new evidence, would be revised to include the additional requirement that a party moving to submit new evidence in an appeal must file and serve its proposed new evidence along with its motion. The proposed rule would conform the regulation to prevailing practices.

Section 134.309, response to an appeal petition, would be revised to broaden the category of persons who may respond to an appeal and to conform the time limits for responses to long-standing OHA practices. Current § 134.309(a) permits only ''interested persons,'' that is, those who are or could be parties, to file a response to an appeal. Proposed § 134.309(a) would permit, besides ''interested persons,'' any person who has a ''general interest'' in an appeal to file a response. Thus, this revision would remove the regulatory barrier to responses from such persons; however, the Judge would have to determine whether a particular response is relevant before admitting it into the record.

Current § 134.309(b) permits a respondent to file a response within 10 days after service of the appeal petition, unless the Judge otherwise specifies. Consistent with OHA's long-standing practices, the proposed rule would require OHA to issue a Notice and Order informing the parties when OHA received the appeal, setting the close of record as 15 days after service of the Notice and Order, and requiring any responses to the appeal to be received at OHA no later than the close of record.

Current § 134.313, applicability of subpart B provisions, would be revised to state, simply, that the provisions of subpart B, OHA's general rules of practice, apply to size and NAICS code

appeals, except where inconsistent. Current § 134.313 lists specific sections of subpart B; however, practice has shown this list to be incomplete and confusing. The Judge should be able to determine when a particular subpart B provision conflicts with the subpart C regulations governing size or NAICS code appeals.

Section 134.316, the decision, would be revised to clarify that the Area Office's size determination remains in effect if OHA dismisses the appeal from it. The proposed rule would clarify that the decision in a NAICS code appeal may not be reconsidered.

Current § 134.317, termination of jurisdiction, would be deleted as unnecessary and current § 134.318, return of the case file, would be redesignated as § 134.317.

Part 134, Subpart D

Current § 134.402, appeal petition, conflicts with § 124.305(d), which places the burden in suspension appeals on the SBA, not the petitioner. Revised § 134.402 would clarify that it does not apply to suspension appeals.

Current § 134.403, on service, would be revised to delete § 134.403(a)(3), which is unnecessary.

Current § 134.406(a) limits review to the written administrative record, but § 124.305(c) contemplates a hearing in a suspension appeal. Current § 134.406(b) limits review to the issue of whether the SBA's determination is arbitrary, capricious, or contrary to law, but § 124.305(d) establishes the issue in suspension appeals as whether the SBA has produced adequate evidence to show that suspension is necessary to protect the Government's interest. Revised § 134.406(a) and (b) would clarify that they do not apply to suspension appeals. Proposed § 134.406(c) would specify that the administrative record also must include documents relied upon by SBA officials who made recommendations regarding the SBA determination and clarify that the administrative record submitted by SBA would be deemed complete unless the petitioner objects to its completeness or the Judge finds the record insufficiently complete, under § 134.406(e), to permit a decision on the merits. Current § 134.406(e) permits the Judge to order a remand to the SBA if, due to the absence of the reasons upon which the SBA determination was based, the administrative record is insufficiently complete to decide whether the SBA determination is arbitrary, capricious, or contrary to law. Then the SBA responds to the order, and the Judge decides the case. Proposed § 134.406(e) would state that the SBA, when responding to the remand order, need not supplement the administrative record except to supply any reasons for the determination or any documents it received or considered in connection with any reconsideration during the remand period. If, however, the Judge found, from the SBA's response to the remand order, that the supplemented record still did not contain the reasons upon which the determination was based, the Judge could not require the SBA to further supplement the administrative record and thus provide the SBA another opportunity to provide the reasons upon which the determination was based, but must find the SBA determination arbitrary, capricious, or contrary to law. However, nothing in the rules prevents the SBA from filing, or the Judge from granting, a meritorious motion to dismiss on other grounds. Finally, proposed § 134.406(e) would permit the Judge to set a reasonable period for remand, because the current period of 10 working days has proven to be unreasonable.

Current § 134.407(a) limits the admission of evidence beyond that in the written administrative record, but § 124.305(c) contemplates a hearing in suspension appeals. Revised § 134.407(a) would clarify that it does not apply to suspension appeals.

Section 134.212 allows motions for summary decision in all cases under this part. Proposed § 134.408(a) merely refers to the general provisions of § 134.212. Proposed § 134.408(b), summary decision based on fewer than all grounds, would extend the general provision for summary decision on fewer than all grounds (proposed § 134.212(e)). If the SBA moves for summary decision on one or more grounds and the Judge finds no genuine issue of material fact as to whether the SBA determination meets the required standard of review and that the SBA is entitled to judgment as a matter of law, the Judge would grant the motion and dismiss the appeal.

Current § 134.408, decision on appeal, would be redesignated as § 134.409 and revised to delete the second sentence of paragraph (b), which is unnecessary.

Compliance With the Regulatory Flexibility Act (5 U.S.C. 601–612), the Paperwork Reduction Act (44 U.S.C. Ch. 35), and Executive Orders 12866, 12988, and 13132

SBA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule would revise some of the rules of practice for SBA administrative proceedings to simplify those rules and to make them easier for the few small businesses that engage in administrative litigation with the SBA to understand and to use. Accordingly, the proposed rule is purely procedural and would not affect the operations of small entities.

For purposes of the Paperwork Reduction Act (44 U.S.C. ch. 35), SBA certifies that this proposed rule would impose no new reporting or record-keeping requirements on firms. This proposed rule would make revisions to certain procedures for administrative litigation, and those revisions would not necessitate any additional reports to SBA and would not require the maintenance of any additional records beyond those that firms currently make or maintain.

OMB has determined that this proposed rule is not a ''significant'' regulatory action within the meaning of Executive Order 12866. The proposed rule is merely procedural and, therefore, it would not have an annual economic effect of $100 million or more, and it would have no adverse effect on any sector of the economy or on State, local, or tribal governments or communities.

For purposes of Executive Order 12988, SBA certifies that it has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order. This proposed action does not have retroactive or preemptive action.

For purposes of Executive Order 13132, SBA certifies that this proposed rule would have no federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

13 CFR Part 121

Government procurement, government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 124

Government procurement, Hawaiian Natives, Minority businesses, Reporting and recordkeeping requirements, Technical assistance, and Tribally owned concerns.

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, SBA proposes to amend parts 121, 124, and 134 of Title 13, Code of Federal Regulations (CFR) as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.1009, revise paragraph (h) to read as follows:

§ 121.1009 What are the procedures for making the size determination?

* * * * *

(h) *Limited reopening of size determinations.* In cases where the size determination contains clear administrative error or a clear mistake of fact, SBA may, in its sole discretion, reopen the size determination to correct the error or mistake, provided no appeal has been filed with OHA.

3. Revise § 121.1101 to read as follows:

§ 121.1101 Are formal size determinations subject to appeal?

A formal size determination made by a Government Contracting Area Office or by a Disaster Area Office may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

4. Revise § 121.1102 to read as follows:

§ 121.1102 Are NAICS code designations subject to appeal?

A NAICS code designation made by a procuring activity contracting officer may be appealed to OHA. The procedures governing OHA appeals are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a NAICS code designation may be sought in a court.

PART 124

5. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

6. In § 124.206, revise paragraph (c) to read as follows:

§ 124.206 What appeal rights are available to an applicant that has been denied admission?

* * * * *

(c) The applicant may initiate an appeal by filing a petition in accordance with part 134 of this title with OHA within 45 days after the applicant receives the Agency decision.

* * * * *

7. Amend § 124.304 as follows:

a. Revise the second sentence of paragraph (b) and remove the last sentence; and

b. Revise the last sentence of paragraph (e).

The revisions read as follows:

§ 124.304 What are the procedures for early graduation and termination?

* * * * *

(b) * * * The Letter of Intent to Terminate or Graduate Early will set forth the specific facts and reasons for SBA's findings, and will notify the concern that it has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify termination or early graduation.

* * * * *

(e) * * * If a Participant does not appeal a Notification of Early Graduation or Termination within 45 days after the Participant receives the Notification, the decision of the AA/8(a)BD is the final agency decision effective on the date the appeal right expired.

* * * * *

8. In § 124.305, revise the first sentence of paragraph (c) to read as follows:

§ 124.305 What is suspension and how is a Participant suspended from the 8(a) BD program?

* * * * *

(c) The applicant concern may appeal a Notice of Suspension by filing a petition in accordance with part 134 of this title with OHA within 45 days after the concern receives the Notice of Suspension pursuant to paragraph (b) of this section. * * *

* * * * *

9. In § 124.515, revise paragraph (i) to read as follows:

§ 124.515 Can a Participant change its ownership or control and continue to perform an 8(a) contract, and can it transfer performance to another firm?

* * * * *

(i) The 8(a) contractor may appeal SBA's denial of a waiver request by filing a petition with OHA pursuant to part 134 of this title within 45 days after the contractor receives the Administrator's decision.

PART 134

10. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370.

11. Amend § 134.101 as follows:

a. Add new definitions for ''Appeal petition'' and ''NAICS code'' in alphabetical order;

b. Revise the definitions for ''Party,'' ''Petition,'' and ''Pleading'; and

c. Remove the definition for ''SIC code.''

The revisions and additions read as follows:

§ 134.101 Definitions.

* * * * *

Appeal petition has the same meaning as *petition.*

* * * * *

NAICS code means North American Industry Classification System code.

* * * * *

Party means the petitioner, appellant, respondent, or intervenor, and the contracting officer in a NAICS code appeal.

* * * * *

Petition (or appeal petition) means a written complaint, a written appeal from an SBA determination, or a written request for the initiation of proceedings before OHA.

Pleading means a petition, an order to show cause commencing a case, an appeal petition, an answer, a response, or any amendment or supplement to those documents.

* * * * *

12. Amend § 134.102 as follows:

a. Revise paragraph (d);

b. In paragraph (k), remove the acronym ''SIC'' and replace it with the acronym ''NAICS''; and

c. In paragraph (m), delete the last word ''and''; redesignate existing paragraph (n) as paragraph (r); and add new paragraphs (n) through (q).

The revisions and additions read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(d) The eligibility of any bank or non-bank lender to continue to participate in SBA loan programs under the Act and part 120 of this chapter, or to do so with preferred or certified status, and any other appeal that is specifically authorized by part 120 of this chapter;

* * * * *

(n) Appeals from the following small disadvantaged business (SDB) determinations under part 124 of this chapter:

(1) SBA's determination that an applicant firm does not qualify for certification, or that a certified SDB no longer qualifies for the program; and

(2) A Private Certifier's ownership and control determination made on a firm's application for certification;

(o) The suspension, termination, or non-renewal of cooperative agreements with Women's Business Centers and Small Business Development Centers under the Act and part 130 of this chapter;

(p) Certain matters involving debarments and suspensions under part 145 of this chapter;

(q) The decision of the Appropriate Management Official in SBA Employee Dispute Resolution Process cases (Employee Disputes) under Standard Operating Procedure 37 71 02 (available at *http://www.sba.gov*); and

* * * * *

§ 134.103 [Amended]

13. In § 134.103, paragraph (b), remove the last sentence.

14. Amend § 134.201 as follows:

a. Designate the first two sentences of the existing undesignated text as paragraph (a);

b. Designate the last sentence of the existing undesignated text as paragraph (b); and

c. In the first sentence of redesignated paragraph (a), remove the acronym ''SIC'' and add in its place the acronym ''NAICS.''

15. Revise § 134.202 to read as follows:

§ 134.202 Commencement of cases.

(a) A party other than the SBA may commence a case by filing a written petition within the following time periods:

(1) Except as provided by paragraphs (a)(2) through (a)(5) of this section, no later than 45 days from the date of receipt of the SBA action or determination to which the petition relates;

(2) In debt collection proceedings under part 140 of this chapter, no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset;

(3) In applications for an award of fees pursuant to subpart E of this part, no later than 30 days after the decision to which it applies becomes final;

(4) For 8(a) program suspension proceedings, see § 124.305 of this chapter;

(5) For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at *www.sba.gov/library/soproom.html*.

(b) The SBA may commence a case by issuing to the respondent an appropriate written order to show cause and filing the order to show cause with OHA.

(c) Cases concerning Small Business Investment Company license suspensions and revocations and cease and desist orders must be commenced with an order to show cause containing a statement of the matters of fact and law asserted by the SBA, the legal authority and jurisdiction under which a hearing is to be held, a statement that a hearing will be held, and the time and place for the hearing.

16. Revise § 134.203 to read as follows:

§ 134.203 The petition.

(a) A petition must contain the following:

(1) The basis of OHA's jurisdiction;

(2) A copy of the SBA determination being appealed, if applicable, and date received;

(3) A clear and concise statement of the factual basis of the case;

(4) The relief being sought;

(5) The name, address, telephone number, facsimile number, and signature of the petitioner or its attorney;

(6) A certificate of service (see § 134.204(d)); and

(7) In a debt collection case, a statement showing when the petitioner received the SBA notice initiating the debt collection proceeding (see § 140.3 of this chapter).

(b) A petition also must contain additional information or documents as required by the applicable program regulations or by other subparts of this part 134. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02.

(c) A petition which does not contain all of the information required by paragraphs (a) and (b) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of the respondent.

17. Amend § 134.204 as follows:

a. Revise the heading of the section;

b. Revise paragraphs (a) through (d); and

c. Remove paragraph (e) and redesignate existing paragraph (f) as paragraph (e).

The revisions read as follows:

§ 134.204 Filing and service requirements.

(a) *Methods of filing and service.* Pleadings or other submissions must be filed and served by mail, delivery, or facsimile. Mail includes first class (including certified and registered), express, and priority mail. For good cause, the Judge may order that filing or service be effected by one of these methods.

(b) *Filing.* Filing is the receipt of pleadings and other submissions at OHA.

(1) OHA accepts filings between the hours of 8:30 a.m. and 5:00 p.m. eastern time at the following address: Office of Hearings and Appeals, Small Business Administration, 409 Third Street, SW., Suite 5900, Washington, DC 20416. OHA's telephone number is (202) 401–8203. The number for OHA's facsimile machine is (202) 205–7059.

(2) The date of filing for pleadings and other submissions filed by mail, delivery, or facsimile is the date the filing is received at OHA. Any filing received at OHA after 5:00 p.m. eastern time is considered filed as of the next day.

(3) *Exhibits.* An exhibit, whether an original or a copy, must be authenticated or identified to be what it purports to be.

(4) *Copies.* No extra copies of pleadings or other submissions need be filed. If a document is offered as an exhibit, a copy of the document will be accepted by the Judge unless:

(i) A genuine question is raised as to whether it is a true and accurate copy or

(ii) It would be unfair, under the circumstances, to admit the copy instead of the original.

(c) *Service.* Service is the mailing, delivery, or facsimile to all other parties of a copy of each pleading or other submission filed with OHA.

(1) Complete copies of all pleadings and other submissions filed with OHA must be served upon all other parties or, if represented, their authorized representatives or their attorneys, at their record addresses.

(2) The date of service is as follows: for facsimile, the date the facsimile is sent; for personal delivery by the party, its employee, or its attorney, the date the document is given to the party served; for commercial delivery, the date the document is given to the delivery service; for mail, the date of mailing. The date of mailing is the date of a U.S. Postal Service postmark or any other proof of mailing. If there is insufficient proof of mailing, there is a rebuttable presumption that the mailing was made five days before receipt.

(3) If the SBA is a party, the SBA must be served, as required by the applicable program regulations or by other subparts of this part 134. If the SBA office for service is not specified elsewhere, serve: Office of General Counsel, Small Business Administration, 409 Third Street, SW., Washington, DC 20416. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02.

(d) *Certificate of service.* A certificate of service shows how, when, and to whom service was made. Every pleading and other submission filed with OHA

and served on the other parties must include a certificate of service. The certificate should state: ''I certify that on [date], I caused the foregoing document to be served by [either ''placing a copy in the mail,'' ''sending a copy by facsimile,'' ''personally delivering a copy,'' or ''giving a copy to a delivery service,''] upon the following: [list name, address, telephone number, and facsimile number of each party served].'' The certificate must be signed and include the typed name and title of the individual serving the pleading or other submission.

* * * * *

18. Revise § 134.205 to read as follows:

§ 134.205 Motion for a more definite statement.

(a) *Procedure.* No later than 15 days after service of the petition or order to show cause, the respondent may file and serve a motion requesting a more definite statement of particular allegations in the petition.

(b) *Stay.* The filing and service of a motion for a more definite statement stays the time for filing and serving an answer or response. The Judge will establish the time for filing and serving an answer or response.

19. Revise § 134.206 to read as follows:

§ 134.206 The answer or response.

(a)(1) Except in a case involving a petition appealing from an SBA determination, a respondent must file and serve an answer within 45 days after the filing of a petition or the service of an order to show cause, except that in debt collection cases, answers are due within 30 days. For SBA Employee Disputes, see Standard Operating Procedure 37 71 02, available at *www.sba.gov/library/soproom.html.*

(2) The answer must contain the following:

(i) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(ii) Any affirmative defenses; and

(iii) The name, address, telephone number, facsimile number, and signature of the respondent or its attorney.

(3) Allegations in the petition or order to show cause which are not answered in accordance with paragraph (a)(2)(i) of this section will be deemed admitted unless injustice would occur.

(b) Upon the filing of a petition appealing from an SBA determination, the Judge or the AA/OHA will issue an order informing all known parties of the date the appeal was filed. The respondent must file and serve a response to such a petition within 45 days after the filing of such a petition. The response need not admit or deny the allegations in the petition but shall set forth the respondent's positions in support of the SBA determination. The response must also set forth the name, address, telephone number, facsimile number, and signature of the respondent or its attorney.

(c) If a petition or order to show cause is amended or if respondent is not properly served, the Judge will order the time to file an answer or response extended and will specify the date such answer or response is due. If respondent is not properly served with a petition appealing from an SBA determination, the Judge will issue an order directing that the petitioner serve respondent within a specified time and directing respondent to file and serve a response within 45 days after petitioner timely serves respondent in accordance with the order.

(d) If the respondent fails to timely file and serve an answer or response, that failure will constitute a default. Following such a default, the Judge may prohibit the respondent from participating further in the case. If SBA, as respondent to a petition appealing from an SBA determination, fails to timely file and serve its response or the administrative record (where required), the Judge will issue an order directing SBA to file and serve the administrative record by a specified date.

20. Amend § 134.207 to read as follows:

a. In paragraph (a), revise the first sentence and add a new sentence at the end;

b. Revise paragraph (b); and

c. Revise paragraph (d).

The revisions read as follows:

§ 134.207 Amendments and supplemental pleadings.

(a) *Amendments.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of amendments to pleadings. * * * The proposed amendment must be filed and served with the motion.

(b) *Supplemental pleadings.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading. The proposed supplemental pleading must be filed and served with the motion.

* * * * *

(d) *Answer or Response.* In an order permitting the filing and service of an amended or supplemented petition or order to show cause, the Judge will establish the time for filing and serving an answer or response.

21. Revise § 134.208 to read as follows:

§ 134.208 Representation in cases before OHA.

(a) A party may represent itself, or be represented by an attorney. A partner may represent a partnership, and an officer may represent a corporation, trust, association, or other entity.

(b) An attorney for a party who did not appear on behalf of that party in the party's first filing with OHA must file and serve a written notice of appearance.

(c) An attorney seeking to withdraw from a case must file and serve a motion for the withdrawal of his or her appearance.

22. Revise § 134.210 to read as follows:

§ 134.210 Intervention.

(a) *By SBA.* SBA may intervene as of right at any time in any case until 15 days after the close of record, or the issuance of a decision, whichever comes first.

(b) *By interested persons.* Any interested person may move to intervene at any time until the close of record by filing and serving a motion to intervene containing a statement of the moving party's interest in the case and the necessity for intervention to protect such interest. An interested person is any individual, business entity, or governmental agency that has a direct stake in the outcome of the appeal. The Judge may grant leave to intervene upon such terms as he or she deems appropriate.

23. Amend § 134.211 as follows:

a. Redesignate existing paragraphs (b) through (d) as paragraphs (c) through (e);

b. Add a new paragraph (b);

c. Revise redesignated paragraph (e); and

d. Add a new paragraph (f).

The revisions and additions read as follows:

§ 134.211 Motions.

* * * * *

(b) Except when a party is filing a motion to dismiss or a motion for summary decision, a party must make reasonable efforts to contact all non-moving parties prior to filing the motion

to determine whether they oppose the motion, and must set forth in the motion all non-moving parties' positions. If the moving party is unable to determine a non-moving party's position, the moving party must describe in the motion the efforts made to contact such non-moving party.

* * * * *

(e) *Motion to dismiss.* A respondent may file a motion to dismiss any time before a decision is issued. If an answer or response has not been filed, the motion to dismiss stays the time to answer or respond. If the Judge denies the motion, and an answer or response has not been filed, the respondent must file the answer or response within 20 days after the order deciding the motion.

(f) *Motion for an extension of time.* Except for good cause shown, a motion for an extension of time must be filed at least two days before the original deadline.

24. Amend § 134.212 as follows:

a. In paragraph (c), remove the words ''serve and file'' and add in their place the words ''file and serve';

b. In paragraph (d), remove the words ''serving and filing'' and add in their place the words ''filing and serving'; and

c. Add a new paragraph (e), to read as follows:

§ 134.212 Summary Decision.

* * * * *

(e) *Appeal petitions from SBA determinations (other than 8(a) determinations).* In a case involving an appeal petition, except as provided in subpart D of this part, if SBA has provided multiple grounds for the determination being appealed, SBA may move for summary decision on one or more grounds. If the Judge finds that there is no genuine issue of material fact and the SBA is entitled to a decision in its favor as a matter of law as to any such ground, the Judge will grant the motion for summary decision and dismiss the appeal.

25. In § 134.213, paragraph (d), remove the words ''serve and file'' and add in their place the words ''file and serve.''

26. Amend § 134.214 as follows:

a. In paragraph (a), add a new sentence at the end; and

b. In paragraph (d), revise the first two sentences.

The revisions and additions read as follows:

§ 134.214 Subpoenas.

(a) * * * Subpoenas are not authorized for proceedings relating to internal Agency determinations, such as Employee Disputes.

* * * * *

(d) *Motion to quash.* A motion to limit or quash a subpoena must be filed and served within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be filed and served within 10 days after service of the motion, unless a shorter time is specified by the Judge. * * *

§ 134.215 [Amended]

27. In § 134.215, paragraph (b), remove the words ''serve and file'' and add in their place the words ''file and serve.''

28. In § 134.217, revise the first sentence and add two new sentences after the first sentence, to read as follows:

§ 134.217 Settlement.

At any time during the pendency of a case, the parties may submit a joint motion to dismiss the appeal if they have settled the case, and may file with such motion a copy of the settlement agreement. If the Judge has express authority, under statute, SBA regulation or SBA standard operating procedures, to review the contents of a settlement agreement for legality, the Judge may order the parties to file a copy of the settlement agreement. Otherwise, upon the filing of a joint motion to dismiss, the Judge will issue an order dismissing the case. * * *

29. In § 134.226, paragraph (b), add a sentence at the end to read as follows:

§ 134.226 The decision.

* * * * *

(b) * * * Time limits for decisions in other types of cases, if any, are indicated either in the applicable program regulations or in other subparts of this part 134.

* * * * *

30. Revise § 134.227 to read as follows:

§ 134.227 Finality of decisions.

(a) *Initial decisions.* Except as otherwise provided in paragraph (b) of this section, a decision by the Judge on the merits is an initial decision. However, unless a request for review is filed pursuant to § 134.228(a), or a request for reconsideration is filed pursuant to paragraph (c) of this section, an initial decision shall become the final decision of the SBA 30 days after its service.

(b) *Final decisions.* A decision by the Judge on the merits shall be a final decision in the following proceedings:

(1) Collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter;

(2) Appeals from SBA 8(a) program determinations under the Act and part 124 of this chapter;

(3) Appeals from size determinations and NAICS code designations under part 121 of this chapter; and

(4) In other proceedings as provided either in the applicable program regulations or in other subparts of this part 134.

(c) *Reconsideration.* Except as otherwise provided by statute, the applicable program regulations, or this part 134, an initial or final decision of the Judge may be reconsidered. Any party may request reconsideration by filing with the Judge and serving a petition for reconsideration within 20 days after service of the written decision, upon a clear showing of an error of fact or law material to the decision. The Judge also may reconsider a decision on his or her own initiative.

31. Amend § 134.228 as follows:

a. In paragraph (b), remove the words ''serve and file with OHA'' and add in their place the words ''file and serve'';

b. Revise paragraph (a).

The revisions read as follows:

§ 134.228 Review of initial decisions.

(a) *Request for review.* Within 30 days after the service of an initial decision or a reconsidered initial decision of a Judge, any party, or SBA's Office of General Counsel, may file and serve a request for review by the Administrator. A request for review must set forth the filing party's specific objections to the initial decision, and any alleged support for those objections in the record, or in case law, statute, regulation, or SBA policy. A party must serve its request for review upon all other parties and upon SBA's Office of General Counsel.

* * * * *

32. Revise § 134.229 to read as follows:

§ 134.229 Termination of jurisdiction.

Except when the Judge reconsiders a decision or remands the case, the jurisdiction of OHA will terminate upon the issuance of a decision resolving all material issues of fact and law. If the Judge reconsiders a decision, OHA's jurisdiction terminates when the Judge issues the decision after reconsideration. If the Judge remands the case, the Judge may retain jurisdiction at his or her own discretion, and the remand order may include the terms and duration of the remand.

33. Revise the heading for subpart C to read as follows:

Subpart C—Rules of Practice for Appeals From Size Determinations and NAICS Code Designations

§ 134.301 [Amended]

34. In § 134.301, paragraph (b), remove the acronym ''SIC'' and add in its place the acronym ''NAICS.''

35. In § 134.302, revise the introductory text and paragraph (b) to read as follows:

§ 134.302 Who may appeal.

Appeals from size determinations and NAICS code designations may be filed with OHA by the following, as applicable:

* * * * *

(b) Any person adversely affected by a NAICS code designation. However, with respect to a particular sole source 8(a) contract, only the AA/8(a)BD may appeal a NAICS code designation;

* * * * *

36. Revise § 134.303 to read as follows:

§ 134.303 Advisory opinions.

The Office of Hearings and Appeals does not issue advisory opinions.

37. In § 134.304, revise the heading and paragraph (a) to read as follows:

§ 134.304 Commencement of appeals from size determinations and NAICS code designations.

(a) Appeals from size determinations and NAICS code designations must be commenced by filing and serving an appeal petition as follows:

(1) If the appeal is from a size determination in a pending procurement or pending Government property sale, then the appeal petition must be filed and served within 15 days after appellant receives the size determination;

(2) If appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the appeal petition must be filed and served within 30 days after appellant receives the size determination;

(3) If appeal is from a NAICS code designation, then the appeal petition must be filed and served within 10 days after the issuance of the initial solicitation. If the appeal relates to an amendment affecting the NAICS code, then the appeal petition must be filed and served within 10 days after the issuance of the amendment.

* * * * *

38. Amend § 134.305 as follows:

a. In paragraphs (a)(1), (a)(3), and (c), remove the acronym ''SIC'' wherever it appears and add in its place the acronym ''NAICS';

b. In paragraph (a)(4), before the word ''and,'' add the words ''facsimile number,'' ; and

c. Revise paragraph (d) to read as follows:

§ 134.305 The appeal petition.

* * * * *

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d) of this part.

* * * * *

39. Amend § 134.306 as follows:

a. Revise the section heading;

b. Designate as paragraph (a) the first sentence of the existing undesignated text;

c. Remove the last sentence of the existing undesignated text; and

d. Add a new paragraph (b), to read as follows:

§ 134.306 Transmission of the case file and solicitation.

* * * * *

(b) Upon receipt of an appeal petition pertaining to a NAICS code designation, or a size determination made in connection with a particular procurement, the procuring agency contracting officer must immediately send to OHA a paper copy of both the original solicitation relating to that procurement and all amendments.

40. In § 134.308, revise paragraph (a)(2) to read as follows:

§ 134.308 Limitation on new evidence and adverse inference from non-submission in appeals from size determinations.

(a) * * *

(2) A motion is filed and served establishing good cause for the submission of such evidence. The offered new evidence must be filed and served with the motion.

* * * * *

41. In § 134.309, revise paragraph (a) and paragraph (b) to read as follows:

§ 134.309 Response to an appeal petition.

(a) *Who may respond.* Any person served with an appeal petition, any intervenor, or any person with a general interest in an issue raised by the appeal may file and serve a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits.* The Judge will issue a Notice and Order informing the parties of the filing of the appeal petition, establishing the close of record as 15 days after service of the Notice and Order, and informing the parties that OHA must receive any responses to the appeal petition no later than the close of record.

* * * * *

42. In § 134.310, remove the acronym ''SIC'' and add in its place the acronym ''NAICS.''

43. In § 134.311, remove the acronym ''SIC'' and add in its place the acronym ''NAICS.''

44. Revise § 134.313 to read as follows:

§ 134.313 Applicability of subpart B provisions.

Although the provisions of subpart B of this part and this subpart C apply to appeals from size determinations and NAICS code designations, the provisions of this subpart shall govern.

§ 134.314 [Amended]

45. In § 134.314, remove the acronym ''SIC'' and replace it with the acronym ''NAICS.''

46. In § 134.316, add a new sentence at the end of paragraph (b); and add new paragraph (d) to read as follows:

§ 134.316 The decision.

* * * * *

(b) * * * Where a size appeal is dismissed, the Area Office size determination remains in effect.

* * * * *

(d) *Reconsideration.* The decision in a NAICS code appeal may not be reconsidered.

47. Remove existing § 134.317, and redesignate existing § 134.318 as § 134.317 and revise it, to read as follows:

§ 134.317 Return of the case file.

Upon issuance of the decision, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

48. In § 134.402, add two sentences at the end, to read as follows:

§ 134.402 Appeal petition.

* * * This section does not apply to suspension appeals. For suspensions, see § 124.305.

49. Amend § 134.403 as follows:

a. Remove paragraph (a)(3); and

b. In paragraph (b), remove the words ''Service should be addressed to'' and add in their place the word ''Serve.''

50. Amend § 134.406 as follows:

a. Revise paragraph (a);

b. In paragraph (b), revise the first sentence;

c. In paragraph (c), revise the first sentence; and add two new sentences at the end;

d. Revise paragraph (d); and

e. Revise paragraph (e).

The revisions and additions read as follows:

§ 134.406 Review of the administrative record.

(a) Any proceeding conducted under § 134.401(a) through (d) shall be decided solely on a review of the written administrative record, except as provided in § 134.407 and in suspension appeals. For suspension appeals under § 134.401(e), see § 124.305(d).

(b) Except in suspension appeals, the Administrative Law Judge's review is limited to determining whether the Agency's determination is arbitrary, capricious, or contrary to law. * * *

(c) The administrative record must contain all documents that are relevant to the determination on appeal before the Administrative Law Judge and upon which the SBA decision-maker, and those SBA officials that either recommended for or against the decision, relied. * * * The petitioner may object to the absence of a document, previously submitted to, or sent by, SBA, which the petitioner believes was erroneously omitted from the administrative record. In the absence of any objection by the petitioner or a finding by the Judge pursuant to paragraph (e) of this section that the record is insufficiently complete to decide whether the determination was arbitrary, capricious, or contrary to law, the administrative record submitted by SBA shall be deemed complete.

(d) Where the Agency files its response to the appeal petition after the date specified in § 134.206, the Administrative Law Judge may decline to consider the response and base his or her decision solely on a review of the administrative record.

(e) The Administrative Law Judge may remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this title, to the Administrator) for further consideration if he or she determines that, due to the absence in the written administrative record of the reasons upon which the determination was based, the administrative record is insufficiently complete to decide whether the determination is arbitrary, capricious or contrary to law. In the event of such a remand, the Judge will not require the SBA to supplement the administrative record other than to supply the reason or reasons for the determination and any documents submitted to, or considered by, SBA in connection with any reconsideration permitted by regulation that occurs during the remand period. After such a remand, in the event the Judge finds that the reasons upon which the determination is based are absent from any supplemented record, the Judge will find the SBA determination to be arbitrary, capricious, or contrary to law. The Administrative Law Judge may also remand a case to the AA/8(a)BD (or, in the case of a denial of a request for waiver under § 124.515 of this title, to the Administrator) for further consideration where it is clearly apparent from the record that SBA made an erroneous factual finding (*e.g.,* SBA double counted an asset of an individual claiming disadvantaged status) or a mistake of law (*e.g.,* SBA applied the wrong regulatory provision in evaluating the case). A remand under this section will be for a reasonable period.

§ 134.407 [Amended]

51. In § 134.407, paragraph (a), remove the word ''The'' at the beginning and replace it with the words ''Except in suspension appeals, the.''

§ 134.408 [Redesignated as § 134.409]

52. Redesignate existing § 134.408 as § 134.409.

53. Add a new § 134.408 as follows:

§ 134.408 Summary decision.

(a) *Generally.* In any appeal under this subpart D, either party may move or cross-move for summary decision, as provided in § 134.212 of this chapter.

(b) *Summary decision based on fewer than all grounds.* If SBA has provided multiple grounds for the 8(a) determination being appealed, SBA may move for summary decision on one or more grounds.

(1) *Non-suspension cases.* Except in suspension appeals, if the Judge finds that there is no genuine issue of material fact as to whether SBA acted arbitrarily, capriciously, or contrary to law as to any such ground or grounds, and that the SBA is entitled to a decision in its favor as a matter of law, the Judge will grant the motion for summary decision and dismiss the appeal.

(2) *Suspension cases.* In suspension appeals, if the Judge finds that there is no genuine issue of material fact as to whether adequate evidence exists that protection of the Federal Government's interest requires suspension, as to any such ground or grounds for the proposed suspension, the SBA is entitled to a decision in its favor as a matter of law, and the Judge will grant the motion for summary decision and dismiss the appeal.

§ 134.409 [Amended]

54. In redesignated § 134.409, paragraph (b), remove the second sentence.

Hector V. Barreto,

Administrator.

[FR Doc. 02–5613 Filed 3–11–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–4]

Proposed Establishment of Class D Airspace; Greenville Donaldson Center, SC, Proposed Amendment of Class E2 Airspace; Greer, Greenville-Spartanburg Airport, SC, and Proposed Amendment of Class E5 Airspace; Greenville, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D airspace at Greenville Donaldson Center, SC, and amend Class E5 airspace at Greenville, SC. A Federal contract tower with a weather reporting system is being constructed at the Donaldson Center Airport. Therefore, the airport will meet the criteria for establishment of Class D Airspace. Class D surface area airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the Donaldson Center Airport. A regional evaluation has determined the existing Class E5 airspace area should be amended to contain the Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 5 SIAP. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) southwest of Donaldson Center Airport is needed to contain the SIAP. This action would also make a technical amendment to the Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and the Class E5 airspace description at Greenville, SC, by changing the name of the Greenville-Spartanburg Airport to the Greenville-Spartanburg International Airport.

DATES: Comments must be received on or before April 11, 2002.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Docket No. 02–ASO–4, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Greenville Donaldson Center, SC, and amend Class E5 airspace at Greenville, SC. This proposal would also make a technical amendment to Class E2 airspace at Greer, Greenville-Spartanburg Airport, SC, and the Class E5 airspace description at Greenville, SC, by changing the name of the Greenville-Spartanburg Airport to the Greenville-Spartanburg International Airport. This name change was effective on October 31, 1995. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as surface areas and airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6002, and 6005 respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO SC D Greenville Donaldson Center Airport, SC [NEW]

Greenville, Donaldson Center Airport, SC
(Lat. 34°45′30, long. 80°22′35″ W)
Greenville Downtown Airport
(Lat. 34°50′52, long. 82°21′00″ W)
Greenville-Spartanburg International Airport
(Lat. 34°53′56, long. 82°12′49″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Donaldson Center Airport, excluding that airspace within the Greenville Downtown Airport Class D airspace area, and excluding that airspace within the Greenville-Spartanburg International Airport Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO SC E2 Greer, Greenville-Spartanburg International Airport, SC [REVISED]

Greenville-Spartanburg International Airport, SC
(Lat. 34°53′56, long. 82°12′49″ W)

Within a 5-mile radius of the Greenville-Spartanburg International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time

will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO SC E5 Greenville, SC [REVISED]

Greenville Downtown Airport, SC
(Lat. 34°50′52, long. 82°21′00″ W)
Greenville-Spartanburg International Airport
(Lat. 34°53′56, long. 82°12′49″ W)
Donaldson Center Airport
(Lat. 34°45′30, long. 80°22′35″ W)
DYANA NDB
(Lat. 34°41′28, long. 82°26′37″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Greenville Downtown Airport and within a 10 mile radius of Greenville-Spartanburg International Airport and within a 6.7-mile radius of Donaldson Center Airport and within 4 miles northwest and 8 miles southeast of 224° bearing from the DYANA NDB extending from the 6.7-mile radius to 16 miles southwest of the Donaldson Center Airport.

* * * * *

Issued in College Park, Georgia, on March 5, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–5877 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102740–02]

RIN 1545–BA52

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document contains proposed regulations under sections 337(d) and 1502 of the Internal Revenue Code. These regulations permit certain losses recognized on sales of subsidiary stock by members of a consolidated group. The regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 10, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for July 17, 2002, at 10 a.m., must be received by June 26, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–102740–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 6 p.m. to CC:ITA:RU (REG–102740–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in the Internal Revenue Service Auditorium, in the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sean P. Duffley, (202) 622–7530, or Lola L. Johnson, (202) 622–7550; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by May 6, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start up-costs and the costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.337(d)–2T, 1.1502–20T, and 1.1502–32T. The collection of information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)–2T, § 1.1502–20 as currently in effect, or under § 1.1502–20 modified so that the amount of allowable loss determined pursuant to § 1.1502–20(c)(1) is computed by taking into account only the amounts computed under § 1.1502–20(c)(1)(i) and (ii); to allow the taxpayer to reapportion a section 382 limitation in certain cases; to allow the taxpayer to waive certain loss carryovers; and to ensure that loss is not disallowed under § 1.337(d)–2T and basis is not reduced under § 1.337(d)–2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset. The collection of information is required to obtain a benefit. The likely respondents are corporations that file consolidated income tax returns.

Estimated total annual reporting burden: 30,000 hours.

Estimated average annual burden hours per respondent: 2 hours.

Estimated number of respondents: 15,000.

Estimated annual frequency of responses: once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating

to sections 337(d) and 1502. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

The IRS and Treasury are undertaking a study of the various approaches that could be implemented to give full effect to section 337(d) and to reflect the single entity principles of the consolidated return rules. Among the approaches the IRS and Treasury are studying is one that would deny positive investment adjustments for gain recognized and income attributable to the disposition or consumption of built-in gain assets held by the subsidiary at the time it joined the consolidated group. In addition, the IRS and Treasury are considering allowing selling groups to deduct subsidiary stock losses that would otherwise reflect duplicated loss, if the subsidiary reduces its attributes (including net operating loss carryovers and asset basis) immediately prior to the disposition. Comments are requested concerning any approaches that may be employed to allow appropriate losses in a manner that is administrable for both taxpayers and the government.

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing has been scheduled for July 17, 2002, at 10 a.m., in the IRS Auditorium, IRS Building, 1111 Constitution, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

Drafting Information

The principal authors of these regulations are Sean P. Duffley and Lola L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.337(d)–2 is added to read as follows:

§ 1.337(d)–2 Loss limitation window period.

[The text of this proposed section is the same as the text of § 1.337(d)-2T published elsewhere in this issue of the **Federal Register**].

Par. 3. In § 1.1502–20, paragraph (i) is added to read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

[The text of this proposed section is the same as the text of § 1.1502–20T(i) published elsewhere in this issue of the **Federal Register**].

Par. 4. In § 1.1502–32, paragraph (b)(4)(v) is added to read as follows:

§ 1.1502–32 Investment adjustments.

[The text of this proposed section is the same as the text of § 1.1502–32T(b)(4)(v) published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–5851 Filed 3–7–02; 3:17 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–7157–4]

Unregulated Contaminant Monitoring Regulation for Public Water Systems; Establishment of Reporting Date

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This action proposes to establish August 9, 2002, as a new, later date by which large public water systems serving more than 10,000 persons must report all contaminant monitoring laboratory results they receive before May 13, 2002, for the unregulated contaminant monitoring Regulation (UCMR) monitoring program. Monitoring results received on or after May 13, 2002, would have to be reported within 30 days following the month in which laboratory results are received, as specified in the current regulation for this program.

DATES: Comments must be received in writing by April 11, 2002.

ADDRESSES: Please send an original and three copies of your comments and enclosures (including references) to docket number W–00–01–IV, Comment Clerk, Water Docket (MC4101), USEPA, 1200 Pennsylvania Ave., NW Washington, DC 20460. Due to the uncertainty of mail delivery in the Washington DC area, in order to ensure that your comments are received, please also send a separate copy of your comments to Greg Carroll, USEPA, 26 West Martin Luther King Drive, MC–140, Cincinnati, Ohio 45268. Hand deliveries should be delivered to EPA's Water Docket at 401 M. St., Room EB57, Washington, DC. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov.* Electronic comments must be submitted as a Word Perfect (WP), WP5.1, WP6.1 or WP8 file or as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–00–01-IV. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

The record for this proposed rulemaking has been established under

docket number W–00–01–IV and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M. St., SW, Washington, DC. For access to docket materials, please call 202/260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Jeffrey Bryan (202) 564–3942, Drinking Water Protection Division, Office of Ground Water and Drinking Water (MC–4606–M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about UCMR may be obtained from the EPA Safe Drinking Water Hotline at (800) 426–4791. The Hotline operates Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. ET.

SUPPLEMENTARY INFORMATION:

EPA is proposing to approve a revision to the UCMR for Public Water Systems. In the ''Rules and Regulations'' section of today's **Federal Register**, EPA is approving a revision to the Unregulated Contaminant Monitoring Regulation for Public Water Systems as a direct final rule without prior proposal because EPA views this as noncontroversial revision and anticipates no adverse comment. EPA has explained our reasons for this approval in the preamble to the direct final rule. If EPA receives no adverse comment, it will not take further action on this proposed rule. If EPA receives adverse comment, the Agency will withdraw the direct final rule and it will not take effect. EPA would then address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the direct final rule titled ''Unregulated Contaminant Monitoring Regulation for Public Water Systems; Establishment of Reporting Date'' that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. For the various statutes and executive orders that require findings for rulemaking, EPA incorporates the findings from the direct final rule into this companion proposal for the purpose of providing public notice and opportunity for comment.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indian lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 7, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–6017 Filed 3–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7526]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
ILLINOIS Cook County (Unincorporated Areas).				
Addison Creek	Approximately 360 feet upstream of 21st Street.	*620	*621	Village of Bellwood, Village of Broadview, Cook County.
	Approximately 180 feet upstream of Tri-State Tollway.	None	*656	(Unincorporated Areas), Village of Hillside, Village of Maywood, Village of Melrose Park, City of Northlake, Village of Stone Park, Village of Westchester.

Village of Broadview

Maps available for inspection at the Broadview Village Hall, 2350 South 25th Avenue, Broadview, Illinois.

Send comments to The Honorable Henry Vicenik, Mayor of the Village of Broadview, 2350 South 25th Avenue, Broadview, Illinois 60155.

Village of Hillside

Maps available for inspection at the Hillside Department of Public Works and Building Services, 4151 May Street, Hillside, Illinois.

Send comments to The Honorable Joseph T. Tamburino, Mayor of the Village of Hillside, 30 North Wolf Road, Hillside, Illinois 60162.

Village of Westchester

Maps available for inspection at the Westchester Village Hall, 10300 Roosevelt Road, Westchester, Illinois.

Send comments to Mr. John Sinde, Westchester Village President, 10300 Roosevelt Road, Westchester, Illinois 60154.

Unincorporated Areas of Cook County

Maps available for inspection at the Cook County Department of Building and Zoning, 69 West Washington Street, Chicago, Illinois.

Send comments to Mr. John H. Stroger, Jr., 118 North Clark Street, Room 537, Chicago, Illinois 60602.

City of Northlake

Maps available for inspection at the Northlake City Hall, Building Department, 55 East North Avenue, Northlake, Illinois.

Send comments to The Honorable Jeffrey Sherwin, Mayor of the City of Northlake, 55 East North Avenue, Northlake, Illinois 60164.

Village of Maywood

Maps available for inspection at the Maywood Village Hall, 40 Madison Street, Maywood, Illinois.

Send comments to The Honorable Ralph Conner, Mayor of the Village of Maywood, 40 Madison Street, Maywood, Illinois 60153.

Village of Bellwood

Maps available for inspection at the Bellwood Village Hall, Building Department, 3200 Washington Boulevard, Bellwood, Illinois.

Send comments to The Honorable Frank Pasquale, Mayor of the Village of Bellwood, 3200 Washington Boulevard, Bellwood, Illinois 60104.

Village of Melrose Park

Maps available for inspection at the Melrose Park Village Hall, 1000 North 25th Avenue, Melrose Park, Illinois.

Send comments to The Honorable Ronald M. Serpico, Mayor of the Village of Melrose Park, 1000 North 25th Avenue, Melrose Park, Illinois 60160.

Village of Stone Park

Maps available for inspection at the Stone Park Village Hall, 1629 North Mannheim Road, Stone Park, Illinois.

Send comments to The Honorable Beniamino Mazzulla, Mayor of the Village of Stone Park, 1629 North Mannheim Road, Stone Park, Illinois 60165.

NORTH CAROLINA Onslow County (Unincorporated Areas)				
Atlantic Ocean	At Intracoastal Waterway and Salliers Bay confluence.	•7	•8	Onslow County (Unincorporated Areas).
	Approximately 2,000 feet east of River Drive and New River Inlet Road intersection.	•15	•18	
Bachelor's Delight Swamp.	At the confluence with New River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence of Bachelor's Delight Swamp Tributary 2.	None	•29	
Bachelor's Delight Swamp Tributary.	Approximately 0.5 mile upstream of the confluence with Bachelor's Delight Swamp.	None	•30	Onslow County (Unincorporated Areas).
	Approximately 1,150 feet upstream of Timothy Road.	None	•34	
Bachelor's Delight Swamp Tributary 2.	At the confluence with Bachelor's Delight Swamp.	None	•21	Onslow County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1,400 feet upstream of the confluence with Bachelor's Delight Swamp.	None	•26	
Bear Creek	Approximately 150 feet downstream of NC 172.	None	•9	Onslow County (Unincorporated Areas).
	Approximately 1.4 miles upstream of NC 172.	None	•31	
Bearhead Creek ..	Approximately 0.8 mile upstream of the confluence with Wallace Creek.	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 1.3 miles upstream of Holcomb Boulevard.	None	•21	
Bell Swamp	Approximately 800 feet upstream of NC 172.	None	•10	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Hubert Boulevard.	None	•32	
Blue Creek	Approximately 1.4 miles upstream of Richlands Highway.	None	•18	Onslow County (Unincorporated Areas).
	Approximately 300 feet upstream of Pony Farm Road.	None	•44	
Brick Kiln Branch (at White Oak River).	At the confluence with White Oak River	None	•11	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with White Oak River.	None	•17	
Cartwheel Branch	At the confluence with Holland Mill Creek.	None	•8	Onslow County (Unincorporated Areas).
	Approximately 125 feet upstream of Swansboro Loop Road.	None	•10	
Chinkapin Branch	At the confluence with White Oak River	None	•38	Onslow County (Unincorporated Areas).
	Approximately 1.7 miles upstream of confluence with White Oak River.	None	•42	
Cogdels Creek	Approximately 100 feet upstream of the confluence with New River.	•2	•3	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Sneads Ferry Road.	None	•24	
Cowford Branch ..	At the confluence with New River	None	•39	Onslow County (Unincorporated Areas).
	Approximately 0.56 mile upstream of State Route 24.	None	•51	
Cowhead Creek ..	Approximately 0.6 mile upstream of the confluence with Frenchs Creek.	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Sneads Ferry Road	None	•35	
Cowhorn Swamp	Approximately 50 feet upstream of the confluence with Jenkins Swamp.	•31	•32	Onslow County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Hoffmann Forest Road.	None	•52	
Deep Run	At the confluence with Southwest Creek	None	•27	Onslow County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Ben Williams Road.	None	•51	
Freemans Creek	At the confluence with White Oak River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with White Oak River.	None	•9	
Frenchs Creek	At the confluence of Jumping Run	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.6 mile upstream of Marine Road.	None	•16	
Gibson Branch	At the confluence with White Oak River	None	•24	Onslow County (Unincorporated Areas).
	Approximately 1.1 miles upstream of White Oak River Road.	None	•41	
Grants Creek	At the confluence with White Oak River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 700 feet upstream of the confluence of Halls Branch (Cummins Creek).	None	•14	
Half Moon Creek	At the confluence with New River	None	•9	Onslow County (Unincorporated Area), City of Jacksonville.
	Approximately 1.3 miles upstream of Ramsey Road.	None	•44	
Half Moon Creek Tributary 1.	At the confluence with Half Moon Creek	None	•24	Onslow County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1,830 feet upstream of the confluence with Half Moon Creek.	None	•28	
Hargetts Creek	Approximately 1.4 miles upstream of the confluence with White Oak River.	None	•9	Onslow County (Unincorporated Areas).
	Approximately 1,100 feet downstream of Sloan Farm Road.	None	•15	
Harris Creek	At the confluence with Southwest Creek	None	•24	Onslow County (Unincorporated Areas).
	Approximately 1,900 feet upstream of Harris Creek Road.	None	•42	
Harris Creek Tributary 1.	At the confluence with Harris Creek	None	•32	Onslow County (Unincorporated Areas).
	Approximately 500 feet upstream of Burgaw Highway.	None	•39	
Haws Run	At the confluence with Southwest Creek	None	•18	Onslow County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Haws Run Road.	None	•40	
Haws Run Tributary 1.	At the confluence with Haws Run	None	•23	Onslow County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence with Haws Run.	None	•23	
Haws Run Tributary 2.	At the confluence with Haws Run	None	•27	Onslow County Unincorporated Areas).
	Approximately 200 feet upstream of Harris Creek Road.	None	•33	
Hicks Run	At the confluence with Southwest Creek	•2	•6	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.9 mile upstream of High Hill Road.	None	•46	
Holland Mill Creek	Approximately 1.9 miles upstream of the confluence with White Oak river.	None	•8	Onslow County (Unincorporated Areas).
	Approximately 1,250 feet upstream of Belgrade Swansboro Road.	None	•21	
Horse Swamp	At the confluence with Little Northeast Creek.	None	•14	Onslow County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Rocky Run Road.	None	•36	
Jenkins Swamp ...	At confluence with New River	•25	•24	Onslow County (Unincorporated Areas).
	Approximately 0.4 miles upstream of SR 1003.	None	•55	
Jumping Run	At the confluence with French Creek	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 1.2 miles upstream of Sneads Ferry Road.	None	•26	
Little Northeast Creek.	At the confluence with Northeast Creek	None	•2	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 3.0 miles upstream of the confluence with Horse Swamp.	None	•28	
Mill Run	At the confluence with Southwest Creek	•2	•3	Onslow County (Unincorporated Areas).
	Approximately 2.3 miles upstreat of Verona Road.	None	•37	
Mill Swamp	At the confluence with New River	•25	•24	Onslow County (Unincorporated Areas), Twn of Richlands.
	Approximately 1,000 feet upstream of North Wilmington Street.	None	•35	
New River	Approximately 0.4 mile upstream of the confluence with Blue Creek.	None	•7	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.5 mile upstream of State Route 1235.	None	•73	
New River Tributary.	At the confluence with New River	None	•50	Onslow County (Unincorporated Areas).
	Approximately 50 feet upstream of Al Taylor Road.	None	•74	
New River Tributary 2.	At the confluence with New River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Richlands Highway.	None	•45	
New River Tributary 3.	At the confluence with New River Tributary 2.	None	•16	Onslow County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.0 mile upstream of the confluence with New River Tributary 2.	None	•33	
New River Tributary 4.	At the confluence with New River	None	•19	Onslow County (Unincorporated Areas).
	Approximately 150 feet upstream of Richlands Highway.	None	•44	
New River Tributary 5.	At the confluence with New River	None	•22	Onslow County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Duffy Field Road.	None	•42	
New River Tributary 6.	At the confluence with New River Tributary 5.	None	•25	Onslow County (Unincorporated Areas).
	Approximately 1,700 feet upstream of the confluence with New River Tributary 5.	None	•27	
New River Tributary 7.	At the confluence with New River Tributary 5.	None	•26	Onslow County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with New River Tributary 5.	None	•44	
Northeast Creek ..	At the confluence of Little Northeast Creek.	None	•2	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.6 mile upstream of North Marine Boulevard.	None	•27	
Northeast Creek Tributary.	At the confluence with Northeast Creek	None	•9	City of Jacksonville.
	Approximately 0.4 mile upstream of the confluence with Northeast Creek.	None	•10	
Northeast Creek Tributary 2.	At the confluence with Northeast Creek	None	•7	City of Jacksonville.
	Approximately 0.6 mile upstream of the confluence with Northeast Creek.	None	•9	
North Branch at Lauradale Subdivision.	At confluence with New River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 0.7 mile upstream of confluence with New River.	None	•9	
Parrot Swamp	Approximately 1,850 feet upstream of Queens Creek Road.	•9	•10	Onslow County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Queens Creek Road.	None	•20	
Poplar Creek	At the confluence Little Northeast Creek	None	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.4 mile upstream of Water Road.	None	•26	
Queen Creek	Approximately 1.2 miles upstream of NC 24.	None	•10	Onslow County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Camp Lejeune Railroad.	None	•25	
Rocky Run	At confluence with Little Northeast Creek	None	•8	Onslow County (Unincorporated Areas).
	Approximately 1,400 feet upstream of confluence with Little Northeast Creek.	None	•13	
South Branch at Lauradale Subdivision.	At the confluence with North Branch at Lauradale Subdivision.	None	•9	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 1.0 mile upstream of the confluence with North Branch at Lauradale Subdivision.	None	•36	
Southwest Creek	Approximately 2.5 miles upstream of the confluence with New River.	•2	•3	Onslow County (Unincorporated Areas), City of Jacksonville.
	Approximately 0.6 mile upstream of Five Mile Road.	None	•65	
Southwest Creek Tributary 2.	At the confluence with Southwest Creek	None	•46	Onslow County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Red Lane.	None	•56	
Southwest Creek Tributary 3.	At the confluence with Southwest Creek	None	•54	Onslow County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with Southwest Creek.	None	•68	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Southwest Creek Tributary 4.	At the confluence with Southwest Creek Tributary 3.	None	•61	Onslow County (Unincorporated Areas).
	Approximately 1,700 feet upstream of Five Mile Road.	None	•70	
Starkys Creek	At confluence with White Oak River	None	•10	Onslow County (Unincorporated Areas).
	Approximately 1,750 feet upstream of I–17.	None	•44	
Stump Sound	At the intersection of Chadwick Acres Road and Carroll Street.	•6	•8	Onslow County (Unincorporated Areas).
	Approximately 1,000 feet south of the intersection of Harbor Point Road and Ocracoke Road.	•7	•11	
Wallace Creek	At the upstream side of Norfolk Southern Railway.	•2	•3	Onslow County (Unincorporated Areas).
	Approximately 4.2 miles upstream of Holcomb Boulevard.	None	•22	
Wallace Creek	At the confluence with Wallace Creek	None	•14	Onslow County (Unincorporated Areas).
Tributary 1	Approximately 500 feet downstream of Lejeune Boulevard.	None	•;27	
Webb Creek	At the confluence with White Oak River	None	•9	Onslow County (Unincorporated Areas).
	Approximately 1,200 feet downstream of Parkertown Road.	None	•20	
White Oak River ..	Approximately 500 feet upstream of the confluence of Webb Creek.	None	•9	Onslow County (Unincorporated Areas).
	At the confluence of Chinkapin Branch ...	None	•38	
Wolf Swamp	At North Marine Boulevard	None	•22	Onslow County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Ramsey Road.	None	•42	

Onslow County (Unincorporated Areas).

Maps available for inspection at the Onslow County Floodplain Administration, 604 College Street, Jacksonville, North Carolina.

Send comments to Mr. Ron Lewis, Onslow County Manager, 118 Old Bridge Street, Jacksonville, North Carolina 28540.

City of Jacksonville

Maps available for inspection at the Jacksonville City Hall, 211 Johnson Boulevard, Jacksonville, North Carolina.

Send comments to The Honorable George Jones, Mayor of the City of Jacksonville, P.O. Box 128, Jacksonville, North Carolina 28541.

Town of Richlands

Maps available for inspection at the Richlands Town Hall, 106 North Wilmington Street, Jacksonville, North Carolina.

Send comments to Mr. Greg Whitehead, Town of Richlands Administrator, P.O. Box 245, Richlands, North Carolina 28574.

PENNSYLVANIA

(Westmoreland County, Borough of Scottdale, Township of Mt. Pleasant, Township of East Huntingdon)

Jacobs Creek	At State Route 819	•1,021	•1,020	Township of East Huntingdon.
	A point approximately 0.82 mile upstream of State Route 982.	•1,286	•1,288	Borough of Scottdale, Township of Mt. Pleasant.
Stauffer Run	Approximately 340 feet upsteam of confluence with Jacobs Creek (Lower Reach).	•1,036	•1,031	Borough of Scottdale.
	Approximately 1,100 feet upstream of State Route 819.	•1,038	•1,040	
Laurel Run	At the confluence with Jacobs Creek	•1,214	•1,219	Township of Mt. Pleasant.
	Approximately 1,530 feet upstream of Jacobs Creek.	•1,236	•1,244	
Shupe Run	At the confluence with Jacobs Creek	None	•1,040	Township of East Huntingdon.
	Approximately 42 feet downstream of the CONRAIL bridge.	•1,045	•1,046	Township of Mt. Pleasant.

Borough of Scottdale

Maps available for inspection at the Scottdale Borough Municipal Building, 10 Mount Pleasant Road, Scottdale, Pennsylvania.

Send comments to Mr. Barry D. Whoric, Scottdale Borough Manager, 10 Mount Pleasant Road, Scottdale, Pennsylvania 15683.

Township of Mt. Pleasant.

Maps available for inspection at the Mt. Pleasant Township Building, Poker Road, Mammoth, Pennsylvania.

Send comments to Mr. Don Scott, Mt. Pleasant Township Supervisor, P.O. Box 158, Mammoth, Pennsylvania 15664.

Township of East Huntingdon

Maps available for inspection at the East Huntingdon Township Building, Route 981, Alverton, Pennsylvania.

Send comments to Mr. Joe Suter, Chairman of the Township of East Huntingdon Board of Supervisors, P.O. Box 9, Alverton, Pennsylvania 15612.

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5837 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7524]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Connecticut	East Haven (Town), New Haven County.	Maloney Brook	Approximately 10 feet upstream of the confluence with Farm River Approximately 50 feet upstream of Foxon Hill Road.	*34 None	*36 *105
Maps available for inspection at the East Haven Public Works Building, 461 North High Street, East Haven, Connecticut.					
Send comments to The Honorable Joseph Maturo, Jr., Mayor of the Town of East Haven, Town Hall, 250 Main Street, East Haven, Connecticut 06512.					
Florida	Belleair (Town), Pinellas County.	Gulf of Mexico	Approximately 1,100 feet northwest of the intersection of Corbett Street and Druid Road.	• 13	• 16

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 300 feet south of the intersection of Bellevue Boulevard and Druid Road.	• 9	• 12
Maps available for inspection at the Belleair Town Hall, 901 Ponce De Leon Boulevard, Belleair, Florida. Send comments to Mr. Stephen Cottrell, Belleair Town Manager, 9091 Ponce De Leon Boulevard, Belleair, Florida 33756.					
Florida	Belleair Beach (City), Pinellas County.	Gulf of Mexico	At the intersection of Donato Drive and Altea Drive.	• 9	• 11
			Approximately 300 feet west of the intersection of Harrison Avenue and Gulf Boulevard.	• 14	• 16
Maps available for inspection at the Belleair Beach City Hall, 444 Causeway Boulevard, Belleair Beach, Florida. Send comments to The Honorable William L. Atteberry, Mayor of the City of Belleair Beach, 444 Causeway Boulevard, Belleair Beach, Florida 33786.					
Florida	Belleair Bluffs (City), Pinellas County.	Gulf of Mexico	Approximately 300 feet west of the intersection of Renatta Drive and Bluff View Drive.	• 10	• 12
			Approximately 1,700 feet west of the intersection of Lentz Road and Los Gatos Drive.	• 12	• 14
Maps available for inspection at the Belleair Bluffs City Hall, 115 Florence Drive, Belleair Bluffs, Florida. Send comments to The Honorable David Coyner, Mayor of the City of Belleair Bluffs, 115 Florence Drive, Belleair Bluffs, Florida 33770–1978.					
Florida	Belleair Shore (Town), Pinellas County.	Gulf of Mexico	Approximately 300 feet west of the intersection of 13th Street and Gulf Boulevard.	• 12	• 12
			Approximately 50 feet west of the intersection of 1st Street and gulf Boulevard.	• 9	• 12
Maps available for inspection at the Belleair shore Town Hall, 1200 Gulf Boulevard, Belleair Shore, Florida. Send comments to The Honorable George Jirotka, Mayor of the Town of Belleair Shore, 1200 Gulf Boulevard, Belleair Shore, Florida 33786.					
Florida	Clearwater (City), Pinellas County.	Gulf of Mexico	At the intersection of Fulton Avenue and Harbor Drive.	• 10	• 15
			Approximately 0.4 mile northwest of intersection of Bay Esplanade and Eldorado Avenue.	• 15	• 12
		Joe's Creek	Approximately 500 feet downstream of 49th Street North.	None	• 24
			Downstream side of 49th Street North	None	• 25
Maps available for inspection at the city of Clearwater Central Permitting Department, 100 South Myrtle Avenue, Clearwater, Florida. Send comments to Mr. Michael Roberto, Clearwater City Manger, P.O. Box 4748, Clearwater, Florida 33758–4748.					
Florida	Collier County (Unincorporated Areas).	Gulf of Mexico	Approximately 300 feet west of the intersection of Commerce Street and Gulf Shore Drive.	• 14	• 18
			At the intersection of Seagull Avenue and Vanderbilt Drive.	• 10	• 13
			Approximately 350 feet east of the intersection of Heights Court and South Barfield Drive.	• 10	• 13
			At the intersection of Guava Drive and Coconut Circle South.	None	• 6
Maps available fro inspection at the Floodplain Management Coordinator's Office, 295 Riverside Circle, Naples, Florida. Send comments to Mr. Tom Olliff, Collier County Manager, 3301 East Tamiami Trail, Naples, Florida 34112.					
Florida	Dunedin (City), Pinellas County.	Curlew Creek	At confluence with Intracoastal Waterway	• 14	• 17
			Approximately 0.34 mile upstream of County Road 1.	None	• 25
		Jerry Branch	At confluence with Curlew Creek	None	• 25
			Approximately 0.4 mile upstream of Main Street.	None	• 47
		Gulf of Mexico	Approximately 1.0 mile northwest of the intersection of Edinburgh Drive and Causeway Boulevard.	• 15	• 17

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
			Approximately 300 feet west of the intersection of Douglas Avenue and Lyndhurst Street.	• 10	• 11
Maps available for inspection at the City of Dunedin Engineering Department, 737 Louden Street, Dunedin, Florida.					
Send comments to Mr. John Lawrence, Dunedin City Manager, P.O. Box 1348, Dunedin, Florida 34697–1348.					
Florida	Everglades (City), Collier County.	Gulf of Mexico	At the intersection of Jasmine Street and Storter Avenue.	• 10	• 8
			At the intersection of Evergreen Street and Copeland Avenue.	• 9	• 7
			At end of Airport Road, where it meets Everglade Airport.	• 12	• 10
			At intersection of Begonia Street and Buckner Avenue.	• 8	• 7
Maps available for inspection at the Everglades City Clerk's Office, 102 Broadway, Everglades, Florida.					
Send comments to The Honorable Sammy Hamilton, Mayor of the City of Everglades City, P.O. Box 110, Everglades, Florida 34139.					
Florida	Gulfport (City), Pinellas County.	Gulf of Mexico Boca Ciega Bay.	Approximately 1,500 feet southeast of the intersection of Seabreeze Point Boulevard and Seabird Road.	• 12	• 6
			Approximately 300 feet east of the intersectionof Pompano Place and Dolphin Boulevard East.	• 10	• 12
Maps available for inspection at the City of Gulfport Public Services Department, 5330 23rd Avenue South, Gulfport, Florida.					
Send comments to Mr. Robert E. Lee, Gulfport City Manager, 2401 53rd Street South, Gulfport, Florida 33707.					
Florida	Indian Rocks Beach (City), Pinellas County.	Gulf of Mexico	Approximately 200 feet west of the intersection of Gulf Boulevard and 27th Avenue.	• 9	• 11
			At the intersection of 20th Avenue and Bay Boulevard.	• 12	• 15
Maps available for inspection at the Indian Rocks Beach City Hall, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.					
Send comments to The Honorable Robert Dinicola, Mayor of the City of Indian Rocks Beach, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida 33785.					
Florida	Indian Shores (Town), Pinellas County.	Gulf of Mexico	Approximately 200 feet east of the intersection of 200th Avenue and Gulf Boulevard.	• 9	• 11
			Approximately 250 feet west of the intersection of 199th Avenue and Gulf Boulevard.	• 12	• 15
Maps available for inspection at the Indian Shores Town Hall, 19305 Gulf Boulevard, Indian Shores, Florida.					
Send comments to The Honorable Robert G. McEwen, Mayor of the Town of Indian Shores, 19305 Gulf Boulevard, Indian Shores, Florida 33785.					
Florida	Kenneth City (Town), Pinellas County.	Joe's Creek	Upstream side of 66th Street	• 16	• 15
			Approximately 23 miles upstream of 58th Street.	• 23	• 21

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the Kenneth City Town Hall, 6000 54th Avenue North, Kenneth City, Florida. Send comments to The Honorable Maurice Knox, Mayor of the Town of Kenneth City, 6000 54th Avenue North, Kenneth City, Florida 33709.					
Florida	Largo (City), Pinellas County.	Gulf of Mexico	At the intersection of Indian Rocks Road and Dryer Avenue.	• 9	• 10
			Approximately 1,200 feet northwest of the intersection of Indian Rocks Road and Kent Drive.	• 11	• 13
Maps available for inspection at the Largo City Hall, Engineering Department, 225 1st Avenue, SW, Largo, Florida. Send comments to Mr. Steve Stanton, Largo City Manager, P.O. Box 296, Largo, Florida 33779–0296.					
Florida	Madeira Beach (City), Pinellas County.	Gulf of Mexico	Approximately 100 feet east of the intersection of 154th Avenue and Second Street East.	• 9	• 11
			Approximately 600 feet southwest of the intersection of 132nd Avenue and Gulf Boulevard.	• 15	• 16
Maps available for inspection at the Madeira Beach Building Department, 300 Municipal Drive, Madeira Beach, Florida. Send comments to Mr. Kim Leinbach, Madeira Beach City Manager, 300 Municipal Drive, Madeira Beach, Florida 33708.					
Florida	Marco Island (City), Collier County.	Gulf of Mexico	At intersection of Crescent Street and Thrush Court.	• 10	• 8
			At the intersection of Honduras Avenue and Stillwater Court.	• 9	• 7
			At the intersection of Huron Court and Swallow Avenue.	• 14	• 16
				• 10	• 16
			Approximately 900 feet southwest of intersection of South Barfield Drive and Heights Court.		
Maps available for inspection at the City of Marco Island Manager's Office, 50 Bald Eagle Drive, Marco Island, Florida. Send comments to Mr. A. William Moss, Manager of the City of Marco Island, 50 Bald Eagle Drive, Marco Island, Florida 34145.					
Florida	Naples (City), Collier County.	Gulf of Mexico	Approximately 600 feet west of intersection of Yucca Road and Gulf Shore Boulevard North.	• 14	• 6
			At the intersection of Gordon Drive and Champney Bay Court.	• 0	• 13
			At the intersection of Yucca Road and Banyan Boulevard.	None	• 10
Maps available for inspection at City of Naples and Collier County FEMA Coordinator's Office, 13th Street North, Naples, Florida. Send comments to Mr. Kevin Rambosk, Manager of the City of Naples, 735 Eighth Street South, Naples, Florida 34102.					
Florida	North Redington Beach (Town), Pinellas County.	Gulf of Mexico	At the intersection of Rosa Lee Way and 173rd Avenue.	• 9	• 11
			Approximately 450 feet west of the intersection of 173rd Avenue and Gulf Boulevard.	• 12	• 16
Maps available for inspection at the North Redington Beach Town Hall, 190 173rd Avenue, North Redington Beach, Florida. Send comments to The Honorable Harold Radcliffe, Mayor of the Town of North Redington Beach, 190 173rd Avenue, North Redington Beach, Florida 33708.					
Florida	Pinellas County (Unincorporated Areas).	Brooker Creek Tributary A	At East Lake Road	None	• 6
			Approximately 0.42 mile upstream of Ridgemoor Boulevard.	None	• 16
		Brooker Creek Tributary B	At confluence with Brooker Creek Tributary A.	None	• 8
			At Eastlake Woodlands Parkway	None	• 9
		Joe's Creek Tributary No. 4.	At confluence with Joe's Creek	• 12	• 10
			Approximately 0.25 mile upstream of 53rd Street.	• 18	• 17
		Joe's Creek Tributary No. 5.	At 74th Avenue (Park Boulevard)	None	• 10
			Approximately 0.26 mile upstream of Park Boulevard.	None	• 10

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
		Miles Creek	At confluence with Joe's Creek	• 15	• 13
			Approximately 700 feet downstream of 38th Avenue.	• 15	• 13
		Hollin Creek Tributary A	Approximately 0.06 mile downstream of Old East Lake Road.	None	• 9
			Approximately 0.29 mile upstream of Crescent Oaks Boulevard.	None	• 22
		Hollin Creek Tributary A–2	At confluence with Hollin Creek Tributary A.	None	• 19
			At Dirt Road	None	• 19
		Hollin Creek Tributary B	At confluence with Hollin Creek Tributary A.	None	• 12
			At Trinity Boulevard	None	• 21
		Jerry Branch	At Brady Drive	None	• 25
			At the weir on north end of Indigo Drive	None	• 47
		Joe's Creek	Approximately 1.250 feet downstream of 54th Avenue North.	• 11	• 10
			At 28th Street North	None	• 45
		Curlew Creek	Approximately 0.7 mile upstream of CSX Transportation.	• 11	• 12
			Approximately 750 feet upstream of County Road 1/Palm Harbor Road.	None	• 21
		Gulf of Mexico/Boca Ciega Bay.	At the intersection of Gulfwinds Drive West and Crosswinds Drive.	• 10	• 11
			Approximately 300 feet southwest of the intersection of Curlew Place and Florida Avenue.	• 16	• 18
Maps available for inspection at the Pinellas County Zoning Department, 310 Court Street, Clearwater, Florida.					
Send comments to Mr. Fred E. Marquis, Pinellas County Administrator, 315 Court Street, Clearwater, Florida 33756.					
Florida	Pinellas Park (City), Pinellas County.	Joe's Creek Tributary No. 4.	At 62nd Avenue North	• 11	• 14
			Approximately 0.25 mile upstream of 53rd Street North.	• 18	• 17
		Joe's Creek Tributary No. 5.	Approximately 0.26 mile upstream of Park Boulevard.	None	• 10
			Approximately 0.02 mile upstream of 61st Street North.	None	• 16
Maps available for inspection at the City of Pinellas Park Technical Services Building, 6051–78th Avenue North, Pinellas Park, Florida.					
Send comments to Mr. Robert Bray, Jr., AICP, City of Pinellas Park Floodplain Manager/Planning Director, P.O. Box 1100, Pinellas Park, Florida 33780–1100.					
Florida	Redington Beach (Town), Pinellas County.	Gulf of Mexico	At the intersection of East 3rd Street and Redington Drive.	• 9	• 11
			Approximately 500 feet west of the intersection of Gulf Boulevard and 164th Avenue.	• 15	• 16
Maps available for inspection at the Redington Beach Town Hall, 105 164th Avenue, Redington Beach, Florida.					
Send comments to The Honorable Mark Deighton, Mayor of the Town of Redington Beach, 105 164th Avenue, Redington Beach, Florida 33708.					
Florida	Redington Shores (Town), Pinellas County.	Gulf of Mexico	Approximately 100 feet north of the intersection of 1st Street and Long Point Drive.	• 9	• 11
			Approximately 600 feet west of intersection of Gulf Boulevard and Coral Avenue.	• 14	• 16
Maps available for inspection at the Redington Shores Town Hall, 17798 Gulf Boulevard, Redington Shores, Florida.					
Send comments to The Honorable J. J. Beyrouti, Mayor of the Town of Redington Shores, 17798 Gulf Boulevard, Redington Shores, Florida 33708.					
Florida	Seminole (City), Pinellas County.	Gulf of Mexico/Boca Ceiga Bay.	At the intersection of 94th Street and 46th Avenue North.	• 10	• 11
			Approximately 400 feet southeast of the intersection of Woodlawn Drive and Seminole Boulevard.	• 10	• 15

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the City of Seminole Technical Services Department, 7464 Ridge Road, Seminole, Florida. Send comments to The Honorable Dottie Reeder, Mayor of the City of Seminole, 7464 Ridge Road, Seminole, Florida 33772.					
Florida	South Pasadena (City), Pinellas County.	Gulf of Mexico/Boca Ceiga Bay.	At the intersection of Gulfport Boulevard and Pasadena Avenue.	• 10	• 12
			Approximately 500 feet west of the intersection of Sunset Drive and Bigonia Way.	• 12	• 15
Maps available for inspection at the South Pasadena City Hall, 7047 Sunset Drive South, South Pasadena, Florida. Send comments to The Honorable Fred G. Held, Jr., Mayor of the City of South Pasadena, 7047 Sunset Drive, South Pasadena, Florida 33707.					
Florida	Springfield (City), Bay County.	Watson Bayou Tributary ...	Approximately 300 feet south of the intersection of East 2nd Street and Springfield Avenue.	None	• 8
Maps available for inspection at the Springfield City Hall, 3529 East Third Street, Springfield, Florida.					
Florida	St. Pete Beach (City), Pinellas County.	Gulf of Mexico	At the intersection of 80th Way and Blind Pass Road.	• 10	• 11
			Approximately 600 feet southwest of the intersection of 72nd Avenue and Sunset Avenue.	• 15	• 16
Maps available for inspection at the St. Pete Beach City Hall, 7701 Boca Ciega Drive, St. Pete Beach, Florida. Send comments to Mr. Carl L. Schwing, St. Pete Beach City Manager, 7701 Boca Ciega Drive, St. Pete Beach, Florida 33706.					
Florida	St. Petersburg (City), Pinellas County.	Miles Creek	Approximately 700 feet downstream of 38th Avenue.	•16	•13
			Approximately 0.05 mile upstream of 22nd Avenue and 58th Street.	•18	•19
		Gulf of Mexico/Boca Ciega Bay.	Approximately 50 feet west of the intersection of Park Street and 24th Avenue North.	•10	•12
			Approximately 200 feet southwest of the intersection of Sunset Drive North and 31st Terrace North.	•13	•15
Maps available for inspection at the City of St. Petersburg Municipal Services Center, Permit Division, 14th Street North, St. Petersburg, Florida. Send comments to The Honorable David Fischer, Mayor of the City of St. Petersburg, P.O. Box 2842, St. Petersburg, Florida 33731–2842.					
Florida	Tarpon Springs (City), Pinellas County.	Gulf of Mexico	Approximately 300 feet south of the intersection of Castleworks Lane and Coldstream Court.	•10	•11
			Approximately 1,000 feet west of the intersection of Harbor Watch Circle and North Pointe Alexis Drive.	•17	•18
Maps available for inspection at the Tarpon Springs City Hall, 324 East Pine Street, Tarpon Springs, Florida. Send comments to Mr. Costa F. Vatikiotis, Tarpon Springs City Manager, P.O. Box 5004, Tarpon Springs, Florida 33688–5004.					
Florida	Treasure Island (City), Pinellas County.	Gulf of Mexico	Approximately 1,000 feet west of the intersection of Dolphin Drive and Paradise Boulevard.	•10	•11
			Approximately 900 feet west of the intersection of 125th Avenue and Gulf Boulevard.	•15	•17
Maps available for inspection at the Treasure Island City Hall, Building Department, 120 108th Avenue, Treasure Island, Florida. Send comments to Mr. Charles Coward, Treasure Island City Manager, 120 108th Avenue, Treasure Island, Florida 33706.					
Indiana	Hamilton (Town), DeKalb and Steuben Counties.	Fish Creek	Approximately 2,750 feet downstream of Bellfountain Road.	None	*888
			Approximately 740 feet upstream of South Wayne Street.	None	*891

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the Hamilton Town Hall, 7750 South Wayne Street, Hamilton, Indiana.					
Send comments to Mr. Brent Shull, President of the Town of Hamilton Council, P.O. Box 310, Hamilton, Indiana 46742.					
Illinois	Carbon Cliff (Village), Rock Island County.	Unnamed Creek	Approximately 1,750 feet upstream of the Chicago, Rock Island and Pacific Railroad.	*476	*477
			Approximately 560 feet upstream of the confluence of Tributary 3 to Unnamed Creek.	None	*657
		Tributary 1 to Unnamed Creek.	At the confluence with Unnamed Creek ...	None	*594
			Approximately 0.6 mile upstream of the confluence with Unnamed Creek.	None	*636
		Tributary 2 to Unnamed Creek.	At the confluence with Unnamed Creek ...	None	*622
			Approximately 960 feet upstream of the confluence with Unnamed Creek.	None	*640
		Tributary 3 to Unnamed Creek.	At the confluence with Unnamed Creek ...	None	*650
			Approximately 800 feet upstream of the confluence with Unnamed Creek.	None	*662
		Shallow Flooding Area	Approximately 400 feet southeast of intersection of 1st Avenue and 5th Street.	*576	#1
			Approximately 200 feet southwest of intersection of 1st Avenue and 5th Street.	None	#1
Maps available for inspection at Carbon Cliff Village Hall, 106 First Avenue, Carbon Cliff, Illinois.					
Send comments to Mr. Kenneth Williams, Carbon Cliff Village President, 106 First Avenue, P.O. Box 426, Carbon Cliff, Illinois 61239.					
Massachusetts	Worcester (City), Worcester County.	Broad Meadow Brook	Approximately 240 feet downstream of U.S. Highway 20	None	*450
			Approximately 1.6 miles upstream of U.S. Highway 20	None	*484
		Beaver Brook	Approximately 175 feet downstream of Mill Street bridge.	*482	*480
			At Maywood Street	*484	*481
Maps available for inspection at the Worcester Environmental/Land Use Planner's Office, 25 Meade Street, Worcester, Massachusetts.					
Send comments to Mr. Thomas R. Hoover, Worcester City Manager, Worcester City Hall, 455 Main Street, Worcester, Massachusetts 01608.					
Mississippi	Gulfport (City), Harrison County.	Flat Branch	Approximately 525 feet upstream of Dedeaux Road.	*19	*20
			Downstream side of U.S. Highway 49	*45	*50
Maps available for inspection at the Gulfport City Hall, 2309 15th Street, Gulfport, Mississippi.					
Send comments to The Honorable Ken Combs, Mayor of the City of Gulfport, P.O. Box 1780, Gulfport, Mississippi 39502.					
New Jersey	Florham Park (Borough), Morris County.	Spring Garden Brook	Approximately 200 feet downstream of Brooklake Road.	*176	*175
			At the upstream corporate limits	*188	*182
Maps available for inspection at the Florham Park Municipal Building, Public Works Office, 111 Ridgedale Avenue, Florham Park, New Jersey.					
Send comments to The Honorable Barbara B. Doyle, Mayor of the Borough of Florham Park, Municipal Building, 111 Ridgedale Avenue, Florham Park, New Jersey 07932.					
New Jersey	Rahway (City), Union County.	Rahway River	At the downstream corporate limits	*12	*9
			Approximately 30 feet upstream of Monroe Street.	*12	*11
		South Branch	At the confluence with the Rahway River	*12	*11
			Approximately 528 feet upstream of East Inman Avenue.	*12	*11

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the Rahway City Hall, Department of Engineering, City Hall Plaza, Rahway, New Jersey. Send comments to The Honorable James Kennedy, Mayor of the City of Rahway, City Hall Plaza, Rahway, New Jersey 07065.					
New Jersey	Weymouth (Township), Atlantic County.	Tuckahoe River	At the downstream corporate limits	None	*56
			At the upstream corporate limits	None	*77
		Great Egg Harbor River	At teh confluence of the South River	None	*9
			At the upstream corporate limits	None	*9
		South River	At Walkers Forge Avenue	None	*16
			Approximately 500 feet upstream of upstream corporate limits.	None	*38
Maps available for inspection at the Weymouth Township Hall, 45 South Jersey Avenue, Dorothy, New Jersey. Send comments to The Honorable Amelia A. Messina, Mayor of the Township of Weymouth, P.O. Box 53, Dorothy, New Jersey 08317.					
New York	Mina (Town), Chautauqua County.	Findley Lake	Entire shoreline of Findley Lake	None	*1,423
Maps available for inspection at Mina Town Community Center, 2883 North Road, Findley Lake, New York. Send comments to Ms. Rebecca Brumagin, Mina Town Supervisor, P.O. Box 38, 2883 North Road, Findley Lake, New York 14736.					
North Carolina	Cramerton (Town), Gaston County.	Duharts Creek	Approximately 0.86 mile upstream of confluence with South Fork Catawba River.	*577	*578
			Approximately 1.31 miles upstream of 8th Avenue.	*601	*611
Maps available for inspection at the Cramerton Town Hall, 155 North Main Street, Cramerton, North Carolina. Send comments to The Honorable Cathy Biles, Mayor of the Town of Cramerton, 155 North Main Street, Cramerton, North Carolina 28032.					
Pennsylvania	Bullskin (Township), Fayette County.	Jacobs Creek	At the downstream corporate limits	*1,039	*1,037
			At a point approximately 250 feet upstream of State Route 31.	*1,143	*1,142
Maps available for inspection at the Bullskin Township Municipal Building, 178 Shenandoah Road, Connellsville, Pennsylvania. Send comments to Mr. Robert Butler, Chairman of the Township of Bullskin Board of Supervisors, 178 Shenandoah Road, Connellsville, Pennsylvania 15425.					
Pennsylvania	Everson (Borough), Fayette County.	Jacobs Creek	Approximately 2,400 feet downstream of 5th Avenue.	*1,027	*1,025
			Upstream corporate limits	*1,031	*1,029
Maps available for inspection at Everson Borough Building, Brown Street, Everson, Pennsylvania. Send comments to The Honorable Timothy Shoemaker, Mayor of the Borough of Everson, Municipal Building, Brown Street, Everson, Pennsylvania 15631.					
Pennsylvania	Upper Tyrone (Township), Fayette County.	Jacobs Creek	At State Route 819	*1,021	*1,020
			At upstream corporate limits	*1,039	*1,037
		Stauffer Run	At confluence with Jacobs Creek	*1,034	*1,030
			At upstream corporate limits	*1,034	*1,031
Maps available for inspection at the Upper Tyrone Township Building, 259 Montgomery Road, Scottdale, Pennsylvania. Send comments to Mr. Jack E. Fullem, Upper Tyrone Township Supervisor, 509 Hickory Square Road, Connellsville, Pennsylvania 15425.					
Tennessee	Fairview (City), Williamson County.	Hunting Camp Creek	At upstream side of Fernvale Road	None	*703
			A point approximately 0.75 miles upstream of Chester Creek Road.	None	*822
		Hunting Camp Creek Tributary No. 2.	At Fernvale Road	None	*701
			Approximately 30 feet upstream of Chester Road.	None	*794
		Hunting Camp Creek Tributary No. 3.	At Fernvale Road	None	*701
			Approximately 275 feet upstream of State Route 100.	None	*804

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
		Hunting Camp Creek Tributary 4.	At the confluence with Hunting Camp Creek Tributary No. 3.	None	*721
			Approximately 200 feet upstream of Chester Road.	None	*798
		Hunting Camp Creek Tributary No. 5.	At the confluence with Hunting Camp Creek Tributary No. 2.	None	*790
			Approximately 2 feet upstream of Chester Road.	None	*794
Maps available for inspection at the City of Fairview Codes Administration Building, 216 Highway 96 North, Fairview, Tennessee.					
Tennessee	Goodlettsville (City), (Davidson and Sumner Counties).	Slaters Creek	At the confluence with Mansker Creek	*454	*452
			Approximately 1,640 feet upstream of Long Drive.	*476	*475
		Pattens Branch	At the confluence of Madison Creek	None	*466
			Approximately 1,640 feet upstream of most upstream crossing of Pattens Branch Road.	None	*521
		Goodlettsville Outlet Ditch	At the confluence with Mansker Creek	*436	*437
			At the downstream side of Old Long Hollow Pike.	*436	*437
		Madison Creek	At the confluence with Mansker Creek	*430	*432
			Approximately 1.51 miles upstream of Pattens Branch.	None	*535
		Mansker Creek	At the confluence of Madison	*430	*432
			Approximately 1,450 feet upstream of the most upstream crossing of U.S. Route 41.	*486	*485
		Willis Branch	At the confluence with Madison Creek	*430	*432
			Approximately 0.12 mile upstream of the confluence with Madison Creek.	*431	*432
Maps available for inspection at Goodlettsville City Hall, 105 South Main Street, Goodlettsville, Tennessee.					
Send comments to The Honorable Bobby T. Jones, Mayor of the City of Goodlettsville, City Hall, 105 South Main Street, Goodlettsville, Tennessee 37072.					
Tennessee	Murfreesboro (City), Rutherford County.	Lytle Creek	At the confluence with West Fork Stones River.	*575	*571
			At a point approximately 200 feet upstream of Country Club Drive.	*604	*602
		Sinking Creek	At the confluence with West Fork Stones River.	*548	*547
			Approximately 0.6 mile upstream of Thompson Lane.	*548	*547
		Unnamed Tributary of West Fork of West Fork Stones River.	At the confluence with West Fork Stones River.	*589	585
			Approximately 0.54 mile upstream of confluence with West Fork Stones River.	*589	585
		West Fork Stones River	Approximately 0.7 mile upstream of I–840	*544	*543
			At the confluence of Middle Fork Stones River.	*597	*595
		Middle Fork Stones River	At the confluence with West Fork Stones River.	*597	*595
			Approximately 0.52 mile upstream of confluence with West Fork Stones River.	*597	*595
		Sink Hole #2	Entire perimeter of the sink	None	*595
		Sink Hole #3	Entire perimeter of the sink hole	None	*585
Maps available for inspection at the City of Murfreesboro Planning Department, City Hall, 111 West Vine Street, Murfreesboro, Tennessee.					
Send comments to The Honorable Richard Reeves, Mayor of the City of Murfreesboro, P.O. Box 1139, Murfreesboro, Tennessee 37133.					
Tennessee	Rutherford County (Unincorporated Areas).	Lytle Creek	At a point approximately 455 feet upstream of Sanbyrn Drive.	*601	*599

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
			At a point approximately 1.26 miles upstream of Dilton-Mankin Road.	*657	*656
		West Fork Stones River ...	At a point approximately 0.35 mile upstream of Sulphur Springs Road.	*526	*525
			At a point approximately 1.28 miles upstream of Stones River Road.	*676	*675
		Sinking Creek	At the confluence with West Fork Stones River.	*548	*547
			Approximately 250 feet downstream of Thompson Lane.	*548	*547
		Lees Spring Branch	At the confluence with Lytle Creek	*621	*620
			Approximately 500 feet upstream of confluence with Lytle Creek.	*621	*620
		Unnamed Tributary of West Fork Stones River.	Approximately 0.54 mile upstream of confluence with West Fork Stones River.	*589	*585
			Approximately 106 feet upstream of State Highway 99.	*589	*588
		Todds Lake	Entire shoreline within the community	None	*613
		Middle Fork Stones River	At the confluence with West Fork Stones River.	*597	*595
			Approximately 0.52 upstream of confluence with West Fork Stones River.	*597	*596
Maps available for inspection at Rutherford County Planning Department, #1 Southside Square, Murfreesboro, Tennessee.					
Send comments to Ms. Nancy Allen, Rutherford County Executive, County Courthouse, Public Square, Room 101, Murfreesboro, Tennessee 37130.					
Tennessee	Williamson County (Unincorporated Areas).	Hunting Camp Creek	Approximnately 55 feet downstream of the confluence of Hunting Camp Creek Tributary No. 3.	None	*680
			At upstream side of Fernvale Road	None	*703
		Hunting Camp Creek Tributary.	At the confluence with Hunding Camp Creek.	None	*684
			At Fernvale Road	None	*701
		Hunting Camp Creek Tributary No. 3.	At the confluence with Hunting Camp Creek.	None	*681
			At upstream side of Fernvale Road	None	*702
Maps available for inspection at the Williamson County Emergency Management Agency, 1320 West Main Street, Suite B30, Franklin Tennessee.					
Send comments to Mr. Clint Callicott, Williamson County Executive, 1320 West Main Street, Suite 125, Franklin, Tennessee 37064.					
Virginia	Grottoes (Town), Augusta and Rockingham Counties.	Miller Run	Approximately 160 feet downstream of 21st Street.	None	*1,090
			Approximately 60 feet upstream of Cary Street.	None	*1,152
Maps available for inspection at the Grottoes Town Office, 601 Dogwood Avenue, Grottoes, Virginia.					
Send comments to Mr. Timothy E. Crider, Grottoes Town Superintendent, P.O. Box 146, Grottoes, Virginia 24441.					

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

Dated: March 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5836 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register
Vol. 67, No. 48
Tuesday, March 12, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Distribution Program: Substitution of Donated Poultry With Commercial Poultry

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Food and Nutrition Service's (FNS) intent to continue a demonstration project to test program changes designed to improve the State processing of donated poultry by allowing the substitution of donated poultry supplied by the Department of Agriculture (the Department) with commercial poultry. The Department is currently operating a demonstration project that allows selected poultry processors to substitute commercial poultry for donated poultry in the State processing of donated poultry. Only bulk pack poultry and poultry parts are eligible for substitution under the current demonstration project. Notice of the project, which commenced operation on February 1, 1996, was published in the **Federal Register** at 61 FR 5373 on February 12, 1996. The project was expanded and extended through June 30, 2000 (64 FR 35582, July 1, 1999). The project was further extended through June 30, 2002 (65 FR 25296, May 1, 2000). Under the demonstration project, FNS invoked its authority under 7 CFR 250.30(t) to waive the current prohibition at 7 CFR 250.30 (f)(1)(i) against the substitution of poultry items and to establish the criteria under which substitution will be permitted.

The Department will continue to operate the demonstration project from July 1, 2002 through June 30, 2003. The Department has determined that this demonstration project is successful and is in the process of publishing a proposed rule to codify limited poultry substitution. The extension of the demonstration will allow the Department to maintain continuity for all concerned parties while the proposed rule proceeds through the final rulemaking process.

DATES: The proposals described in this Notice may be submitted to FNS through June 30, 2002. Note that the demonstration project will continue until June 30, 2003 or until the final rule codifying limited poultry substitution is published in the **Federal Register**.

ADDRESSES: Proposals should be sent to Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: David Brothers, Schools and Institutions Branch, at (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22675, May 31, 1984).

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and is thus exempt from the provisions of that Act.

Background

Section 250.30 of the current Food Distribution Program regulations (7 CFR Part 250) sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts. Section 250.30(t) authorizes FNS to waive any of the requirements contained in 7 CFR Part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Current Program Requirements

The State processing regulations at Section 250.30(f)(1)(i) currently allow for the substitution of certain specified donated food items with commercial foods, with the exception of meat and poultry. Under the current regulations at Section 250.30(g), when donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing is required to be performed in plants under continuous Federal meat or poultry inspection or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to Food Safety Inspection Service (FSIS) inspection, all donated meat and poultry processing must be performed under Agricultural Marketing Service (AMS) acceptance service grading.

Traditionally only a few companies have processed donated poultry. Those processors have stated that the policy prohibiting the substitution of donated poultry reduces the quantity of donated poultry they are able to accept and process during a given period. Poultry purchased by USDA for further processing is bulk chill packed. Processors must schedule production around deliveries of the donated poultry since it is a highly perishable product. Some of the processors must schedule production around deliveries of donated poultry for up to 30 individual States. Vendors do not always deliver donated poultry to the processors as scheduled, causing delays in production of end products. These delays may be alleviated if the processors can substitute their commercial poultry for donated poultry.

Demonstration Project

From July 1, 2002 to June 30, 2003, the Department will continue to operate a demonstration project under which it will permit approved processors to substitute commercial poultry for donated poultry in the State processing of donated poultry. FNS is invoking its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) against the substitution of

poultry for purposes of this demonstration project.

The demonstration project will be limited to bulk pack chicken, chicken parts, and bulk pack turkey because the processing of such items can be readily evaluated. The definition of substitution in 7 CFR 250.3 requires the replacement of commercial product for donated food to be of the same generic identity and equal or better quality. With bulk pack chicken, chicken parts, and bulk pack turkey these requirements can be met easily and quickly. Bulk pack turkey was added to the original demonstration project that allowed for the substitution of bulk pack chicken and bulk pack chicken parts because USDA graders can easily determine if commercial turkey meets or exceeds the specifications for donated turkey.

FNS is inviting interested poultry processors to submit written proposals to participate in the demonstration project. The following basic requirements will apply to the demonstration project:

- As with the processing of donated poultry into end products, AMS graders must monitor the processing of any substituted commercial poultry to ensure program integrity is maintained.
- Only bulk pack chicken, chicken parts, and bulk pack turkey delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically cut-up frozen poultry parts delivered to schools which may be turned over to processors for further processing at a later time.)
- Substitution of commercial poultry may occur in advance of the actual receipt of the donated poultry by the processor. However, no substitution may occur before the product is purchased by USDA and the contract is awarded. Lead time between the purchase and delivery of donated poultry may be up to five weeks. Any variation between the amount of commercial poultry substituted and the amount of donated poultry received by the processor will be adjusted according to guidelines furnished by USDA.
- Any donated poultry not used in end products because of substitution must only be used by the processor at one of its facilities in other commercial processed products and cannot be sold as an intact unit. However, in lieu of processing the donated poultry, the processor may use the product to fulfill other contracts with USDA provided all terms of the other contract are met.
- The only regulatory provision or State processing contract term affected by the demonstration project is the prohibition on substitution of poultry (section 250.30(f)(1)(i) of the regulations). All other regulatory and contract requirements remain unchanged and must still be met by processors participating in the demonstration project.

The continuation of the demonstration project will allow FNS to complete the rulemaking process while the demonstration program continues to operate. This provides continuity of operations for both recipients and processors who are currently participating in the demonstration project.

Interested processors should submit a written proposal to FNS outlining how they plan to carry out the substitution while complying with the above conditions. Processors who are currently participating in the demonstration should apply to continue in the demonstration. The proposal must contain (1) a step-by-step description of how production will be monitored and (2) a complete description of the records that will be maintained for (a) the commercial poultry substituted for the donated poultry (b) the disposition of the donated poultry delivered. All proposals will be reviewed by representatives of the Food Distribution Division of FNS and by representatives of AMS Poultry Division's Grading Branch. Companies approved for participation in the demonstration project will be required to enter into an agreement with FNS and AMS which authorizes the processor to substitute commercial bulk pack chicken, chicken parts, and bulk pack turkey in fulfilling any current or future State processing contracts during the demonstration project period. Participation in the demonstration project will not ensure the processor will receive any State processing contracts.

Dated: March 6, 2002.

George Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 02–5845 Filed 3–11–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

P–Pine Project, Coeur d'Alene River Ranger District, Idaho Panhandle National Forests, Kootenai and Shoshone Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Coeur d'Alene River Ranger District of the Panhandle National Forest is proposing vegetation rehabilitation in the Deerfoot Ridge and Two Mile watersheds, identified as the Ponderosa Pine Restoration Area. The Deerfoot Ridge watershed area is located east of Hayden Lake, Idaho in Kootenai County, and Two-Mile watershed area is located north of Silverton, Idaho in Shoshone County. Only dry-site ecosystems within the watersheds are proposed for rehabilitation at this time. The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of implementing vegetative restoration activities under the project area.

DATES: Written comments and suggestions should be received on or before April 26, 2002.

ADDRESSES: Submit written comments and suggestions on the proposal, or requests to be placed on the project mailing list, to Sarah Jerome, Project Team Leader, Coeur d'Alene River Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Sarah Jerome, Project Team Leader, Coeur d'Alene River Ranger District, (208) 664–2318.

SUPPLEMENTARY INFORMATION: The purpose and need for this project is derived from the National Fire Plan, the Upper Columbia River Basin Ecosystem Management Project, and the Coeur d'Alene River Basin Geographic Assessment. Each of these provide documentation of the currently dense, fire-prone state of dry-site ecosystems across the Idaho Panhandle National Forests and in the Coeur d'Alene Basin, and the marked change these ecosystems have undergone over the past century. Site-specific information indicates that these same conditions are occurring on the stand level in the Deerfoot Ridge and Two Mile Watersheds. Objectives are to: (1) Restore historical conditions in ponderosa pine stands based on the fire ecology of these forest types; (2) trend vegetative species composition toward seral species more resistant to insects and disease; reduce the incidence of noxious weeds; (3) reduce the risk of wildfire in the urban interface, coordinate with state and local entities for urban/interface fuels management; maintain visual quality over the long-term; (4) reduce the overall risk of high-intensity, stand-replacing fires; and (5) reduce fragmentation and improve wildlife habitat.

The Forest Service will consider a range of alternatives. One of these will

be the ''no action'' alternative, under which there would be no change from current management of the area. Additional alternatives will represent a range of strategies to manage natural resources in the area. The Idaho Panhandle National Forests Land and Resource Management Plan provides guidance for management objectives within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Inland Native Fish Strategy guidelines (USDA Forest Service, 1995) supersede Forest Plan guidelines established for riparian areas.

The public was first notified of this proposal and the intention to prepare an environmental impact statement in February 2002. Comments provided by the public and other agencies will be used to develop strategies for management of natural resources in the project area. The public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service is also seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in October 2002. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

I am the responsible official for this environmental impact statement. My address is Coeur d'Alene River Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

Dated: March 4, 2002.

Joseph P. Stringer,

District Ranger.

[FR Doc. 02–5840 Filed 3–11–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC); Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on April 4–5, 2002 in John Day, Oregon; May 30–31 in Baker City, Oregon; and June 14 in Pendleton, Oregon. The purpose of the meetings is to meet as a Committee to review and recommend the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meetings will be held as follows: April 4, 2002, 9 a.m. to 4:30 p.m., John Day, Oregon; April 5, 2002, 8:30 a.m. to 4:45 p.m., John Day, Oregon; May 30, 2002, 9 a.m. to 4:30 p.m., Baker City, Oregon; May 31, 2002, 8 a.m. to 4:45 p.m., Baker City, Oregon; See **SUPPLEMENTARY INFORMATION** section for one additional meeting date.

ADDRESSES: The April 4–5, 2002 meetings will be held in Juniper Hall, at the Malheur National Forest Headquarters Office located at 431 Patterson Bridge Road, John Day, Oregon. The May 30–31, 2002 meetings will be held in the conference room at the Baker Ranger District office located at 3165 10th Street, Baker City, Oregon. See Supplementary Information section for the location of one additional meeting.

FOR FURTHER INFORMATION CONTACT: Bonnie Wood, Designated Federal Official, USDA, Malheur National Forest, PO Box 909, John Day, Oregon 97845. Phone: (541) 575–3100.

SUPPLEMENTARY INFORMATION: At the April 4–5, 2002 meeting the committee will determine the overhead rate for projects and then will review and recommend Fiscal Year 2002 project proposals for funding under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000. A public input opportunity will be provided at 11:15 a.m. on April 4, and individuals will have the opportunity to address the committee at that time. At the May 30–31, 2002 meeting the committee will determine if they wish to change their review process and will then review and recommend Fiscal Year 2003 project

proposals for funding under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000. A public input opportunity will be provided at 11:15 a.m. on May 30, and individuals will be able to address the committee at that time. One additional meeting will be held on June 14, 2002 in Pendleton, Oregon to finish reviewing project proposals for Fiscal Year 2003 funding. This meeting will be held at the Oregon Trail room, Red Lion Inn, in Pendleton, Oregon. The meeting will begin at 8 a.m. and end at 4 p.m. A public input opportunity will be provided at 11:15 a.m., and individuals will be able to address the committee at that time.

Dated: March 5, 2002.

Bonnie J. Wood,

Forest Supervisor.

[FR Doc. 02–5839 Filed 3–11–02; 8:45 am]

BILLING CODE 3410–DK–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Proposed Information Collection; Comment Request; Miscellaneous Activities

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Renewal of an existing collection.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 13, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, (202) 482–0637, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

On September 30, 1993, the Secretary of Commerce submitted to the Congress a report of the Trade Promotion Coordinating Committee, entitled Toward a National Export Strategy. The report included the goal to ''Undertake a comprehensive review of the Export Administration Regulations to simplify, clarify, and make the regulations more user-friendly''. To carry out this recommendation, BXA has rewritten the entire EAR. To the extent activities have been added or changed but not deleted, this collection represents the authority to collect, on rare occasions, certain information from the public. This assembly of information collection activities is comprised of two activities. ''Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export'', and ''Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic materials; Public Hearings'' are statutory in nature and-though they never have been applied-must remain a part of BXA's information collection budget authorization. The third—The Commerce Control List—became necessary as the rewrite of the Export Administration Regulations sought to harmonize the U.S. ECCN system with the European system for consistency and future simplicity. However, this activity is no longer needed since the transformation from the old system to the new system is complete.

For the purpose of clarity, this abstract will refer to the two activities as follows: USAG will refer to Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export activities; and, PETITIONS will refer to Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic materials; Public Hearings activities.

II. Method of Collection

For USAG, the method is a written application for the exemption from Short Supply Limitations on Export Activities.

For PETITIONS, the method is a written petition requesting the monitoring of exports or the imposition of export controls, or both, with respect to certain materials.

The same mailing address is used for both submissions: P.O. Box 273, Washington, DC 20230.

III. Data

OMB Number: 0694–0102.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response: USAG: 5 hours per response; PETITION: 5 hours per response.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 1, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5372 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1212]

Grant of Authority for Subzone Status; Nissan North America, Inc. (Motor Vehicles); Canton, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the

privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Vicksburg-Jackson Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 158, has made application for authority to establish special-purpose subzone status at the motor vehicle manufacturing plant of Nissan North America, Inc., located in Canton, Mississippi (FTZ Docket 27–2001, filed 6–26–2001);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 35223, 7–3–2001); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the motor vehicle manufacturing plant of Nissan North America, Inc., located in Canton, Mississippi (Subzone 158D), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 4th day of March, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–5888 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 16–2002]

Foreign-Trade Zone 204, Tri-Cities Area, TN/VA; Expansion of Manufacturing Authority—Subzone 204A; Siemens Energy & Automation, Inc. (Industrial Automation Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Tri-Cities Airport Commission, grantee of FTZ 204, requesting on behalf of Siemens Energy & Automation, Inc. (Siemens), to expand the scope of manufacturing authority under zone procedures within Subzone 204A, at the Siemens plant in Carter County, Tennessee. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 4, 2002.

Subzone 204A was approved by the Board in 1995 at a 104-acre site on Bill Garland Road in Carter County, Tennessee. Authority was granted for the manufacture of robotics, programmable logic controllers, and other industrial automation products (Board Order 756, 60 FR 36105, 7/13/95).

Siemens is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 204A to include additional finished products (*e.g.,* automotive, media, and traffic technologies) and components. The finished products would have duty rates ranging from duty-free to 8.5% *ad valorem.* Foreign-sourced materials under the proposed expanded scope may include the following items: copper wire; electric screwdrivers; ground clips/pins; threaded fasteners; transmitters; floating instruments parts; flow meters; ultraviolet lamps; electronic dispensers; automotive technology; media technology; and traffic technology for road, railroad, or airport. Duty rates on these components range from duty-free to 8.5% *ad valorem.*

Expanded subzone authority would exempt Siemens from Customs duty payments on the aforementioned foreign components when used in export production. On its domestic sales, Siemens would be able to choose the lower duty rate that applies to the finished products for the foreign components, when applicable.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is May 13, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 27, 2002. A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at Tri-City Regional Airport, Room 306, State Highway 75, Blountville, TN 37617.

Dated: March 4, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–5887 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Zev Primor at (202) 482–4114 or Tom Futtner at (202) 482–3814, Office of AD/CVD Enforcement 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary

determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On Ocotber1, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Thailand, covering the period July 1, 2000 through June 30, 2001 (66 FR 49924). The preliminary results are currently due no later than April 1, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. See Decision Memorandum from Holly Kuga to Bernard Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 5, 2002

Bernard T. Carreau,

Deputy Assistant Secretaryfor Import Administration, Group II.

[FR Doc. 02–5885 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall (CSN), Michael Ferrier or Dena Aliadinov (USIMINAS/COSIPA), or Abdelali Elouaradia, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398, (202) 482–1394, (202) 482–3362, and (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (2000).

Scope of Order

For purposes of this order, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this agreement.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this agreement, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.30–0.50%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.16% ..... Mo ..... 0.21% Max	0.70–0.90%	0.025% Max	0.006% Max ...	0.30–0.50%	0.30–0.50%	0.25% Max	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14% ..... V(wt.) ..... 0.10% Max	1.30–1.80% ..... Cb ..... 0.08% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max ..... Nb ..... 0.005% Min	1.40% Max ..... Ca ..... Treated	0.025% Max .... Al 0.01–0.70%	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max.

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this agreement is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this agreement, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this agreement is dispositive.

Antidumping Duty Order

On February 11, 2002, the Department published its final results of the administrative review and termination of the Suspension Agreement on hot-rolled steel from Brazil. See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil: Final Results of Antidumping Duty Administrative Review and Termination of the Suspension Agreement 67 FR 6226 (February 11, 2002). Therefore, the Department will direct Customs to suspend liquidation effective November 13, 2001. In accordance with sections 734(i)(1)(A) and (i)(1)(c) of the Act, the Department hereby issues an antidumping duty order effective November 13, 2001, which is 90 days before the date of publication of the notice of suspension of liquidation.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the U.S. price of the subject merchandise for all relevant entries of hot-rolled steel from Brazil. These antidumping duties will be assessed on all unliquidated entries of hot-rolled steel from Brazil entered, or withdrawn from warehouse, for consumption on or after November 13, 2001, the date which is 90 days before the date of publication of the notice of suspension of liquidation in accordance with section 734(i)(1)(A)(i).

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties on this

merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins:

Manufacturer/exporter	Cash deposit rate (percent)
Companhia Siderurgica Nacional (CSN)	41.27%
Usinas Siderurgicas De Minas Gerais (USIMINAS)	43.40%
Companhia Siderurgica Paulista (COSIPA)	43.40%
All Others	42.12%

The ''All Others'' rate applies to all exporters in Brazil of subject merchandise not specifically listed.

This notice constitutes the antidumping duty order with respect to hot-rolled steel from Brazil. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of the antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: March 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5886 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose from the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Michele Mire, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5346 or (202) 482–4711, respectively.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days.

Background

On August 20, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom 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, 43572. The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. See Decision Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 5, 2002

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–5883 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta from Italy and Turkey: Extension of Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Lyman Armstrong at (202) 482–4793 or (202) 482–3601, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On August 10, 2001, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 2000 to June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 1, 2002.

Extension of Preliminary Results of Reviews

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limits. Therefore, we are extending the time limits for completion of the preliminary results until no later than July 30, 2002. See Decision Memorandum from Melissa Skinner to Bernard Carreau, dated March 1, 2002, which is on file in the Central Records Unit, B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of these reviews.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 4, 2002

Bernard Carreau,

Deputy Assistant SecretaryImport Administration.

[FR Doc. 02–5882 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod from Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: We are amending our final results of the administrative review of the antidumping duty order on stainless steel wire rod from the Republic of Korea, published on February 13, 2002 (Stainless Steel Wire Rod from Korea; Final Results of Antidumping Duty Administrative Review, 67 FR 6685 (February 13, 2002) (Final Results)), to reflect the correction of a ministerial error made in the final results. This correction is in accordance with section 751(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.224(e) of the Department of Commerce's (the Department's) regulations. The period covered by these amended final results of review is September 1, 1999 through August 31, 2000.

EFFECTIVE DATE : March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Karine Gziryan, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–5346 or 482–4081, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On February 13, 2002, the Department published the final results of the administrative review of the antidumping duty order on stainless steel wire rod from the Republic of Korea. See Final Results.

On February 12, 2002, we received a timely allegation from Changwon Specialty Steel Co., Ltd. (Changwon) and Dongbang Special Steel Co., Ltd. (Dongbang) (collectively, respondents) that the Department made a ministerial error in the final results of review. The petitioner did not submit any comments in reply to this ministerial error allegation.

Scope of Review

For purposes of this review, SSWR comprises products that are hot–rolled or hot–rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot–rolling or hot–rolling annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross–section. The majority of SSWR sold in the United States is round in cross–sectional shape, annealed and pickled, and later cold–finished into stainless steel wire or small–diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire–drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the review. SF20T and K–M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T.			
Carbon	0.05 max	Chromium	19.00/21.00
Manganese	2.00 max	Molybdenum	1.50/2.50
Phosphorous	0.05 max	Lead–added	(0.10/0.30)
Sulfur	0.15 max	Tellurium–added	(0.03 min)
Silicon	1.00 max		
K–M35FL.			
Carbon	0.015 max	Nickel	0.30 max
Silicon	0.70/1.00	Chromium	12.50/14.00
Manganese	0.40 max	Lead	0.10/0.30
Phosphorous	0.04 max	Aluminum	0.20/0.35
Sulfur	0.03 max		

The products subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Amendment of Final Results

The respondents contend that in the Final Results, and accompanying Decision Memo at Comment 8, the Department agreed with the respondents' argument that the

Department should replace the variable costs of manufacturing (VCOMs) and total costs of manufacturing (TCOMs) based on semiannual costs that are reported on the sales databases with the VCOMs and TCOMs based on annual costs that are reported on the cost database. The respondents allege that the Department correctly implemented this change for the VCOMs and TCOMs reported on the U.S. sales database, but erred by failing to make the same adjustment to the VCOMs reported on the home market sales database.

After reviewing our calculations, we found that we inadvertently failed to make this adjustment to the VCOMs reported on the home market sales database, and have determined that this error constitutes a ministerial error as defined by 19 CFR 351.224(f). We have corrected this error in accordance with 19 CFR 351.224(e) by adopting the respondents' suggested programming language. For further details, see Calculation Memorandum dated March 4, 2002.

Amended Final Results

As a result of our review and the correction of the ministerial error described above, we have determined that the margin for the collapsed entity Pohang Iron and Steel Co., Ltd. (POSCO)/Changwon/Dongbang is 5.61 percent.

Assessment

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates in the manner described in the Final Results, 67 FR at 6687.

Cash Deposit Requirements

Upon publication of this notice of amended final results of this administrative review, for all shipments of stainless steel wire rod from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the amended final results of this administrative review, as provided by section 751(a)(1) of the Act, the cash deposit rate for POSCO/ Changwon/ Dongbang will be the rate established in these amended final results of this administrative review.

We are issuing and publishing this amendment to the final results in accordance with section 751(h) of the Act.

March 4, 2002

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

[FR Doc. 02–5884 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Applications for the Malcolm Baldrige National Quality Award

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before May 13, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to JoAnne M. Surette, Baldrige National Quality Program, Administration Building, Room 623, 100 Bureau Drive, Stop 1020, National Institute of Standards and Technology, Gaithersburg, MD 20899–1020, telephone (301) 975–5267, fax, (301)948–3716, e-mail *joanne.surette@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce is responsible for the Baldrige National Quality Program and the Malcolm Baldrige National Quality Award. NIST, an agency of the Department's Technology Administration, manages the Baldrige Program. Applicants for the Malcolm Baldrige National Quality Award are required to perform two steps: (1) The applicant organization certifies that it meets eligibility requirements; and (2) the applicant organization prepares and completes an application form and the application process. The Malcolm Baldrige National Quality Award Program Office will assist with or offer advice on any questions or issues that the applicant may have concerning the eligibility process or in completing the self-certification forms. NIST will use the application package to assess and provide feedback on the applicant's quality and performance practices.

II. Method of Collection

Applicants must comply in writing according to the *Baldrige Award Application Forms* booklet.

III. Data

OMB Number: 0693–0006.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 100 hours.

Estimated Total Annual Burden Hours: 10,000 hours.

Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 7, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–5898 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Prospective Grant of Exclusive Patent License.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent Application No. 09/122,583, titled, ''Designed Protein Pores As Components For Biosensors,'' filed July 24, 1998; NIST Docket No. 98–016, to the University of Massachusetts, 365 Plantation Street, Suite, 130, Worcester, MA 01605. The grant of the license would be for the field of Biological Applications.

FOR FURTHER INFORMATION CONTACT: J. Terry Lynch, (301) 975–2691, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty sharing and will comply with the terms and conditions of 35 USC 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 USC 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the **Federal Register**, Vol. 65, No. 53 (March 17, 2000).

U.S. Patent Application No. 09/122,583 is jointly owned by the U.S. government, as represented by the Secretary of Commerce, Worcester Institute, and the University of Chicago. The present invention relates to a mutant staphylococcal alpha hemolysin polypeptide containing a heterologous analyte-binding amino acid which assembles into an analyte-responsive heteroheptameric pore assembly in the presence of a wild type staphylococcal alpha hemolysin polypeptide, digital biosensors, and methods of detecting, identifying and quantifying analytes.

Dated: March 5, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–5917 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030602H]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee, Monkfish Advisory Panel and Groundfish Oversight Committee in March, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between March 25 and 27, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Wakefield and Peabody, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465-0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, March 25, 2002 at 9:30 a.m. and Tuesday, March 26, 2002 at 8:30 a.m.–Research Steering Committee Meeting.

Location: Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

The committee will coordinate previously funded projects, potential future projects and other funding initiatives to ensure that the Council's research priorities are met. This effort will include prioritizing the current initiatives previously identified as high priority cooperative research programs industry-based surveys/study fleets, cod tagging and conservation engineering. They will also review and potentially revise the existing research priorities previously established by the Research Steering Committee and approved by the Council for use in future Requests for Proposals (RFPs). They will also develop a mechanism for project tracking, evaluation and incorporation of information into the management process. Also on the agenda is to review the ongoing initiatives to establish pilot programs for study fleets/industry-based surveys.

Tuesday, March 26, 2002 at 9:00 a.m.–Monkfish Advisory Panel Meeting.

Location: Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

The Panel will review Amendment 2 goals and objectives adopted by the Councils, as well as management strategies being developed by the Oversight Committee. The Panel will advise the Committee on issues and alternatives pertaining to Amendment 2, including, but not limited to: how different fishery sectors have been affected by the current management plan; options for modifying how days-at-sea (DAS) are counted, particularly first or partial days of a trip; identifying times and areas of monkfish spawning that could be utilized as part of a management program; incidental catch limits for vessels not fishing on a monkfish DAS; and other specific matters identified by the Committee. The Panel will also develop its own recommendations to the Committee for management strategies to be considered in Amendment 2.

Wednesday, March 27, 2002 at 9:30 a.m.–Groundfish Oversight Committee Meeting.

Location: Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

The Groundfish Committee will continue development of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). At a meeting on February 27, 2002, the New England Council decided to develop groundfish management measures for five broad areas and one user group: inshore Gulf of Maine, offshore Gulf of Maine, eastern Georges Bank, western Georges Bank, Southern New England/Mid Atlantic, and recreational/charter/party. They will define the boundaries of the areas and develop specific objectives for each group (including specific objectives for the recreational/party/charter group). In addition, the committee will identify metrics that can be used to guarantee that objectives are met in each area/user group and will

identify any other issues that must be considered as measures are developed for an area. They will also discuss revised targets for biomass and fishing mortality for groundfish stocks based on a report that will be presented to the Council on March 19, 2002. Finally, the Committee may consider the report of the Capacity Committee, which will also be delivered to the Council on March 19, 2002. A schedule will also be developed for future committee work.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 7, 2002.

Richard W. Surdi,

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

[FR Doc. 02–5915 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021102E]

Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Steel Drilling Caisson Through the Bering Strait and Chukchi Sea and Exploratory Drilling and Associated Activities at the McCovey Exploration Prospect in Beaufort Sea, AK

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

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from Alberta Energy Company Ltd. Oil and Gas, USA, Inc. (AEC) for an authorization to take small numbers of marine mammals by harassment incidental to movement of a Steel Drilling Caisson (SDC) from Port Clarence, AK through the Bering Strait and Chukchi Sea to the Beaufort Sea to planned exploratory drilling and associated activities at the McCovey Exploration Prospect in the western Beaufort Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize AEC to incidentally take, by harassment, small numbers of bowhead whales, beluga whales, gray whales, killer whales, harbor porpoise, ringed seals, bearded seals, and spotted seals in the above mentioned areas during May 2002–August 2002 for SDC preparation, movement, refueling, and re-supplying and from mid-October 2002 through mid-March 2003 for the winter drilling season. The incidental take of polar bears and walrus from AEC's planned activities are not covered by this proposed incidental harassment authorization, as these species are under jurisdiction of the U.S. Fish and Wildlife Service.

DATES: Comments and information must be received no later than April 11, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713–2322, ext 106 or Brad Smith, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim final rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to 50 CFR 216.107.

Summary of Request

On December 18, 2001, NMFS received an application from AEC requesting an authorization for the harassment of small numbers of eight species of marine mammals incidental to movement of a SDC from Port Clarence, AK through the Bering Strait to the Beaufort Sea from May 2002 through August 2002 and planned exploratory drilling and associated activities at the McCovey Exploration Prospect in the Beaufort Sea from mid-October 2002 through mid-March 2003. A detailed description of these activities proposed for 2002-2003 is contained in the application (Lynx Enterprises, Inc., 2001), which is available upon request (see **ADDRESSES**).

Description of Marine Mammals Affected by the Activity

The region encompassing Port Clarence, AK, the Bering Strait, the Chukchi Sea and western Beaufort Sea supports a diverse assemblage of marine mammals under NMFS jurisdiction, including bowhead whales (Balaena mysticetus), beluga whales(*Delphinapterus leucas*), gray whales (*Eschrichtius robustus*), killer whales (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Descriptions of the biology, distribution, and current status of these species can be found in NMFS Stock Assessment Reports (2000, 1999, and 1997). Please refer to those documents for more information on these species.

Potential Effects of SDC Mobilization, Exploratory Drilling, and Associated Activities on Marine Mammals

Potential harassment of marine mammals will result from the noise generated by the operation of towing vessels during SDC mobilization between Port Clarence and the McCovey Prospect, the noise generated during re-fueling and re-supplying the SDC at the

McCovey Prospect, and the noise generated from the SDC during winter drilling operations. The physical presence of vessels and aircraft could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between tug vessels and whales will be eliminated by the slow tow speed (2 knots) and visual monitoring by on-board marine mammal observers.

Marine mammal species with the highest likelihood of being harassed during the SDC mobilization phase (May-July) are: beluga whales, gray whales, ringed seals, and bearded seals. Other marine mammal species less likely to be harassed during the SDC mobilization phase are: spotted seals, killer whales, and harbor porpoise. Bowhead whales are not expected to be encountered during the mobilization phase. The SDC mobilization route will pass through summering grounds for beluga whales in Kotzebue Sound and Kasegaluk Lagoon and the Chukchi Sea feeding grounds for gray whales. The potential for harassment in these areas is greater since the animals may be aggregated when the SDC will be transiting through; however the AEC will be required to monitor for marine mammals throughout the transit and alter their route to avoid harassment of beluga or gray whales.

The marine mammal species with the highest likelihood of being harassed during re-fueling and re-supply of the SDC at McCovey Prospect (July-August) is the ringed seal. This likelihood is based on AEC's past experiences at offshore drilling locations in the mid-Beaufort Sea (e.g., Warthog, Kuvlum). There is the possibility that bearded and spotted seals will also be harassed during re-fueling and re-supply.

It is not likely that bowhead whales will be impacted by re-fueling and re-supply operations since the AEC must finish these operations and shutdown (i.e., cold stack ''quiet'' mode) the SDC by late August or early September, when bowhead whales begin their westward fall migration in the Beaufort Sea. According to 23 years of survey data collected by the Minerals Management Service (MMS), North Slope Borough, the Alaska Eskimo Whaling Commission (AEWC), and many more years of traditional knowledge from Cross Island-based whale hunters, the annual fall migration of the bowhead whales is normally many kilometers north of the McCovey Prospect. However, because the fall migration path of the bowhead whales is dependent on environmental conditions (i.e., extent of ice coverage) that vary from year-to-year, the extreme southern edge of the fall migration corridor may pass closer to McCovey Prospect, increasing the likelihood that bowhead whales may be harassed by activities. Beluga whale migrations during the open-water refueling and re-supply period are through ice leads well beyond the junction of the land-fast ice with the arctic ice pack and therefore it would be extremely unlikely that beluga whales would be impacted by activities at McCovey Prospect.

Exploratory drilling and well testing operations at McCovey Prospect will only occur after the MMS has determined that the sea ice is fully formed around the SDC (approximately mid-November 2002). No drilling or other operations at McCovey will occur during periods of broken ice or open water conditions. During this drilling period, ringed seals (and possibly spotted and bearded seals) will likely be in the area; however, there is no evidence that these species abandon their winter habitat in the presence of active drilling operations. Drilling and well testing operations will cease in March, when the SDC will be shutdown (i.e., cold stacked) until fast-ice conditions return in November or the SDC will be towed to a different location.

Potential Effects of SDC Mobilization, Exploratory Drilling, and Associated Activities on Habitat

The SDC has an ocean bottom footprint measuring 161.8 meters (m) (531 feet, ft) by 109.7 m (360 ft). When exploratory drilling and testing operations are completed at McCovey and there is no discovery for production, the wells will be plugged and abandoned, and a final site clearance will be performed in accordance with MMS and Alaska Oil and Gas Conservation Commission regulations. This abandonment activity will leave the McCovey Prospect area in an essentially undisturbed condition since there will be no wellhead or appurtenances remaining above the ocean floor. If there is a discovery for production outcome, wells would be plugged and abandoned in a suspended status in accordance with the MMS and movement of the SDC will be in accordance with the AEWC and the MMS.

Numbers of Marine Mammals Expected to Be Taken

NMFS estimates, based on current population estimates, past activities in the same geographic area and information provided by the AEC, that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	*Population Size*	*Estimated Harassment Takes 2002/2003*
Bowhead whale	8,200	12
Gray whale	26,000	20
Beluga whale	39,258	50
Harbor Porpoise	10,946	10
Killer Whale	346	5
Ringed seal	1–1.5 million	100
Spotted seal	>200,000	10
Bearded seal	>300,000	20

Effects of SDC Mobilization, Exploratory Drilling, and Associated Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from vessels and drilling activities are the principle concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, but also ringed and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters.

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take two to four whales each season (Western

Geophysical, 2000). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principle field camp location for Nuiqsut whalers, is located 8.53 kilometers (km) (5.3 mi) southeast of the McCovey Prospect. Thus, the possibility and timing of potential re-fueling, re-supply and drilling operations in the Cross Island area requires AEC to provide NMFS with either a Plan of Cooperation with North Slope Borough residents or information identifying measures that have been or will be taken to avoid any unmitigable adverse impact on subsistence needs (see 50 CFR 216.104). AEC's application has identified those measures that will be taken to minimize any adverse effect on subsistence. In addition, the timing of re-fueling, re-supply, and drilling operations will be addressed in a Plan of Cooperation and a Conflict Avoidance Agreement (CAA) with the Nuiqsut whalers and the AEWC (Lynx Enterprises, 2001).

Whalers from the village of Kaktovik search for whales east, north, and west of the village. Kaktovik is located 177 km (110 mi) east of the easternmost end of the McCovey Prospect. The westernmost reported harvest location was about 21 km (13 mi) west of Kaktovik, near 70°10′N, 144° W (Kaleak, 1996).

Many Nuiqsut whale hunters also hunt seals intermittently year round. However, during recent years, most seal hunting has been during the early summer in open water. In summer, boat crews hunt ringed, spotted, and bearded seals. The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island. In this area, during summer, sealing occurs by boat when hunters apparently concentrate on bearded seals. However, these subsistence hunters have not perceived any interference between recent oil and gas activities in the Alaskan Beaufort Sea.

As part of early consultations with the AEWC, North Slope Borough, and village whaling captain associations, AEC has agreed that the SDC will be shutdown (i.e., cold stacked, ''quiet mode'') during the annual bowhead subsistence hunt (late August-November). This shutdown would eliminate the potential for unmitigable adverse impacts on the availability of marine mammal species for subsistence purposes as a result of the AEC's activities. It is unlikely that AEC's activities will have more than a negligible impact on Nuiqsut seal hunting based on the distance of the McCovey Prospect from the Colville Delta sealing area and AEC's proposed marine mammal monitoring and mitigation measures.

Mitigation

During mobilization of the SDC from Port Clarence to the Beaufort Sea, the AEC will have on-board monitors throughout the transit to ensure they remain as far as operationally practicable from beluga whale concentrations in Kotzebue Sound and Kasegaluk Lagoon and feeding gray whales in the Chuckchi Sea.

AEC proposes to mitigate the potential negative impacts from AEC's re-feuling, re-supply, and exploratory activities at the McCovey Prospect by planning the timing of operations in such a way as to reduce the production of noise during the fall bowhead whale migration. This includes putting the SDC into quiet mode (i.e., cold stack) during the entire bowhead migration period (approximately mid-August through mid-October). In addition to these mitigation measures, the AEC is currently working with the AEWC, North Slope Borough, and other whaling communities on a number of other issues including mitigation plans in the event that the SDC cannot reach the McCovey site prior to the start of the bowhead hunt and transit of supply vessels coming from and returning to Canada.

Monitoring

As part of its application, AEC proposed a visual monitoring program for assessing impacts to marine mammals during the SDC's transit from Port Clarence to the Beaufort Sea and while on-site during the entire re-supply period. In addition, marine mammal observers would be onboard all re-supply vessels transiting from within U.S. waters. NMFS also expects that the AEC will develop an on-ice seal monitoring plan for the exploratory drilling phase. The exact nature of such an on-ice plan should be based on discussions with technical experts and marine mammal biologists prior to and during an on-ice monitoring workshop scheduled for the fall of 2002.

AEC proposes to initiate a comprehensive training program for all potential marine mammal observers that includes learning the identification and behavior of all local species known to use the areas where AEC will be operating. This training would be conducted by professional marine biologists and experienced Native observers participating in the monitoring program. The observer protocol would be to scan the area around vessels and the SDC with binoculars of sufficient power during daylight hours and using night vision equipment during low light conditions. Laser range finding binoculars would be supplied to observers in order to better estimate distances. Observers would collect data on the presence, distribution, and behavior of marine mammals relative to AEC activities as well as climatic conditions at the time of marine mammal sightings. Observations would be made on a nearly 24-hour basis from the time the SDC leaves Port Clarence until the SDC shuts down for the fall (on or before September 1, 2002). If re-supply efforts are necessary between the end of the fall bowhead whale harvest and ice-over, observers would be re-deployed on the SDC and supply vessels. All personnel stationed aboard the SDC during the open water season of 2002 or during exploratory drilling would also receive training on marine mammal monitoring and utilize marine mammal reporting forms to document any incidental takes of marine mammals.

As required by the MMPA, this proposed monitoring plan, as well as the need for on-ice monitoring during exploratory drilling, will be subject to a peer-review panel of technical experts prior to formal acceptance by NMFS.

Reporting

All monitoring data collected would be reported to NMFS and the MMS on a daily or weekly basis. AEC must provide an initial report on 2002–2003 activities to NMFS within 90 days of the completion of the monitoring program. This report will provide dates and locations of the SDC movements, re-supply activities, and other operational activities, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A draft technical report will be provided to NMFS as soon as possible, but no later than 90 days, following the cessation of 2003 exploratory activities at McCovey. The draft technical report will contain a description of the methods, results, and an analysis of all marine mammal monitoring results as they relate to SDC mobilization, re-fueling and re-supply activities, and exploratory activities on McCovey Prospect.

Endangered Species Act Consultation

If an authorization to incidentally harass listed marine mammals is issued under the MMPA for this activity, NMFS will issue an Incidental Take Statement under section 7 of the ESA.

National Environmental Policy Act

In accordance with section 6.01 of NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action, as laid out in AEC's application, and has preliminarily determined that the issuance of an IHA to AEC will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27 and is therefore categorically excluded from further NEPA analysis. In addition to the required NEPA analysis for categorical exclusion, NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996) stated that for issuance of an IHA, NMFS must first determine that the taking (by harassment) would not result in any serious injury or death to a marine mammal, would have no more than a negligible impact on marine mammals and their habitat, and would not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Therefore, NMFS' decision-making process for IHA issuance or denial independently and separately analyzes factors similar to those suggested under section 6.01 of NOAA Administrative Order 216–6 for determining the significance of agency actions for the purposes of NEPA.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of SDC mobilization from Port Clarence, AK through the Bering Strait and Chukchi Sea to the Beaufort Sea and exploratory drilling and associated activities at the McCovey Prospect in the Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of whales, porpoise, and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise or visual cues, this behavioral change is expected to have a negligible impact on the survival and recruitment of stocks.

While the number of potential incidental harassment takes will depend on the year-to-year distribution and abundance of marine mammals in the area of operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and there is no potential for temporary or permanent hearing impairment as a result of the activities. During SDC mobilization, operations will pass through beluga whale summering grounds in the Kotzebue Sound and Kasegaluk Lagoon and gray whale feeding grounds in the Chukchi Sea. The potential for harassment throughout the Chukchi region will be greatly reduced through constant visual monitoring in these areas. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the McCovey Prospect during re-supply, re-fueling and exploratory drilling operations.

Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between AEC and subsistence users and may include additional mitigation measures.

Proposed Authorization

NMFS proposes to issue an IHA for the harassment of marine mammals incidental to movement of a SDC from Port Clarence, AK to the Beaufort Sea and planned exploratory drilling and associated activities at the McCovey Exploration Prospect in the western Beaufort Sea. This IHA proposal is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bowhead whales, beluga whales, gray whales, killer whales, harbor porpoise, ringed seals, bearded seals and spotted seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses once the Plan of Cooperation and CAA is finalized.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225.

Dated: March 6, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–5916 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410097–2041–05]

RIN 0660–ZA–11

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Availability of Funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. The deadline for receipt of applications for the Public Telecommunications Facilities Program (PTFP), which is also funded from this account, was February 5, 2002. The PTFP deadline was published in the **Federal Register** on November 20, 2001 (66 FR 58302).

DATES: Applications for the PEACESAT Program grant must be received on or before 5:00 p.m. on April 11, 2002. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. NTIA will not accept mail delivery of applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

ADDRESSES: To submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Applicants submitting applications by

hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. The security office is located in Room 1874, located at Entrance No. 10 on the 15th St. NW side of the building.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156.

SUPPLEMENTARY INFORMATION:

I. Application Forms and Requirements

Funding for the PEACESAT Program is provided pursuant to Public Law 107–77, the ''Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2002'' and Public Law 106–113, ''The Consolidated Appropriations Act, Fiscal Year 2000.'' Public Law 106–113 provides ''That, hereafter, notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds.'' The PEACESAT Program was authorized under Pub. L. 100–584 (102 Stat. 2970) and also Pub. L. 101–555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Public Law 107–77 appropriated $43.5 million for this account to be awarded for Public Telecommunications Facilities Program (PTFP) grants and for PEACESAT Program grants. The solicitation notice for the PTFP Program was published in the **Federal Register** on November 20, 2001 (66 FR 58302). Applications submitted in response to this solicitation for PEACESAT applications are not subject to the requirements of the November 20, 2001 Notice and are exempt from the PTFP regulations at 15 CFR part 2301. NTIA anticipates making a single award for approximately $475,000 for the PEACESAT Program in FY2002.

NTIA requests that each applicant for a PEACESAT Program grant supply one (1) original signed application and five (5) copies, unless doing so would present a financial hardship, in which case the applicant may submit one(1) original and two (2) copies of the application. The application form consists of the Standard Form 424, *Application for Federal Assistance;* Standard Form 424A, *Budget Information-Non-Construction Programs;* Standard Form 424 B, *Assurances;* Standard Form CD–511, *Certification;* and Standard Form LLL, *Disclosure of Lobbying Activities* (if applicable). These requirements are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget control number.

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

The costs allowable under this Notice are not subject to the limitation on costs contained in the November 20, 2001 Notice regarding the PTFP Program.

II. Administrative Requirements; Scope of Project and Eligible Costs; Evaluation and Selection Process.

Public Law Number 107–77 was enacted November 28, 2001. Public Law 107–77 appropriated funds to the Public Broadcasting, Facilities, Planning and Construction Funds account. Pursuant to Public Law 106–113 the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program can compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. Funds appropriated to the Public Broadcasting, Facilities, Planning and Construction Funds account do not carry fiscal year limitations. A notice published on March 16, 1999 set forth the scope of the project and eligible costs, and a description of the evaluation and selection process for applications for the PEACESAT Program. Since funds for the Public Broadcasting, Facilities, Planning and Construction Funds account are available without fiscal year limitations, the administrative requirements; scope of project and eligible costs criteria; and evaluation and selection process criteria set forth in the March 16, 1999 notice apply to the 1999 PEACESAT program and to all subsequent years. A copy of the March 16,1999 Notice is available to potential applicants from NTIA at the address listed in the Address section and is also available on the Internet at *www.ntia.doc.gov/otiahome/peacesat.html.* If, in the future, NTIA changes the administrative requirements; the scope of project and eligible costs criteria; or the evaluation and selection process criteria, a new notice will be published containing the new criteria and requirements. Unsuccessful applications will be destroyed.

Applicants for grants for the PEACESAT Program must file their applications on or before April 11, 2002. NTIA anticipates making the grant award by September 30, 2002. NTIA shall not be liable for any proposal preparation costs.

III. Project Period

Any project awarded pursuant to this notice will be for a one-year period.

IV. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation, unless stated otherwise in this notice. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbaugh,* 172 F. Supp.2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

V. Executive Order 12866

It has been determined that this notice is ''not significant'' for the purpose of Executive Order 12866.

VI. Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

VII. Regulatory Flexibility Analysis

Because notice and comment are not required under 5 USC 553, or any other law, for this notice related to public property, loans, grants, benefits or contracts, 5 USC 553(a), a Regulatory Flexibility Analysis is not required and

has not been prepared for this notice. 5 USC 601 *et seq.*

Authority: Pub. L. 107–77 the ''Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2002'' and Pub. L. 106–113, ''The Consolidated Appropriations Act, Fiscal Year 2000.''

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 02–5857 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

March 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A package of apparel benefits has been granted to the Government of Pakistan, and is laid out in the Annex to a February 21, 2002 letter from Commerce Department International Trade Administration Under Secretary Grant Aldonas to the Pakistani Secretary of Commerce, Mr. Mirza Qamar Beg, in response to Secretary Beg's letter of February 4, 2002. In the attached directive, 2002 limits for imports of certain apparel categories from Pakistan are being raised reflecting the increases to base limits provided in the Annex to Under Secretary Aldonas' letter.

The base limits for certain categories are being raised by 15%; also, some of these limits reflect reductions previously made for carryforward that was applied to the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2000). Also see 66 FR 63683, published on December 10, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 6, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on March 12, 2002, you are directed to raise the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Specific limits	
331pt./631pt. [2]	905,976 dozen pairs.
334/634	389,495 dozen.
335/635	630,644 dozen.
341/641	1,244,490 dozen.
351/651	527,543 dozen.
638/639	700,857 dozen.
647/648	1,328,797 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–5879 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 13, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the USACE, Directorate of Civil Works, Institute for Water Resources, 7701 Telegraph Road/Casey Building, Alexandria, Virginia 22315–3868, ATTN: Virginia Pankow. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title, Associated Form, and OMB Number: Terminal and Transfer Facilities Descriptions, ENG FORMS, 1,2,3,4,5,6,7,8,9; OMB Control No. 0710–0007.

Needs and Uses: Data gathered, and published as one of the 56 Port Series Report, relate to terminals, transfer facilities, storage facilities, and intermodal transportation. This

information is used in navigation, planning, safety, National Security, emergency operations, and general interest studies and activities. Respondents are the terminal and transfer facility operators.

Affected Public: Business or other for profit.

Annual Burden Hours: 372.

Number of Respondents: 1,489.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: The data is used by the Corps of Engineers, in conjunction with other navigation information of waterway freight and passenger traffic, to evaluate the impact of redefining ''the justified level of service'' of the channel maintenance program. These data are also essential to the Waterborne Commerce Statistics Center in exercising their enforcement and quality control responsibilities in the collection of data from vessel reporting companies.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5906 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 13, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the USACE, Directorate of Civil Works, Institute for Water Resources, 7701 Telegraph Road/Casey Building, Alexandria, Virginia 22315–3868, ATTN: Virginia Pankow. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title, Associated Form, and OMB Number: Lock Performance Monitoring System (LPMS) Waterway Traffic Report; ENG Forms 3102C, 3102D; OMB Control No. 0710–0008.

Needs and Uses: The U.S. Army Corps of Engineers utilizes the data collected to monitor and analyze the use and operation of federally owned and operated locks. Owners, agents and, masters of vessels provide general data about vessels and estimated tonnage and commodities carried. The information is used for sizing and scheduling replacement or maintenance of locks and canals.

Affected Public: Business or other for profit.

Annual Burden Hours: 28,507.

Number of Respondents: 3,000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The data is used primarily by the Corps of Engineers in conducting a systems wide approach to planning and management of the waterway. The Headquarters, Division and District Offices use the information specifically to assist in making determinations on: Adequate staffing for operations and maintenance of the navigation locks and dams; to justify the hours of locks operation; to provide a basis to justify the continued funding as set out in the President's Operation and Maintenance, General Budget; to schedule route maintenance and repairs; to serve as a basis for studies and plans for improvement; for lock operating procedures; to provide data to be used in analyses for major modifications or replacements to lock and dam structures; and to forecast the impact the lock delays, downtime, and proposed changes have on the diversion of waterborne commerce to other transportation modes.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5907 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 13, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the U.S. Army Corps of Engineers, Directorate of Civil Works, 441 G Street, NW., Washington, DC 20314–1000, ATTN: CECW–OR (Celestine S. Robertson). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title, Associated Form, and OMB Number: Customer Service Survey—Regulatory Program U.S. Army Corps of Engineers; ENG Form 5065; OMB Control No. 0710–0012.

Needs and Uses: Survey of applicants who are required to obtain permits from the U.S. Army Corps of Engineers to

build on or conduct dredge and fill operations in United States waters. Opinions on the quality of service are used to make program improvements.

Affected Public: Business or Other for Profit.

Annual Burden Hours: 15,000.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Corps will conduct surveys of customers at our districts, division and headquarters offices, currently a total of 49 offices. Most customer responses will be solicited by the 38 districts. These elements will tabulate their survey results and send copies to headquarters for a Corps wide tabulation. The survey form will be provided to the public when they receive a regulatory product, primarily a permit decision or wetland determination.

Luz Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5908 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning High-Throughput Assays for the Proteolytic Activities of Clostridial Neurotoxins

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/962,260 entitled ''High Throughput Assays for the Proteolytic Activities of Clostridial Neurotoxins'' filed September 25, 2001. Foreign rights are also available (PCT/US01/30188). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: In this application are described substrates for high-throughput assays of clostridial neurotoxin proteolytic activities. Two types of substrates are described for use in assays for the proteolytic activities of clostridial neurotoxins: (1) Modified peptides or proteins that can serve as FRET substrates and (2) modified peptides or proteins that can serve as immobilized substrates. In both types a fluorescent molecules is present in the substrate, eliminating the requirement for the addition of a fluorigenic reagent. The assays described can be readily adapted for use in automated or robotic systems.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5903 Filed 1–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Compositions and Methods for Reducing Blood and Fluid Loss From Open Wounds

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 60/300,384 entitled ''Compositions and Methods for Reducing Blood and Fluid Loss from Open Wounds'' filed June 22, 2001. The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention described herein relates to methods for reducing and/or stopping bleeding or fluid loss from open wound, denuded tissue or burned skin, comprising the step of applying to the open wound, denuded tissue or burned skin a gel-forming composition comprising at least one of the following compositions: a polyacrylic acid having the structural formula $[CH_2{=}CHCO_2H]n$, where n is between 10,000 and 70,000; a polyacrylic acid and a dessicated water soluble organic or inorganic base; polyacrylic acid and a dessicated poorly soluble basic salt, and a polyvinyl alcohol having the structural formula of $[CH_2{=}CHOH]n$, where n is between 15,000 and 150,000. When the gel-forming composition is applied to the open wound, denuded tissue, or burned skin, its ions react therein the presence of water from blood or body fluid therein to form an aqueous gel or mucilage having sufficient viscosity and adhesiveness to cover and adhere to the open wound, denuded tissue, or burned skin so that bleeding or fluid loss is thereby reduced and/or stopped.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5902 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method for Detecting Clostridium Botulinum Neurotoxin Serotypes A, B, E and F in a Sample

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/952,078 entitled ''Method for Detecting Clostridium Botulinum Neurotoxin Serotypes A, B, E and F in a Sample'' filed September 14, 2001. Foreign rights are also available (PCT/US01/28641). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Sensitive and specific enzyme-linked immunosorbent assays which detect Clostridium botulinum neurotoxins serotypes A, B, E, and F in a sample are described. The assay is based upon affinity-purified antibodies directed against the C-fragments of each toxin. These assays demonstrate sensitivity close to that on the mouse bioassay without the use of animals and in a much simpler format than other assays of similar sensitivity.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5899 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method for Detecting Clostridium Botulinum Neurotoxin Serotypes A, B, E and F in a Sample

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 60/232,929 entitled ''Method for Detecting Clostridium Botulinum Neurotoxin Serotypes A, B, E and F in a Sample'' filed September 15, 2000. Foreign rights are also available (PCT/US01/28641). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to a simple, sensitive colorimetric capture ELISA for BoNTs with detection limits at or below 1 mouse unit. The assay is reproducible and accurate with negligible cross-reactivity between serotypes. The strength of the assay relies on its novel format and the unique preparation of the antibodies used in the assay. The antibodies are affinity-purified to the heavy chain C-fragment of the toxin. Others have used antibodies, which are not affinity purified or which are purified to the whole toxin molecule. We reasoned that since the C-terminal region of the heavy chain is where the binding domain is located, this portion of the molecule should not be covered by associated proteins, if the binding domain is located, this portion of the molecule should not be covered by associated proteins; if the binding domain was blocked, then the molecule would be precluded from binding to the cell surface and would not be toxic. Thus, the binding region ''looks'' the same in both the purified and complex forms. Antibodies to this region should recognize preparation of the antibodies is that they do not cross-react between serotypes, they recognize neutralizing epitopes, and they recognize purified and complex toxins equally.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5905 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Diagnosis of Exposure to Toxic Agents by Measuring Distinct Patterns in the Levels of Specific Genes

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/876,249 entitled ''Diagnosis of Exposure to Toxic Agents by Measuring Distinct Patterns in the Levels of Specific Genes'' filed June 7, 2001. Foreign rights are also available (PCT/US00/02756). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to a novel method of diagnosing the exposure to toxic agents based on relative ratios or changes in levels of the genes/proteins in mammalian tissue or body fluids from normal levels. The present invention further relates to compositions and uses thereof for treating lethal shock induced by toxic agents.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5900 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Digital Radiographic Sensor View Capture

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/954,678 entitled ''Digital Radiographic Sensor View Capture'' filed Sept. 14, 2001. Foreign Rights are also available (PCT/US01/29662). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: An apparatus including but not limited to a charge-coupled device (CCD)-array sensor positioning mechanism, the positioning mechanism structured to position a CCD-array sensor to capture a first target area; and the CCD-array sensor to capture a second target area proximate to the first target area, the first and second target areas spatially related such that a first radiographic image recorded at the first target area may be combined with a second

radiographic image recorded at the second target area to form a composite radiographic image substantially analogous to a single radiographic image of an aggregate target area covered by the first and second target areas. A related method that includes but is not limited to recording a first radiographic image of a first target area using CCD-array sensor techniques; recording a second radiographic image of a second target area, the second target area proximate to the first target area, using CCD-array sensor techniques; and displaying a composite image constructed from the first and second image.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5901 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Human Liver Cell Line

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/962,364 entitled ''Human Liver Cell Line'' filed September 25, 2001. Foreign rights are also available (PCT/US01/29975). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: In this application is described the establishment and maintenance of a normal human hepatocyte cell line able to support complete development of malaria parasite development in vitro. Advantages and uses of the cell line are also described.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5904 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 13, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 4, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan Program Deferment Request Forms.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 715,152.

Burden Hours: 143,030.

Abstract: These forms serve as the means by which the U.S. Department of Education collects the information needed to determine whether a Direct Loan borrower qualifies for a loan deferment.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5796 Filed 3–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 7, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Program for International Student Assessment (PISA).
Frequency: One-time.
Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,440,
Burden Hours: 4,817.
Abstract: The Program for International Student Assessment (PISA) is a new system of international assessments that focus on 15-year-olds' capabilities in reading literacy, mathematics literacy, and science literacy. PISA 2000 was the first cycle of PISA, which will be conducted every three years, with a primary focus on one area for each cycle. PISA 2000 focuses on reading literacy; mathematics literacy will be the focus in 2003, and science literacy in 2006. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5847 Filed 3–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–90–000, CP02–91–000, CP02–92–000, and CP02–93–000]

AES Ocean Express LLC; Notice of Application for Certificates of Public Convenience and Necessity, and for Section 3 Authorization and a Presidential Permit

March 5, 2002.

Take notice that on February 21, 2002, AES Ocean Express LLC (Ocean Express), Two Alhambra Plaza, Suite 1104, Coral Gables, Florida, 33134, filed applications pursuant to Sections 3 and 7(c) of the Natural Gas Act (NGA). Ocean Express is a limited liability company organized under the laws of the State of Delaware. Ocean Express is an indirect, wholly-owned subsidiary of The AES Corporation.

In Docket No. CP02–90–000, Ocean Express seeks a certificate of public convenience and necessity authorizing Ocean Express to construct, own, and operate a new natural gas pipeline under Part 157, Subpart A of the Commission's Regulations. In Docket No. CP02–91–000, Ocean Express seeks a blanket certificate for certain blanket construction and operation authorization under Part 157, Subpart F of the Commission's Regulations. In Docket No. CP02–92–000, Ocean Express seeks a blanket certificate under Part 284, Subpart G of the Commission's Regulations for self-implementing transportation authority. In Docket No. CP02–93–000, Ocean Express seeks a Presidential Permit and Section 3 authorization pursuant to Part 153 of the Commission's Regulations.

The Applications are on file with the Commission and open to public inspection. The filings may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, selecting ''Docket #'' and following the instructions (please call (202) 208–2222 for assistance). Any questions regarding the application may be directed to Kimberly Hall, AES Ocean Express LLC, Two Alhambra Plaza, Suite 1104, Coral Gables, FL 33134, (305) 444–4002.

In Docket No. CP02–90–000, Ocean Express requests authorization to construct, own, and operate a new 24-inch diameter, approximately 52.4-mile interstate natural gas pipeline, consisting of a 46.1 mile offshore segment and a 6.3-mile onshore segment.

The offshore pipeline will extend from Exclusive Economic Zone (EEZ) boundary between the United States and The Bahamas in the Atlantic Ocean, off the southeast Florida coastline[1] to the Dania Beach Boulevard traffic circle in Broward County, Florida. After making landfall at the Dania Beach Boulevard traffic circle, the proposed pipeline will continue onshore, in a westward direction, to two delivery points: (i) an interconnection with the Florida Gas Transmission (FGT) system at the Florida Power & Light (FPL) Fort Lauderdale Power Plant, and (ii) an interconnection with the FPL gas line servicing the FPL Fort Lauderdale Power Plant. Ocean Express' proposed pipeline is designed to transport up to 824,000 Dth/day.

Ocean Express states that it will receive, at the EEZ boundary, natural gas transported by an approximately 40.4-mile nonjurisdictional pipeline beginning at a liquefied natural gas (LNG) receiving, storage and regasification facility in Ocean Cay, The

[1] The EEZ is defined in the 1995 Department of State Public Notice 2237—Exclusive Economic Zone and Maritime Boundaries; Notice of Limits U.S. Atlantic Coast and Gulf of Mexico. See 60 *Fed. Reg.* ¶ 43,825 (1995).

Bahamas. Ocean Express states that the nonjurisdictional, foreign pipeline and LNG facility will be constructed, owned and operated by its Bahamian affiliate, AES Ocean LNG, Ltd.

Ocean Express estimates that the total capital cost of constructing the United States part of the pipeline and appurtenant facilities in the United States will be about $93 million. Ocean Express also filed a *pro forma* FERC Gas Tariff showing the initial rate for firm transportation service of a $0.0456/Dth reservation charge. The rate for interruptible service is the 100% load factor equivalent of the firm service rate. The *pro forma* tariff also contains the terms and conditions of the transportation services proposed to be offered by Ocean Express.

Ocean Express says it conducted an open season from September 18, 2001 through October 18, 2001 to receive requests and obtain binding commitments for transportation capacity. As a result, Ocean Express received six requests for additional information on the project, and two bids for capacity. Ocean Express says that only AES LNG Marketing, L.L.C. submitted a conforming bid, resulting in an executed precedent agreement for 800,000 Dth/day.

Ocean Express says that it has consulted with numerous interested stakeholders through the course of developing its project in order to avoid or minimize negative impacts to surrounding communities. Ocean Express has identified a total of fifteen landowners and governmental agencies that could be directly affected by the proposed pipeline. Ocean Express states it will maintain contact with these landowners throughout the course of its project. Ocean Express also states that it will employ construction techniques that minimize environmental impacts. Ocean Express states that it intends to utilize horizontal directional drilling (HDD) technology to construct the approximately 7880 feet of offshore pipeline closest to shore, and explains that use of the HDD technology will avoid or minimize construction-related impact to reef structures near the shore. Ocean Express states it is also using HDD technology for various portions of its onshore route to minimize impacts.

Ocean Express also seeks NGA Section 3 authority and a Presidential Permit to construct, own, operate, and maintain a 24-inch pipeline at the U.S.-Bahamian boundary. Ocean Express states that it will connect with AES Ocean LNG, Ltd., its Bahamian affiliate, at the EEZ boundary between the U.S. and The Bahamas, and that any facilities considered to be ''border facilities'' will be a segment of 24-inch diameter at that location on the EEZ boundary.

Ocean Express requests that the Commission issue a preliminary determination on non-environmental issues by July 2002, and a final certificate authorization by March 2003. Ocean Express says that this will allow construction to be completed by a proposed in-service date of November 1, 2004. This proposed in-service date depends on the timing of financing commitments. If financing commitments cannot be secured on the basis of a preliminary determination issued by the Commission, then Ocean Express proposes an alternative in-service date of March 1, 2005 because of such commercial considerations.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before March 26, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to take, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5718 Filed 3–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PA02–2–000]

Fact-finding Investigation of Potential Manipulation of Electric and Natural Gas Prices; All Jurisdictional Sellers and All Non-jurisdictional Sellers in the West

March 5, 2002.

On February 13, 2002, the Commission issued an order directing Staff to conduct a fact-finding investigation into whether any entity, including Enron Corporation (through its affiliates or subsidiaries), manipulated short-term prices in electric energy or natural gas markets in the West or otherwise exercised undue influence over wholesale prices in the West, for the period January 1, 2000, forward. In Ordering Paragraph (B) of the February 13, 2002, order, the Commission empowered the General Counsel or her designee, with respect to any matters relevant to that investigation, to gather information and to require the production of any contracts, agreements or other records, among other things.

In the course of conducting this fact-finding investigation, Staff reviewed the wholesale sales information filed by jurisdictional sellers in their quarterly reports. Staff determined that the information contained in the reports is not useful for the fact-finding investigation. Moreover, the information is incomplete as to the markets in the West because non-jurisdictional sellers of wholesale energy do not file quarterly reports.

Accordingly, pursuant to the February 13, 2002, order, I hereby direct all jurisdictional sellers and all non-jurisdictional sellers with wholesales sales in the U.S. portion of the Western Systems Coordinating Council (WSCC) to respond to this information request, as described in more detail below. The failure to respond on the part of any seller to which this information request applies may result in appropriate enforcement action, including the issuance of a subpoena. Any jurisdictional seller that does not have any transactions to report is to report that fact to the e-mail address listed below.

All jurisdictional sellers and all non-jurisdictional sellers with wholesales sales in U.S. portion of the WSCC are required to report on a daily basis certain historical information (specified in an Excel spreadsheet template entitled ''Short-term Firm and Non-firm Wholesale Sales Transactions'') for all short-term energy transactions in the U.S. portion of the WSCC for calendar years 2000 and 2001. Short-term energy transactions are defined as those transactions for sales or resales with a term of one week or less. The spreadsheet template includes columns for quantity and price data, transactions with affiliated buyers, non-affiliated buyers, and by specific, identified delivery points.

All jurisdictional and non-jurisdictional sellers with wholesale sales in the U.S. portion of the WSCC are required to report certain historical information for calendar years 2000 and 2001 (specified in an Excel spreadsheet template entitled ''Monthly Firm and Non-Firm Wholesale Sales Transactions'') for transactions of capacity and energy in the U.S. portion of the WSCC on a monthly basis. Monthly transactions are defined as all wholesale capacity and wholesale energy sales or resales that were made on a monthly, seasonal, or quarterly basis. The spreadsheet template includes columns for quantity and price data, transactions with affiliated buyers, non-affiliated buyers, and by specific, identified delivery points.

All jurisdictional sellers and all non-jurisdictional sellers with wholesales sales in the U.S. portion in the WSCC are required to report certain historical and projected information (specified in an Excel spreadsheet template entitled ''Long Term Capacity and Energy Sales'') for all long-term transactions in the U.S. portion of the WSCC, the contracts for which were executed for delivery on or after January 1, 2000. Long-term transactions are defined as those transactions for a term of one year or more. For the date on which any long-term contract was executed, the spreadsheet template includes columns for quantity and price data, term dates, transactions with affiliated buyers, non-affiliated buyers, and by location. Respondents are also required to provide copies of the relevant contracts, together with all supplements and amendments, in electronic (scanned) format.

Responses must be provided no later than April 2, 2002. The three Excel spreadsheets needed to complete this information request are contained in two files posted on the Commission's web page for Docket No. PA02–2–000 (*http://www.ferc.gov/electric/bulkpower/pa02–2/pa02–2.htm*). These spreadsheets are to be completed by respondents and e-mailed to *william.booth@ferc.gov*. A response that exceeds the row limit for an Excel spreadsheet must be reported in CSV format. If any respondent seeks privileged treatment of the information pursuant to 18 CFR 388.112 (2001), two versions of each spreadsheet should be e-mailed. Include in the e-mail and in the title of the spreadsheet that the information is ''Confidential'' or ''Not Confidential.''

A copy of this information request will be published in the **Federal Register** and published on the Commission's web page for Docket No. PA02–2–000 (*http://www.ferc.gov/electric/bulkpower/pa02–2/pa02–2.htm*). In addition, it also will be mailed to all the jurisdictional public utilities listed in the appendix to the November 20, 2001, order in Docket No. EL01–118–000.

Respondents seeking assistance with this information request may contact Mr. William Booth at 202–208–0849 (technical) or Ms. Jo Tolley at 202–208–1260 (non-technical).

Donald J. Gelinas,

Associate Director, Office of Markets, Tariffs and Rates.

[FR Doc. 02–5721 Filed 3–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–93–005, et al.]

Mirant Americas Energy Marketing, L.P., et al.; Electric Rate and Corporate Regulation Filings

March 5, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Mirant Americas Energy Marketing, L.P.; Mirant New England, LLC; Mirant Kendall, LLC; and Mirant Canal, LLC v. ISO New England Inc.

[Docket No. EL01–93–005]

Take notice that on February 25, 2002, ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) its compliance filing in response to the Commission's October 26, 2001 Order in the above-referenced proceeding.

Copies of said filing have been served upon all parties to this proceeding, NEPOOL Participants, and all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment Date: March 27, 2002.

2. Arizona Public Service Company

[Docket No. ER02–1174–000]

Take notice that on February 28, 2002, Arizona Public Service Company (APS) tendered for filing a revised Contract Demand Exhibit for Southern California Edison (SCE) applicable under the APS-FERC Rate Schedule No. 120.

Copies of this filing have been served on SCE, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment Date: March 21, 2002.

3. San Diego Gas & Electric Company

[Docket No. ER02–1180–000]

Take notice that on February 28, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its Service Agreements numbers 13 and 14 to its FERC Electric Tariff, First Revised Volume No. 6, two interconnection agreements. Both agreements relate to the interconnection of new generation plants to be owned by Energia Azteca X, S. de R.L. de C.V. and Energia de Baja California, S. de R.L. de C.V. The plants, with a capacity of 685 megawatts, are being constructed on an expedited basis to meet electricity demand in the Western United States, Baja California, Mexico, and the San Diego Basin. They will be located near Mexicali, Mexico, and are expected to begin service on or about July 1, 2002.

Service Agreement No. 13 is an Expedited Interconnection Facilities Agreement dated February 1, 2002 between SDG&E and Baja California Power, Inc., under which SDG&E will construct, operate and maintain the proposed interconnection facilities. Service Agreement No. 14, the Interconnection Agreement between SDG&E and Baja California Power, Inc., dated February 1, 2002, establishes interconnection and operating responsibilities and associated communications procedures between the parties. SDG&E requests an effective date of May 15, 2002 for both agreements.

SDG&E states that copies of the filing have been served on Baja California Power, Inc., and on the California Public Utilities Commission.

Comment Date: March 21, 2002.

4. Nevada Power Company

[Docket Nos. ER01–2754–003, ER01–2755–003, ER01–2758–003, and ER01–2759–003]

Take notice that on February 27, 2002, Nevada Power Company (Nevada Power) filed, pursuant to Section 205 of the Federal Power Act and the Federal Energy Regulatory Commission's (Commission) Orders dated December 20, 2001 and February 21, 2002 in the above-referenced proceedings, transmission service agreements that have been revised in accordance with the Commission's December 20, 2001 Order.

Comment Date: March 20, 2002.

5. PJM Interconnection, L.L.C.

[Docket No. ER02–1171–000]

Take notice that on February 28, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing executed service agreements for firm point-to-point transmission service, non-firm point-to-point transmission service, and network integration transmission service for Rockland Electric Company.

PJM requested a waiver of the Commission's notice requirement to permit a March 1, 2002 effective date for the agreements.

Copies of this filing were served upon Rockland Electric Company and the state commissions within the PJM region.

Comment Date: March 21, 2002.

6. International Transmission Company

[Docket No. ER02–1172–000]

Take notice that on February 28, 2002, International Transmission Co., (International Transmission) pursuant to Section 205 of the Federal Power Act, submitted for filing with the Federal Energy Regulatory Commission (Commission) agreements for the provision of non-discriminatory transmission service under the joint open access transmission tariff (JOATT) between International Transmission and Michigan Electric Transmission Company (METC).

Comment Date: March 21, 2002.

7. Front Range Power Company, LLC

[Docket No. ER02–1173–000]

Take notice that on February 28, 2002, Front Range Power Company, LLC (FRPC), a Colorado limited liability company, applied to the Federal Energy Regulatory Commission (Commission) for acceptance of Front Range Power Company, LLC, Electric Tariff, Original Volume No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; the waiver of certain Commission regulations; and the waiver of certain notice requirements. The application also asks the Commission to accept for filing service agreements with Public Service Company of Colorado and Colorado Springs Utilities.

Comment Date: March 21, 2002.

8. Arizona Public Service Company

[Docket No. ER02–1174–000]

Take notice that on February 28, 2002, Arizona Public Service Company (APS) tendered for filing a revised Contract Demand Exhibit for Southern California Edison (SCE) applicable under the APS-FERC Rate Schedule No. 120.

Copies of this filing have been served on SCE, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment Date: March 21, 2002.

9. Aroostook Valley Electric Company

[Docket No. ER02–1175–000]

Take notice that on February 28, 2002, Aroostook Valley Electric Company, tendered for filing a notice of succession and amendments to an existing market-based rate tariff to reflect the name change from Aroostook Valley Electric Company, which owns a 31 MW wood-burning power plant in Fort Fairfield, Maine, to Boralex Fort Fairfield Inc. and to remove language from the tariff to comply with *Calhoun Power Company I, LLC*, 96 FERC ¶ 61,056 (2001).

Comment Date: March 21, 2002.

10. American Electric Power Service Corporation

[Docket No. ER02–1176–000]

Take notice that on February 28, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing Firm and Non-Firm Point-to-Point Transmission (PTP) Service Agreements for Dominion Energy Marketing, Inc, Progress Ventures, Inc., and Wisconsin Public Service Corporation, a revised Network Integration Service Agreement for Wabash Valley Power Association, Inc., and a Long-Term Firm PTP Service Agreement Specification for AEPSC's Power Marketing Organization. These agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective on and after February 1, 2002. A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: March 21, 2002.

11. Tampa Electric Company

[Docket No. ER02–1177–000]

Take notice that on February 28, 2002, Tampa Electric Company (TEC)

tendered for filing pursuant to section 205 of the Federal Power Act an executed Interconnection and Operating Agreement between TEC and Auburndale Peaker Energy Center, L.L.C. as a service agreement under TEC's open access transmission tariff.

Comment Date: March 21, 2002.

12. Ocean State Power II

[Docket No. ER02–1178–000]

Take notice that on February 28, 2002, Ocean State Power II (Ocean State II), tendered for filing revised pages to Rate Schedule FERC Nos. 5–8, which update Ocean State II's rate of return on equity (ROE) with respect to such rate schedules.

Ocean State II requests an effective date of April 29, 2002. Copies of the Supplements have been served upon, among others, Ocean State II's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment Date: March 21, 2002.

13. Ameren Services Company

[Docket No. ER02–1181–000]

Take notice that on February 28, 2002, Ameren Services Company (Ameren Services) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between Ameren Services and MidAmerican Energy Company. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to MidAmerican Energy Company pursuant to Ameren's Open Access Tariff.

Comment Date: March 21, 2002.

14. Niagara Mohawk Power Corporation

[Docket No. ER02–1182–000]

Take notice that on February 28, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing its Rate Schedule No. 314 with the City of Jamestown Board of Public Utilities (Jamestown).

Copies of the filing have been served on counsel for Jamestown, the Power Authority of the State of New York, the New York Independent System Operator, Inc. and the New York State Public Service Commission.

Comment Date: March 21, 2002.

15. Commonwealth Edison Company

[Docket No. ER02–1183–000]

Take notice that on February 28, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Service Agreement) and the associated unexecuted Dynamic Scheduling Agreement (DSA) with Exelon Generation Company, LLC (Exelon) under ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of March 1, 2002, and accordingly, requests waiver of the Commission's notice requirements. A copy of this filing was served on Exelon and ORMET Corporation.

Comment Date: March 21, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5855 Filed 3–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, Comments, Recommendations, and Terms and Conditions

March 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12144–000.

c. *Date filed:* January 23, 2002.

d. *Applicant:* Pristine Springs, Inc.

e. *Name of Project:* Pristine Springs Hydro #3.

f. *Location:* On Warm Creek, in Jerome County, Idaho. The project would not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Nyal Hoffman, 2122E 3950N, Filer, Idaho 83328, (208) 326–5680.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see the following paragraphs about filing responsive documents.

k. *Deadline for filing motions to intervene, protests and comments:* (April 14, 2002).

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. Please include the Project Number (P–12144–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The project will be located at the outflow of an existing Aquaculture facility. The existing outflow exits an existing dam through a concrete structure and into the Snake River. The hydroelectric facility will consist of a new concrete structure connected to the existing one. The project will consist of a new powerhouse and a new 500 kW turbine generating unit. A channel will be built that allows the water to go through the turbine and exit by a 80-inch pipeline to the Snake River. The turbine will be operated as run-of-river. Approximately 4000 feet of power lines will be built to

connect with lines that exist on the property. The average annual generation would be 1,762,305 kWh.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests of Motions to Intervene*—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, 385.211, and 385.214. 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 on or before the specified deadline date for the particular application.

q. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

r. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

s. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the Service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5854 Filed 3–11–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7156–7]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Louisiana Oil Recycle & Reuse Site, Baton Rouge, Louisiana, with the parties referenced in the Supplementary Information portion of this notice.

The settlement requires the settling deminimis parties to pay a total of $73,176.87 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before April 11, 2002.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Janice Bivens, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6717. Comments should reference the Louisiana Oil Recycle & Reuse Site, Baton Rouge, Louisiana, and EPA Docket Number 6–04–02, and should be addressed to Janice Bivens at the address listed above.

FOR FURTHER INFORMATION CONTACT: Amy McGee, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–8063.

SUPPLEMENTARY INFORMATION:

Acadian Ambulance
American Manufacturing (American Cordage)
Ascension Parish (LA) Police Jury
Atlas Processing (Pennzoil Quaker State)
Atlas Wireline Service (Baker-Hughes)
Aviation Labs
B&B Auto
B.F. Goodrich Chemical
Bercen, Inc.
Bob Wall's Automotive
BP Oil Company, and Sohio
Brandt Company
C & L Supply
Cabot Corporation (Haynes International)
Caleb Brett Industries
Carboline, Inc.
Catalyst Recovery
CCL Custom Manuf. (Peterson Puritan, Inc.)
CENLA Ambulance (Rapides Regional Med. Ctr.)
Cherry Picker Parts & Service
Coastal Fluid (Coastal Chemical Co., L.L.C.)
Conoco, Inc.
Daniel Oil Tool (Emerson Process Mgmt.)
Don's Auto Shop
Dravo Lime
Dresser Industries/Dresser Pump
DSI Transport
Durametallic (FlowServe Corp.)
Enron Trading (EOTT)
Ferriday Farm Equipment
Francis Drilling Fluid
Futrell Chevrolet
General Electric
George Lato
G. N. Gonzales
Greenwell Springs Hospital (E. LA Mental Health System)
Groendyke Transport, Inc.
Halliburton Logging
Hammond (LA) State School
Highland Hardware
Howell Industries
I.E.W. Systems, Inc. (Universal Compression Inc.)
Iberville (LA) Policy Jury
Ingersoll-Rand
Inspectorate American/Charles Martin
Intercontinental Terminals
International Paint (AKZO-Nobel)
Ken Coleman Equipment
Koch Pipeline Company, L.P.
KRC Southern (Voith Paper)
L & B Transportation Co., Inc.
Lincoln Big Three Inc.
Liquid Air Engineering Corp. (Air Liquide)
Liquid Carbonic (Praxair)
Lewis Grocer
Louisiana Community & Technical College
Louisiana Industries (TXI)
Luv-n-Care
M & L Industries
MacKenzie Chemical (Murdoch Corp.)
Melamine Chemical
N L McCullough Industries, Inc. (Baker-Atlas)
U.S. Navy
Occidental Chemical Corporation
Oddis Machine (Otis-Halliburton)
OHM Corporation
Our Lady of the Lake Hospital (Baton Rouge, LA)
P & H Tube
Pierce Properties
Purina Mills, Inc.
Quality Diesel
Raymond Pylant
Richard Oil Company
Rubicon, Inc.
Schuylkill Metals (Exide Technology)
SEPCO Industries (DPX Enterprises, Inc.)
Sewell Plastics (Crown Cork & Seal)
Shell Western E & P
Simmons Tractor
Solar Turbines
Southern Flo, Inc.
Southern Natural Gas (El Paso Corp.)
Southern Scrap Materials, Ltd.
Speciality Oil (Pennzoil-Quaker State)
Stupp Corporation
T.M.I.
Union Texas Petroleum (Williams Companies)
United States Postal Service (USPS)
University of Southeast Louisiana
University of Southwest Louisiana (Lafayette)
Valley Electric Corporation
Verret Shipyard
West Jefferson Levee District (LA)
Westinghouse (Siemens)
Woodward-Clyde Consultants
WY Tractor Company

Dated: January 31, 2002.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 02–5866 Filed 3–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7156–6]

Notice of Availability of Draft NPDES General Permits for Reverse Osmosis Reject Water Discharges in the State of Massachusetts

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of the draft NPDES General Permit MAG450000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-New England (EPA–NE), is today providing notice of the availability of the Draft National Pollutant Discharge Elimination System (NPDES) general permit for reverse osmosis reject water discharges to certain waters in the State of Massachusetts as authorized by section 301(a) of the Clean Water Act. See also 40 CFR 122.28. The draft NPDES general permit establishes Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for reverse osmosis reject water discharges. Reverse osmosis reject water is defined as pumped or drained wastewater discharges from reverse osmosis units.

Owners and/or operators of sites that discharge reverse osmosis reject water, will be required to submit an NOI to EPA–NE to be covered by the appropriate general permit and will receive a written notification from EPA–NE of permit coverage and authorization to discharge under the general permit. The general permit does not cover new sources as defined under 40 CFR 122.2.

DATES: For comment period: Interested persons may submit comments on the draft general permit as part of the administrative record to the EPA–NE, at the address given below, no later than April 11, 2002.

ADDRESSES: The draft permit is based on an administrative record available for public review at EPA–NE, Office of Ecosystem Protection (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. Written comments may be hand delivered or mailed to this address. Electronic comments may be e-mailed to *davis.betsy@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday excluding holidays from: Betsy Davis, EPA–NE, Office of Ecosystem Protection, NPDES Permit Unit; One Congress Street, Boston, MA 02114–2023; telephone: 617–918–1576; e-mail: *davis.betsy@epa.gov.*

SUPPLEMENTARY INFORMATION: The draft NPDES general permit may be viewed over the Internet via the EPA–NE web site *www.epa.gov/region01/topics/water/permits.html.* To obtain a hard copy of the document, please call, e-mail or write to Ms. Davis at the addresses listed above. The draft general permit includes FACT SHEET AND **SUPPLEMENTARY INFORMATION** sections that set forth principal facts and the significant factual, legal and policy questions considered in the

development of the draft permit. A reasonable fee may be charged for copying requests.

When the general permit is issued, it will be published in its entirety in the **Federal Register**. The general permit will be effective on the date specified in the **Federal Register** and it will expire five years from the date that the final permit is published in the **Federal Register**.

Dated: February 19, 2002.

Robert W. Varney,

Regional Administrator, Region I.

[FR Doc. 02–5867 Filed 3–11–02; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

March 7, 2002.

Deletion of Agenda Item From March 14th Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at Open Meeting and previously listed in the Commission's Notice of March 7, 2002.

Item No., Bureau, and Subject

6—Wireless Telecommunications and Office of Engineering and Technology—*Title:* Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range (ET Docket No. 98–206; RM–9147 and RM–9245); Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band. *Summary:* The Commission will consider further action regarding the new Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6030 Filed 3–08–02; 2:17 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

March 7, 2002.

Open Commission Meeting; Thursday, March 14, 2002

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday March 14, 2002, which is scheduled to commence at 9:30 a.m. in Room TW–C305, 445 12th Street, SW., Washington, DC.

Item No., Bureau, and Subject

1—Cable Services—*Title:* Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities (GN Docket No. 00–185); Internet Over Cable Declaratory Order Proceeding; and Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities. *Summary:* The Commission will consider a Declaratory Ruling and Notice of Proposed Rulemaking addressing the legal classification and the appropriate regulatory framework under the Communications Act of 1934, as amended, for broadband access to the Internet over cable system facilities.

2—Common Carrier—*Title:* Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations (CC Docket No. 01–150). *Summary:* The Commission will consider a Report and Order concerning streamlined procedures for transfer of control applications by domestic telecommunications carriers pursuant to section 214 of the Communications Act of 1934, as amended.

3—Common Carrier—*Title:* Presubscribed Interexchange Carrier Charges (CCB/CPD File No. 01–12, RM No. 10131). *Summary:* The Commission will consider an Order and Notice of Proposed Rulemaking concerning charges for changing end users' presubscribed interexchange carriers.

4—International—*Title:* Mitigation of Orbital Debris. *Summary:* The Commission will consider a Notice of Proposed Rule Making concerning mitigation of orbital debris by satellite systems.

5—Wireless Telecommunications—*Title:* Improving Public Safety Communications in the 800 MHz Band Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, Notice of Proposed Rulemaking (NPRM). *Summary:* The Commission will consider a Notice of Proposed Rulemaking inviting comments on how best to remedy interference to 800 MHz band public safety systems.

6—Wireless Telecommunications and Office of Engineering and Technology—*Title:* Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range (ET Docket No. 98–206; RM–9147 and RM–9245); Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band. *Summary:* The Commission will consider further action regarding the new Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@apl.com*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 834–1470 Ext. 10. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at *http://www.fcc.gov/realaudio/*. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6031 Filed 3–8–02; 2:17 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2536]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 7, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition

must be filed by March 27, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 1.

William F. Caton,

Acting Secretary.

[FR Doc. 02–5846 Filed 3–11–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1404–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1404–DR), dated March 1, 2002, and related determinations.

EFFECTIVE DATE: March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 1, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from a severe winter storm on December 24–29, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter J. Martinasco of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of New York to have been affected adversely by this declared major disaster:

Erie County for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5831 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Pre-Disaster Mitigation Program

AGENCY: Federal Insurance and Mitigation Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of Pre-Disaster Mitigation grants.

SUMMARY: FEMA gives notice of the availability of grants for fiscal year (FY) 2002 under the Pre-Disaster Mitigation (PDM) Program as authorized by section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 USC 5133, as amended by section 102 of the Disaster Mitigation Act of 2000 (DMA), Public Law 106–390, 114 Stat. 1552. No State shall receive less than one percent of the $25M appropriated in FY 2002, as specified in section 203(f) of the Stafford Act for eligible State, local, and tribal activities. FEMA will contribute up to 75 percent of the cost of activities approved for funding. At least 25 percent of the total eligible costs must be provided from a nonfederal source. Grants awarded to small and impoverished communities may receive a Federal cost share of up to 90 percent of the total cost to implement eligible PDM activities. A Small and Impoverished Community must meet all of the following criteria:

- It must be a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city;
- It must be economically disadvantaged, with residents having an average per capita annual income not exceeding 80 percent of national per capita income, based on best available data;
- It must have a local unemployment rate that exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and
- It must meet any other factors identified in the State Plan in which the community is located.

DATES: States are requested to submit a letter of intent to the appropriate FEMA Regional Director by March 30, 2002, including a list of communities they are targeting (*i.e.,* identify potential sub-grantees). States must submit a grant application and their assessment of the extent to which communities meet the criteria outlined in section 203(g) of the Stafford Act to the appropriate FEMA Regional Office by June 30, 2002.

ADDRESSES: FEMA Regional Offices:

Serving the State of Maine, State of New Hampshire, State of Vermont, State of Rhode Island, State of Connecticut, and the Commonwealth of Massachusetts:

FEMA Region I

442 J.W. McCormack POCH, Boston, MA 02109–4595.

Serving the State of New York, State of New Jersey, the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands:

FEMA Region II

26 Federal Plaza, Rm. 1337, New York, NY 10278–0002.

Serving the District of Columbia, Delaware, Maryland, Pennsylvania, Commonwealth of Virginia, and West Virginia:

FEMA Region III

1 Independence Mall, 6th Floor, 615 Chestnut Street, Philadelphia, PA 19106–4404.

Serving the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:

FEMA Region IV

3003 Chamblee Tucker Road, Atlanta, GA 30341.

Serving the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin:

FEMA Region V

536 S. Clark Street, 6th Floor, Chicago, IL 60605.

Serving the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas:

FEMA Region VI

FRC 800 North Loop 288, Denton, TX 76201–3698.

Serving Iowa, Kansas, Missouri, and Nebraska:

FEMA Region VII

2323 Grand Avenue, Suite 900, Kansas City, MO 64108.

Serving Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

FEMA Region VIII

Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

Serving the States of Arizona, California, Hawaii and Nevada; and the Territory of American Samoa, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau:

FEMA Region IX

Building 105, Presidio of San Francisco, San Francisco, CA 94129–1250.

Serving the States of Alaska, Idaho, Oregon and Washington:

FEMA Region X

Federal Regional Center, 130 228th Street, SW, Bothell, WA 98021–979.

FOR FURTHER INFORMATION CONTACT: Margaret Lawless, Program Planning and Delivery Division, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Room 401, Washington, DC 20472, (202) 646–3027 or e-mail: *Margaret.Lawless@fema.gov.*

SUPPLEMENTARY INFORMATION:

Appropriations

Under Public Law 107–73, 115 Stat. 651, Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, we are issuing a Request for Application (RFA) to implement the PDM Program.

Background

The PDM program provides funding for cost-effective hazard mitigation activities that complement comprehensive mitigation programs, reduce injuries, loss of life, and damage and destruction of property.

Section 203 of the Stafford Act provided a deadline of October 1, 2001 for States' submittal of recommendations for eligible communities to receive assistance. Since the president's budget request for FY 2002 did not include funding for the program, FEMA did not feel that it was appropriate to request the States to recommend communities for assistance. FEMA has notified Congress that the deadline was not applied because enactment of FEMA's appropriations came after the deadline.

It is anticipated that proposed program regulations will be available in 2002 and should be effective for next year's (FY 2003) PDM grants. Pending publication of our program regulations, we encourage States to focus their applications, including applications from local governments and tribes (sub-grantees), on the development of local mitigation plans or on cost-effective ''brick and mortar'' projects in communities where plans have already been developed. For FY 2002 funds, awards will be governed by section 203 of the Stafford Act, this notice, and program guidance, which will be made available to the public on the FEMA Internet site: *www.fema.gov.*

Applicant Eligibility

A State or Indian tribal government is eligible to apply for assistance as a grantee.

A local government or Indian tribal government is eligible to apply to the grantee for assistance as a sub-grantee. In order for flood prone communities to receive funds, applicants must be NFIP-participating communities (if they have been mapped through the NFIP) and must be in good standing (not on probation or suspension).

Grant Application Process

Local governments should consult the official designated point of contact in their State for more information on the process the State requires to be followed in applying for assistance.

To apply for this grant, States are requested to submit a letter to the Regional Director expressing their intent to participate in the PDM Program for FY 2002. The letter must also include a list of which communities they are targeting (i.e., identify potential sub-grantees) based on a State prioritization that takes into consideration relevant criteria under section 203(g) of the Stafford Act.

States must complete and submit to the appropriate FEMA Regional Office a grant application, which can be obtained from the FEMA Regional Office. The grant application should include:

- Application for Federal Assistance, Standard Form 424;
- Budget Information—Non-Construction Program, FEMA Form 20–20;
- Summary Sheet for Assurances and Certification, FEMA Form 20–16;
- Assurances—Non-Construction Program, FEMA Form 20–16A;
- Certification Regarding Lobbying; Debarment, Suspension and Other Responsible
- Matters; and Drug-Free Workplace Requirements, FEMA Form 20–16C;
- Disclosure of Lobbying Activities, Standard Form LLL; and,
- Program Narrative identifying the activities for which funding is requested.

The State should prioritize activities included in their Program Narrative taking into consideration relevant criteria under section 203(g) of the Stafford Act. Mitigation projects should be ranked beginning with those that are most cost effective, consistent with OMB Circular A–94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs. However, consideration should be made to complete mitigation projects within a geographic area when possible. In this case, supporting documentation should be submitted with the application. The Program Narrative should include the following:

- Individual activity location and name of sub-grantee;
- Activity title and number;
- Individual activity costs, including Federal and nonfederal shares;
- Activity specific scopes of work, including a list of properties, if applicable;
- Recommendations and documentation regarding the environmental review required by 44 Code of Federal Regulations (CFR) part 10, Environmental Considerations, and other applicable laws and executive orders; and
- Certification that the State has evaluated the included projects, they meet all PDM Program eligibility criteria, and the projects will be implemented in accordance with 44 CFR part 13, Uniform Administrative

Requirements for Grants and Cooperative Agreements to State and Local Governments.

• State's assessment of the extent to which communities meet the relevant criteria under section 203(g) of the Stafford Act.

Eligible Activities

44 CFR part 201, Hazard Mitigation Planning, establishes new criteria for State and local hazard mitigation planning, pursuant to section 322 of the Stafford Act, which will require local governments and Indian tribal governments applying for PDM funds through the States to have an approved local mitigation plan prior to the approval of mitigation project grants after November 1, 2003. Therefore, we encourage States to focus their FY 2002 PDM funding on the development of State and local multi-hazard mitigation plans in order to meet this future requirement. This may include developing countywide or multi-jurisdictional plans (must be adopted by all jurisdictions included), since many issues are better resolved by evaluating hazards in a more comprehensive fashion. Eligible activities under this grant are:

• *Management costs.* Grantees may use up to $50,000 of their PDM funds to assist in soliciting and reviewing PDM applications and for providing technical assistance to sub-applicants.

• *Information dissemination.* Up to 10 percent of the funds awarded to States may be used to disseminate information regarding cost-effective mitigation technologies, such as marketing, outreach, training and education.

• *Planning.* PDM funds may be used to develop State, tribal, and local multi-hazard (to include man-made) mitigation plans which meet the planning criteria outlined in 44 CFR part 201.

• *Technical assistance.* Sub-grantee activities to support the development of comprehensive project applications are eligible.

• *Mitigation projects.* A mitigation project is any action that results in elimination or long-term reduction of damages to public or private property from natural hazards, and may include property acquisition or relocation, consistent with 44 CFR 206.434(e) and related guidance; structural and non-structural retrofitting; minor structural hazard control or protection projects; and, localized flood control projects. Mitigation projects must also meet the following general criteria:

(1) Be in conformance with an existing FEMA-approved State hazard mitigation plan;

(2) Be in conformance with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, consistent with 44 CFR part 206, subpart N, Hazard Mitigation Grant Program, section 434(b)(3);

(3) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed, consistent with 44 CFR 206.434(c)(4);

(4) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster, consistent with 44 CFR 206.434(c)(5) and related guidance;

(5) Not duplicate the assistance that another Federal agency or program has the primary authority to provide, consistent with 44 CFR 206.434(g);

(6) Be located physically in a participating NFIP community that is not on probation or suspended (if the community has been mapped through the NFIP); and,

(7) Meet the requirements of applicable Federal, State, and local laws.

Reporting Requirements

The States are required to submit quarterly financial and performance reports 30 days after the end of each quarter, per 44 CFR 13.40 and 41. Reporting dates are: January 30, April 30, July 30, and October 30. The performance reports will provide a comparison of actual accomplishments to the objectives approved for the period. Where the output of the project can be quantified, that information shall be provided. The States must also report the progress of each sub-grantee award in their quarterly reports. In addition, final financial and performance reports are required 90 after the close of the grant, per 44 CFR 13.50.

Dated: March 5, 2002.

Robert F. Shea,

Deputy Administrator for Mitigation, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5832 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12:00 p.m., Monday, March 18, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6015 Filed 3–8–02; 12:52 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Certification of Maintenance of Effort Form Title III of the Older Americans Act, Grants for State and Community Programs on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to certification of maintenance of effort form Title III of the Older Americans Act, Grants for State and Community Programs on Aging.

DATES: Submit written or electronic comments on the collection of information by May 30, 2002.

ADDRESSES: Submit electronic comments on the collection of information to: *www.mtolson@aoa.gov.* Submit written comments on the collection of information to Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Margaret A. Tolson at (202) 401–0838.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Certification of Maintenance of Effort form will be used by the Administration on Aging to verify the amount of State expenditures for Title III of the Older Americans Act, and make comparisons with such expenditures for the three previous years to assure that the State Agency on Aging is in compliance with 45 CFR 1321.49.

This information will be used for federal oversight of the Title III program. AoA estimates the burden of this collection of information as follows: ½ hour per State Agency on Aging annually, for a total of 28 hours.

Dated: March 7, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–5856 Filed 3–11–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the charters of the committees listed below for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed below. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the date indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Antiviral Drugs Advisory Committee.	Feb. 15, 2003.
National Mammography Quality Assurance Advisory Committee,	July 6, 2003.
Nonprescription Drugs Advisory Committee.	Oct. 27, 2003.
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants.	Dec. 2, 2003.
Food Advisory Committee	Dec. 18, 2003.
Vaccines and Related Biological Products Advisory. Committee	Dec. 31, 2003.
Advisory Committee for Pharmaceutical Science.	Jan. 22, 2004.
Pharmacy Compounding Advisory Committee.	Feb. 3, 2004.

FOR FURTHER INFORMATION CONTACT: Linda A. Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

Dated: March 5, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–5791 Filed 3–11–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take

evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on October 1, 2001, through December 28, 2001.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation, Office of Special Programs, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Robin Reynolds on behalf of Tyler, Holcomb, Vienna, Virginia, Court of Federal Claims Number 01–0560V
2. Holly Vanderconck on behalf of Grant Vanderconck, Vienna, Virginia, Court of Federal Claims Number 01–0561V
3. Jill and Robert Simpson on behalf of Alexander Simpson, Vienna, Virginia, Court of Federal Claims Number 01–0562V
4. Lorna and Kenneth Kemper on behalf of Jared Stephen Kemper, Vienna, Virginia, Court of Federal Claims Number 01–0563V
5. Kelly McCord on behalf of Neave Ittman, Houston, Texas, Court of Federal Claims Number 01–0564V
6. Tiffany Bast on behalf of Makena Shaye Bast, Vienna, Virginia, Court of Federal Claims Number 01–0565V
7. Courtnay and Joseph Fuller on behalf of Emma Marie Fuller, Vienna, Virginia, Court of Federal Claims Number 01–0566V
8. Barbara Allore and Mathew Dame on behalf of Lawren K. Dame, Canton, Michigan, Court of Federal Claims Number 01–0567V
9. Wendy Small on behalf of Taylor Mackenzie Markum, Deceased, Jacksonville, Florida, Court of Federal Claims Number 01–0569V
10. Richelle Cain on behalf of Natascha Skerczak, Agoura Hills, California, Court of Federal Claims Number 01–0573V
11. Renee and Daniel Brovold on behalf of Ashley Dee Brovold, Fargo, North Dakota, Court of Federal Claims Number 01–0577V
12. Beulah Nix, Kotzebue, Alaska, Court of Federal Claims Number 01–0579V
13. Virginia Mitchell on behalf of Connor Mitchell, Boston, Massachusetts, Court of Federal Claims Number 01–0584V
14. Dawn Marquis on behalf of Justin Marquis, Boston, Massachusetts, Court of Federal Claims Number 01–0585V
15. Edward J. Anthony, Rocky Island, Illinois, Court of Federal Claims Number 01–0594V
16. Gayla and Brian Powers on behalf of Madeleine Powers, Decatur, Texas, Court of Federal Claims Number 01–0598V
17. Melissa and Jeffrey Reiland on behalf of Zachary Reiland, St. Clare, Minnesota, Court of Federal Claims Number 01–0599V
18. Melinda and Pete Sarullo on behalf of Sophia Isabella Sarullo, Clinton, Mississippi, Court of Federal Claims Number 01–0604V
19. Joy and Earl Dixon on behalf of Noah Matthew Dixon, Puyallup, Washington, Court of Federal Claims Number 01–0605V
20. Larry Monaco on behalf of Lawrence Monaco, Vienna, Virginia, Court of Federal Claims Number 01–0611V
21. Michelle Robinson on behalf of Jessica Mapes, Vienna, Virginia, Court of Federal Claims Number 01–0612V
22. Jackie Deliberis on behalf of Joshua Deliberis, Vienna, Virginia, Court of Federal Claims Number 01–0613V
23. Adriana Niazi, Vienna, Virginia, Court of Federal Claims Number 01–0617V
24. Bobbie Keylin on behalf of Ryan Keylin, Vienna, Virginia, Court of Federal Claims Number 01–0618V
25. Julie Conatzer on behalf of Billy Austin Conatzer, Vienna, Virginia, Court of Federal Claims Number 01–0619V
26. Mary Beth and David Niebler on behalf of Andrew David Niebler, Vienna, Virginia, Court of Federal Claims Number 01–0620V
27. DeCarla D. and Jeffrey Netterville on behalf of Addie Grace Netterville, Vienna, Virginia, Court of Federal Claims Number 01–0621V
28. Sharon A. Burke on behalf of Ryan C. Burke, Boston, Massachusetts, Court of Federal Claims Number 01–0624V
29. Betty Jean Morgan, Vienna, Virginia, Court of Federal Claims Number 01–0628V
30. Jolene Beville on behalf of Lara J. Beville, Bowling Green, Kentucky, Court of Federal Claims Number 01–0633V
31. Billie M. McDonald, Boise, Idaho, Court of Federal Claims Number 01–0635V
32. Karen Walcott on behalf of Dean Walcott, Boston, Massachusetts, Court of Federal Claims Number 01–0638V
33. Stephanie and Robert Sawyer on behalf of Sydney Noel Sawyer, Mobile, Alabama, Court of Federal Claims Number 01–0643V
34. Cheryl Ann and Keith William Hall on behalf of Alexander William Hall,

Vienna, Virginia, Court of Federal Claims Number 01–0644V
35. Camilla and Patrick Thomas on behalf of Kenidi Dayna Thomas, Montgomery, Alabama, Court of Federal Claims Number 01–0645V
36. Brian Wayda on behalf of Jacob Patrick Wayda, Springfield, Virginia, Court of Federal Claims Number 01–0646V
37. Regina and Shannon Lemire on behalf of Destiny Lemire, Portland, Maine, Court of Federal Claims Number 01–0647V
38. Timothy Smith on behalf of Lydia Smith, Tanglewood, Mississippi, Court of Federal Claims Number 01–0651V
39. Mary Kathleen Carter on behalf of Kirby Carter, Hood River, Oregon, Court of Federal Claims Number 01–0652V
40. Albert G. Gurries, II, Sparks, Nevada, Court of Federal Claims Number 01–0656V
41. Mary Goings on behalf of James Goings, Jr., McMinnville, Oregon, Court of Federal Claims Number 01–0657V
42. Noreen McGuire on behalf of Brooke McGuire, Boston, Massachusetts, Court of Federal Claims Number 01–0658V
43. Xiujuan Wang and George Chou on behalf of Yuening Chou, Cambridge, Massachusetts, Court of Federal Claims Number 01–0659V
44. Deborah Delp on behalf of Rodney E. Delp, Jr., Boston, Massachusetts, Court of Federal Claims Number 01–0661V
45. Amy Brockelmeyer on behalf of Ashley Brockelmeyer, Boston, Massachusetts, Court of Federal Claims Number 01–0662V
46. James Don Easterling, Little Rock, Arkansas, Court of Federal Claims Number 01–0667V
47. Jason Saucier and Cleile Joy Scott on behalf of Avery Saucier, Metairie, Louisiana, Court of Federal Claims Number 01–0673V
48. Melissa Johnson on behalf of Evan Johnson, Vienna, Virginia, Court of Federal Claims Number 01–0675V
49. Andrea and Robert Kantor on behalf of Madelyn Kantor, Katonah, New York, Court of Federal Claims Number 01–0679V
50. Deborah Mikelson on behalf of Kali Mikelson, Fort Dodge, Iowa, Court of Federal Claims Number 01–0681V
51. Robert Welch, Des Moines, Iowa, Court of Federal Claims Number 01–0682V
52. Jeanne Pellegrino on behalf of Michael Pellegrino, Boston, Massachusetts, Court of Federal Claims Number 01–0684V
53. Jeff Leed on behalf of Tyler Scott Leed, Vienna, Virginia, Court of Federal Claims Number 01–0686V
54. Lavilla Aileen Campbell, Allen, Kentucky, Court of Federal Claims Number 01–0688V
55. Debra and Scott Hippensteel on behalf of Ryan Scott Hippensteel, Allentown, Pennsylvania, Court of Federal Claims Number 01–0690V
56. Laura and Stanley Foss on behalf of Jacob Kenneth Foss, Gorham, Maine, Court of Federal Claims Number 01–0691V
57. Alma Guadalupe Rojas, Los Angeles, California, Court of Federal Claims Number 01–0692V
58. Henry Stein on behalf of Michael Stein, Boston, Massachusetts, Court of Federal Claims Number 01–0693V
59. Brooke Anna Childers, Ely, Nevada, Court of Federal Claims Number 01–0694V
60. Bridget and Jerome Wanecski on behalf of Emily Brooke Wanecski, Sarasota, Florida, Court of Federal Claims Number 01–0695V
61. Sonia Suarez, Vienna, Virginia, Court of Federal Claims Number 01–0700V
62. Malissa Evans on behalf of Jeremiah William Evans, Vienna, Virginia, Court of Federal Claims Number 01–0701V
63. Claire Serowinski on behalf of Ryan Serowinski, Vienna, Virginia, Court of Federal Claims Number 01–0702V
64. Otilia Sullivan on behalf of Justin Sullivan, Vienna, Virginia, Court of Federal Claims Number 01–0703V
65. Lawrence Hobbs on behalf of Samuel Hobbs, Vienna, Virginia, Court of Federal Claims Number 01–0704V
66. Maryann and Michael Zezulak on behalf of Michael Scott Zezulak, Jr., Vienna, Virginia, Court of Federal Claims Number 01–0705V
67. Jean Steele on behalf of Paul W. Steele, Vienna, Virginia, Court of Federal Claims Number 01–0706V
68. Michael Stephen Shaw, San Francisco, California, Court of Federal Claims Number 01–0707V
69. Shirley Allen, Tylertown, Mississippi, Court of Federal Claims Number 01–0716V
70. Sharon Bubb, Boston, Massachusetts, Court of Federal Claims Number 01–0721V
71. Francesca Walkiewicz on behalf of Samuel Walkiewicz, Boston, Massachusetts, Court of Federal Claims Number 01–0722V

Dated: March 5, 2002.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 02–5841 Filed 3–11–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Mala Geoscience, Inc. to investigate the applications of advanced surface and borehole electromagnetic and impulse radar systems to hydrologic problems and other near-surface imaging problems.

Inquiries: If any other parties are interested in similar activities with the USGS, please contact John W. Lane, Jr., U.S. Geological Survey, 11 Sherman Place, U–5010 Storrs Mansfield, CT 06269; phone (860) 487–7402, x.13/fax (860) 487–8802.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

Dated: February 28, 2002.

Robert M. Hirsch,

Associate Director for Water.

[FR Doc. 02–5844 Filed 3–11–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Advisory Committee on Water Information

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting of the ACWI is to discuss broad policy-related topics relating to national water resource issues, and to hear reports from ACWI subgroups. The proposed agenda will include a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum M–92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-

information users and professionals to advise the Federal Government of activities and plans that may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations have been invited by the Secretary of the Interior to name representatives to the ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 8:30 a.m. on April 2, 2002, and will adjourn on April 3, 2002, by 5 p.m.

ADDRESSES: Days Hotel and Conference Center, 2200 Centreville Road, Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Toni M. Johnson (Executive Secretary, ACWI), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648–5644; e-mail: tjohnson@usgs.gov.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Johnson at the above address no later than noon, March 25, 2002. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Johnson for distribution at the ACWI Meeting.

Dated: February 26, 2002.

Katherine Lins,

Senior Staff Scientist.

[FR Doc. 02–5843 Filed 3–11–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 01–01237 GK]

Public Comments and Response on Proposed Final Judgment in United States v. 3D Systems Corp., *et al.*

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the five comments received on the proposed Final Judgment in United States v. 3D Systems Corporation, et al., Civil Action No. 01–01237 GK, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, Telephone: (202) 514–2481, and at the office of the Clerk of the United States District Court for the District of Columbia, E. Barrett Prettyman United States Courthouse, Room 1225, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

United States District Court for the District of Columbia

[Civil No.: 1:01CV01237 (GK)]

United States of America, Plaintiff, v. 3D Systems Corporation and DTM Corporation, Defendants; Plaintiff's Response to Public Comments

The United States, pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), hereby responds to the five public comments received regarding the proposed Final Judgment in this case.

I. Background

On June 6, 2001, the United States filed a Complaint alleging that the proposed acquisition of DTM Corporation (''DTM'') by 3D Systems Corporation (''3D'') would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that 3D and DTM are two of only three firms that produce industrial rapid prototyping (''RP'') systems in the United States. Stereolithography (''SL'') technology, utilized by 3D, forms a three-dimensional object through radiation from a liquid, photocurable material. DTM's RP systems use laser sintering (''LS'') technology to heat and form a sinterable powder into a three-dimensional form. Both 3D and DTM hold extensive patent portfolios related to RP systems production. These patents have prevented firms that sell RP systems abroad from competing in the United States. The Complaint alleges that the transaction will substantially lessen competition in the development, production and sale of industrial RP systems in the United States, thereby harming consumers. Accordingly, the Complaint asks the Court to issue (1) a judgment that the proposed acquisition of DTM by 3D would violate section 7 of the Clayton Act, 15 U.S.C. 18; and (2) a permanent injunction that would prevent defendants from carrying out the acquisition or otherwise combining their operations.

After this suit was filed, the United States and defendants reached a proposed settlement that allowed 3D to complete its acquisition of DTM, while preserving competition in the market for industrial RP systems by requiring defendants to license their RP-related patent portfolios. A Stipulation and proposed Final Judgment embodying the settlement were filed with the Court on August 17, 2001.

The proposed Final Judgment, also referred to as the ''consent decree,'' orders 3D and DTM to grant a license to develop, manufacture and sell, and to supply any support or maintenance services for, products under the defendants' RP patent portfolios within a limited field of use matching either 3D's or DTM's technology. The licensee, referred to as the Acquirer, must be approved by the United States, and must be a firm that currently manufactures industrial RP systems, utilizing either the LS or SL technology. The defendants must complete the divestiture five (5) days after notice of entry of the Final Judgment by the Court. The United States may extend the time period for divestiture for up to sixty (60) days. If the defendants do not complete the divestiture within the prescribed period, the proposed Final Judgment provides that the Court will appoint a trustee to accomplish the divestiture.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provision of the proposed Final Judgment and to punish violations thereof. In compliance with the APPA, the United States filed a Competitive Impact Statement (''CIS'') on September 4, 2001. The proposed Final Judgment and the CIS were published in the **Federal Register** on September 26, 2001, and the *Washington Post* during the period September 17–23, 2001. In light of the recent disruptions to mail delivery, the United States published a supplemental notice in the **Federal Register** on December 21, 2001 and in the *Washington Post* from December 20–26, 2001, extending the comment period by fifteen days. The comment period has now expired, with the United States having received public comments from Aaroflex, Inc., Accelerated Technologies, Inc., Advanced Manufacturing & Engineering Services, Advanced Prototyping, Inc. and EOS GmbH Optical Systems, which are annexed hereto as Exhibits 1 through 5.

II. Response to the Public Comments

A. Legal Standard Governing the Court's Public Interest Determination

The Tunney Act directs the Court to determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e). In making that determination, the ''court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *United States* v. *Western Elec. Co.,* 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied,* 510 U.S. 984 (1993)(''Western Electric'').

The Court's role under the APPA is limited to reviewing the remedy in relationship to

the violations that the United States alleges in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' U.S. v. Microsoft Corp., 56 F.3d 1448, 1459 (D.C. Cir. 1995). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the Court ''is only authorized to review the consent decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other mattes that the United States might have but did not pursue. Id.

The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that ''other remedies were preferable,'' Microsoft, 56 F.3d at 1460, nor does it give the Court authority to impose different terms on the parties. See. e.g., United States v. American Tel. & Tel. Co., 552 F.Supp. 131, 153 n. 95 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (mem.); accord H.R. Rep. No. 93–1463, at 8 (1974).

B. Discussion of Comments

The most extensive of the five comments plaintiff received is from EOS GmbH Electro Optical Systems (''EOS''), ''a competitor of 3D and DTM in countries other than the United States.'' EOS comment, p. 1. The EOS comment incorporates most, if not all, of the points made in the four other comments. Plaintiff will therefore address the arguments advanced by EOS in order, with references to the other four comments where appropriate.

(i) Interim Period of Monopoly

EOS first contends that the proposed Final Judgment permits a significant period of monopoly for the merged entity by allowing the merger to close prior to the divestiture. However, plaintiff's investigation into industrial RP equipment customers' buying practices disclosed that such customers typically consider a purchase over a protracted period of time, often waiting a year or more while obtaining quotes and making comparisons. Given these buying habits, a potential purchaser of industrial RP equipment would be able to use the imminent new entry of the Acquirer pursuant to the proposed Final Judgment to bargain for a better price from 3D on its industrial RP equipment. In fact, it appears that this kind of bargaining is occurring. Contrary to EOS' assertion that 3D is currently exercising monopoly power, EOS' Attachment E demonstrates that, during the pendency of the proposed Final Judgment, 3D has found it necessary to offer significant discounts to its customers. This discounting practice is discussed at page 9 of the EOS comment and also at page 2 of the comment submitted by Advanced Manufacturing, and is inconsistent with EOS' assertion at page 2 of its comment that 3D currently enjoys ''unfettered monopoly power.''

In accepting the consent decree, plaintiff balanced the likelihood of harm to consumers against the interests of the defendants in closing their transaction, and concluded that the time period specified in the decree for negotiating a divestiture and evaluating a proposed Acquirer was reasonable, given the characteristics of the market for industrial RP equipment as discussed above. Further, there was no need to require that the Divestiture Assets be held separate to ensure their viability, because the principal asset to be divested here is a license of intellectual property.

(ii) Market Saturation

EOS next argues that the competition lost by reason of the merger can only be replaced by licensing the LS technology offered by EOS, because U.S. demand for SL systems ''has reached a point of saturation.'' EOS comment, p.9. Advanced Manufacturing offers the same observation in its comment at page 2. Were that proposition to be accepted, EOS would be the only firm that could qualify as an Acquirer within the meaning of Paragraph IV.C. of the proposed Final Judgment, because it is the only company in the world, other than 3D, that manufactures LS systems. There are two other companies that manufacture and sell RP industrial equipment outside the United States, but they both offer SL technology.

However, none of the comments disputes the facts that SL systems offer a competitive restraint on prices of LS systems and that customers might switch to SL systems in the face of a price increase in LS systems. In fact, EOS specifically notes at page 4 of its comment that since 1997 ''3D and EOS have been significant competitors for RP systems in Europe and Asia.''

Moreover, plaintiff's investigation has revealed that the SL system is the prevailing type of industrial RP equipment sold in the United States. EOS itself estimates that three out of every four industrial RP systems in the United States use SL technology (EOS comment, p. 9), and sales of SL systems have been increasing. 3D's most recent 10–K filing with the Securities & Exchange Commission recites that: ''The increase in product sales over the prior year is due primarily to increased sales of SLA (SL) and related equipment * * *. The increase in machine sales results from increased sales of the higher-end SLA industrial systems, especially the SLA 7000. In 2000, we sold a total of 57 SLA 7000 systems compared to 29 in 1999. We expect sales of large frame machines to increase in 2001.'' 3D 10–K report dated March 16, 2001, p. 26. In fact, less than two months after the quoted 10–K was filed, 3D entered into the largest volume-purchase agreement in the company's history with a California customer, pursuant to which it contracted to deliver as many as 39 SLA 7000 systems over a two-year period. See 3D press release dated May 9, 2001, annexed as exhibit 6. This information runs counter to the assertion that demand for SL systems has reached a saturation point.

As the Complaint alleges, 3D's SL technology and DTM's LS technology compete directly against each other. Since they are substitute technologies in the market for industrial RP systems, the competitive concerns set forth in the Complaint may be addressed by licensing either one.

(iii) LS Materials Monopoly

EOS is joined by Accelerated Technologies, Advanced Manufacturing and Advanced Prototyping in asserting that, if the selected Acquirer uses SL technology, then 3D will retain its monopoly over the sale of LS materials in the United States. LS materials are the sinterable powders used by LS machines. Prior to the merger of DTM and 3D, DTM was the only U.S. supplier of LS materials. 3D succeeded to that sole supplier position through its acquisition of DTM. The Complaint in this case sought no relief with respect to LS materials, because the merger did not lessen competition with respect to LS materials; rather, it left the status quo unchanged. As the comments point out, if EOS is selected as the Acquirer, then there will be a second supplier of LS materials in the United States, and competition will have been created where none existed before. However, since 3D and DTM did not compete in the provision of LS materials, those materials cannot properly be addressed in the context of a remedy designed to resolve the competitive harm arising out of the merger of competing RP systems firms.

(iv) Aaroflex Patent Claims

Relying upon Aaroflex's comment, EOS next asserts that its LS technology should be favored over SL technology because the latter may face patent entry barriers. The ''barriers'' EOS cites are claims by Aaroflex that certain 3D patents on SL technology are invalid. In February 1997, 3D sued Aaroflex for patent infringement. Apparently as a result of this lawsuit, Aaroflex has never commercialized its technology. It has, however, asserted in that proceeding that certain 3D patents are invalid. The Aaroflex claims have not been treated as ''barriers'' by 3D, since it continues to commercialize its technology, and the brief discussion of the Aaroflex litigation in 3D's 10–K report does not even mention Aaroflex's invalidity claims. 3D 10–K report dated March 16, 2001, p. 12. Moreover, 3D is prepared to warrant to the Court and the Acquirer that it can ''convey all intellectual property included in the Divestiture Assets free and clear of any encumbrances * * *.'' Proposed Final Judgment, Paragraph IV.D.

(v) Teijin Seiki/CMET Letter

The EOS comment includes as an attachment a copy of a letter EOS received from Teijin Seiki/CMET, a Japanese company that is a potential Acquirer. EOS construes the letter as an invitation to collude, either regarding the bidding process for the Divestiture Assets or regarding competition generally, and argues that this improper conduct should disqualify Teijin Seiki/CMET as a potential Acquirer. This is not a comment on whether entry of the proposed Final Judgment is in the public interest. Rather, it is a comment on whether plaintiff should approve Teijin Seiki/CMET as an appropriate buyer. Plaintiff agrees that, in the event Teijin Seiki/CMET is presented to it as the proposed Acquirer, plaintiff should weigh the letter and its meaning in exercising its discretionary authority to approve the Acquirer under Paragraph IV.N. of the proposed Final Judgment.

(vi) Pending Litigation Between EOS and 3D

In December 2000, EOS filed suit against DTM, seeking damages for infringement of certain 3D patents which 3D had licensed to EOS in 1997. The license agreement between

EOS and 3D contains what EOS characterizes as a ''Non-Suit Provision,'' which bars EOS from asserting infringement claims against 3D based upon the patents 3D licensed to EOS ''at any time, for any reason, during the term of the License Agreement.'' See Attachment A to EOS comment. Following consummation of the merger between 3D and DTM, 3D filed a motion invoking the Non-Suit Provision to prevent EOS from collecting damages for infringement after the date of the merger, because the allegedly infringing products are now being sold by 3D instead of DTM.

Citing United States v. Microsoft Corporation, 56 F.3d 1448 (D.C. Cir. 1995), EOS contends that the Court should take 3D's motion into account in making its public interest determination under 15 U.S.C. 16(e)(2) because ''[a]mong the factors that the Court is to consider in conducting its public interest inquiry is whether entry of the proposed Final Judgment 'will result in any positive injury to third parties.' '' EOS comment at p. 11, quoting Microsoft Corporation, 56 F.3d at 1461, n.9. However, whatever ''positive injury'' EOS may suffer results not from the proposed Final Judgment but from the broad language of the Non-Suit Provision. The meaning and effect of the contractual relationships between 3D and EOS are properly left to the court before which those issues are now pending.

(vii) Austin Plant and Service Personnel

EOS mistakenly asserts, at page 13 of its comment, that the Divestiture Assets include ''an option for the Acquirer to purchase DTM's plant located in Austin, Texas,'' drawing from this an inference that the Department misunderstands fundamental concepts of the RP industry. In fact, the proposed Final Judgment merely recites that the plant can be included among the assets to be conveyed, meaning that the Acquirer may, at its option, assume whatever interest DTM had in the plant: owned property may be conveyed by purchase, and leased property may be conveyed by a lease assumption. EOS misconstrues the CIS reference to an ''option to purchase the [DTM] plant'' to mean the full assumption of ownership, when in reality it means the Acquirer has the option to ''purchase'' 3D's interest in the plant, whatever form that interest might take.

EOS also suggests that the consent decree should have done more to facilitate the hiring of service personnel from 3D by the Acquirer. The provisions contained in Paragraph IV.I. of the proposed Final Judgment adequately protect the Acquirer's ability to recruit 3D service personnel. That paragraph requires defendants to waive any non-compete clauses in agreements with present or former employees, and prohibits defendants from interfering with any negotiations by the Acquirer to employ any of defendants' present or former employees for a period of two years. Further, each firm that manufactures RP systems outside of the United States currently employs its own service personnel, and has developed its own programs and methods for training them on its own machines. It is not, therefore, a foregone conclusion that the Acquirer would rely upon recruitment of 3D personnel, trained on 3D machines, to build up its U.S. service network.

(viii) Second Comment Period

EOS suggests that there be a second comment period in this case, following the proffer of a proposed Acquirer by 3D but preceding plaintiff's approval of an Acquirer. EOS comment, p. 15. Plaintiff objects to the proposed second round of comments for three principal reasons.

First, such a procedure would be inconsistent with procedures that courts have routinely applied in reviewing proposed Final Judgments. Since the Tunney Act was enacted in 1974, the United States has negotiated hundreds of consent decrees in merger cases. In each instance, the public had an opportunity to comment upon the terms of the proposed Final Judgment. Often the court has proceeded to review and then enter the proposed Final Judgment before the acquirer of the divestiture assets has been selected, relying upon the United States to monitor the divestiture process. Plaintiff has been unable to identify a single instance in which a court deferred entry of a proposed Final Judgment that was otherwise in the public interest in order to receive a second round of comments regarding the divestiture selection process. EOS has provided the Court with no reason to deviate from the procedures that are routinely followed in other cases subject to the Tunney Act.

Second, such a procedure is unnecessary given the incentives and ability plaintiff has to assure that divestitures are accomplished in a manner that protects competition. After concluding that the proposed transaction between 3D and DTM would be anticompetitive, plaintiff agreed to the proposed Final Judgment as a way to preserve the competition that existed prior to 3D's acquisition of DTM. Accordingly, the proposed Final Judgment is designed to ensure that the Acquirer of the license will compete effectively against 3D and others in the industry, and that plaintiff conducts a thorough investigation before approving any particular Acquirer.

The proposed Final Judgment contains provisions that (1) give the United States sole approval of the Acquirer of the license, Paragraph IV. A., (2) set forth the standards that the United States applies in evaluating proposed purchasers, paragraph IV. N., and (3) require defendants to provide information to plaintiff about the process undertaken to select an Acquirer, as well as requiring information from defendants and the prospective purchaser for evaluation of the purchaser in Section VI. After obtaining notice that defendants have entered into a proposed transaction with a prospective purchaser, plaintiff will investigate the transaction and prospective purchaser, reviewing the selection process and analyzing the managerial and financial ability of the purchaser. The proposed Final Judgment gives plaintiff considerable access to details, often highly confidential, about prospective purchasers. Without such access, comments on specific proposed purchasers will lack the information necessary to aid an informed decision. In sum, the proposed Final Judgment's provisions empower the United States to review and approve the proposed Acquirer of the license, and with these provisions, the United States is able to ensure that the Acquirer is capable of competing effectively in the relevant market.

Third, a second round of comments would itself create problems that might make divestitures in antitrust cases more difficult to accomplish promptly. It would potentially delay the achievement of effective remedies to anticompetitive mergers by delaying entry of the proposed Final judgment, and extending the divestiture deadlines contained therein. Any needless delay in the consummation of divestitures would deny the public the benefits of the competition contemplated by the proposed Final Judgment. A second round of public comments would also risk involving the Court in an inquiry that is not envisioned by the Tunney Act. Courts have repeatedly held that it is not within the ''public interest'' standard of the Tunney Act to determine the ''best'' remedy. See Western Electric, 993 F.2d at 1576.

Finally, in this case, a second comment period is plainly unnecessary. There are only three firms in the world that qualify as potential Acquirers, and the comments plaintiff has received demonstrate that industry participants are familiar with the firms and their technologies. Any issues pertaining to a particular potential Acquirer could and should have been addressed in the comment period provided by law, as EOS itself did in its discussion of the Teijin Seiki/CMET letter.

For all of the foregoing reasons, the Court should reject EOS' proposal for a second round of public comments.

C. Recommendations Made in the Comments

Significantly, none of the five comments recommends rejection of the proposed Final Judgment. In their respective comments, Aaroflex, Accelerated Technologies, Advanced Manufacturing and Advanced Prototyping all recommend that the LS technology be licensed instead of the SL technology, and offer observations about perceived advantages of the LS technology and perceived disadvantages of the SL technology. Plaintiff will consider and weigh all such observations when exercising its discretionary authority to approve the Acquirer of the Divestiture Assets.

Advanced Prototyping also recommends that the consent decree be ''amended in some fashion'' to address the possibility that the Acquirer may not compete aggressively or maybe unsuccessful. Advanced Prototyping comment, p.3. However, the decree already directly addresses these concerns by providing that the Acquirer must be a ''firm that currently manufacturers RP industrial equipment'' which, in plaintiff's sole discretion, ''has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively * * *.'' Proposed Final Judgment, Paragraphs IV. C&N. Moreover, in the unlikely event that the entrant fails, the license is transferable.

EOS ''recommends that DOJ or the Court modify the proposed Final Judgment so that a new competitor will be permitted to sell laser sintering (LS) RP systems and material

in the United States, without regard to whether 3D licenses its stereolithography [SL] technology.'' EOS comment, p. 16. The principal difficulty with the EOS recommendation is that it is inconsistent with the theory of liability pleaded in the Complaint and the evidence that supports that liability. The Complaint alleges that ''[t]here are only three companies that develop, manufacture, and sell industrial RP systems in the United States'' (¶20), and that 3D, with its SL technology, and DTM, with its LS technology, ''compete directly against each other in the development, manufacture and sale of industrial RP systems and materials.'' (¶21). Because the merger reduces the number of U.S. competitors from three to two, the consent decree addresses that competitive concern by listing patent entry barriers so that another competitor using either the SL or LS technology can enter the U.S. market, thereby restoring the number of competitors to three.

To the extent EOS assets that a divestiture of LS technology is needed to preserve competition for industrial RP systems, it overlooks the weight of the evidence that SL and LS compete directly against each other. Consistent with the Complaint, and indeed with the history of competition between 3D (an SL firm) and DTM (an LS firm), the license of either SL *or* LS technology will preserve competition in the industrial RP systems market. Accordingly, plaintiff submits the EOS' recommendation to modify the proposed Final Judgment to require the licensing of LS technology must be rejected because the Complaint in this case offers no basis for its implementation.

III. Conclusion

None of the comments received by plaintiff in this case takes the position that the proposed Final Judgment is not in the public interest within the meaning of 15 U.S.C. 16(e), and that it should accordingly be rejected by the Court. Instead, the comments offer suggestions for modification of the proposed Final Judgment or observations about which company might make the most suitable Acquirer in order to remedy the harm alleged in the Complaint.

After careful consideration of the comments, the United States has affirmed its conclusion that entry of the consent decree will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is in the public interest. The proposed modifications that seek a different remedy are inconsistent with the theory of the Complaint in this case, and must therefore be rejected. The observations regarding factors that should be considered in determining whether a proposed Acquirer has the intent and capability of competing effectively in the business of selling and servicing RP Industrial Equipment can and will be taken into account when the United States fulfills its responsibilities to approve a buyer under Paragraph IV.N. of the proposed Final Judgment.

Accordingly, the United States will move the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register** as 15 U.S.C. 16(d) requires.

Dated: February 15, 2002, Washington, DC

Dando B. Cellini,

Stephen A. Harris,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0829.

Certificate of Service

I hereby certify that I caused a copy of the foregoing Response to Public Comments to be served by mail and facsimile transmission, this 15 day of February, 2002, upon the following counsel of record for defendant 3D Systems Corporation:

Charles E. Biggio, Esq., Akin, Gump, Strauss, Hauer & Feld LLP, 590 Madison Avenue, New York, NY 10022, (212) 872–1010, *Fax:* (212) 407–3210.

David Donohoe, Esq. (#3426), Akin, Gump, Strauss, Hauer & Feld LLP, 1333 New Hampshire Avenue, NW, Washington, DC 20036, (202) 887–4000, *Fax:* (202) 887–4288.

John A. Herfort, Esq., Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, (212) 351–3832, *Fax:* (212) 351–3832.

Stephen A. Harris,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (202) 514–4901.

November 19, 2001.

Via Overnight Mail and Facsimile

J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re: Comment on Settlement Agreement Reached in United States v. 3D Systems Corporation and DTM Corporation

Dear Mr. Kramer:

As the Chairman and Chief Executive Officer of Aaroflex, Inc., I submit the following comments on the settlement terms agreed to by the Department of Justice (''DoJ'') to settle its case against the merger of 3D Systems, Inc. and DTM Corporation.

In 1995, DuPont granted North American rights under its stereolithography patents to Aaroflex. Aaroflex continued to develop the technology and began to offer an advanced sterolithography system for sale in the United States. In February of 1997, 3D Systems sued Aaroflex alleging that Aaroflex's very advanced stereolithography system infringed six of 3D Systems' patents. Specifically, 3D Systems asserted that Aaroflex's stereolithography products produced under the DuPont patents infringe the following patents: U.S. Patent Numbers 4,929,402; 5.174,931; 5,059,359; 5,137,662; 5,184,307; and 5,571,471. 3D Systems subsequently added two other patents, U.S. Patent Numbers 4,999,143 and 5,902,537. 3D Systems also removed one of the patents, U.S. Patent Number 5,571,471. Aaroflex has vigorously defended itself, and maintains that its products do not infringe any patents of 3D Systems. In fact, Aaroflex maintains that the patents being asserted by 3D Systems are invalid. Aaroflex's invalidity claims are presently pending in the action *3D Systems, Inc.* v. *Aarotech Laboratories, Inc. et al.,* United States District Court, Central District of California, Case No. 97–0231 AJW.

In reviewing the settlement agreement among the DoJ, 3D Systems, and DTM, I noticed that 3D Systems and DTM have warranted ''that they have the authority to convey all intellectual property included in the Divestiture Assets *free and clear of any encumbrances*. . . .'' Section IV(D) of the Settlement Agreement (emphasis added). Notably, each one of the patents subject to Aaroflex's invalidity claims is ''included in the Divestiture Assets'' as defined in the settlement agreement and identified in Appendix 1 to that agreement. Those patents are clouded by Aaroflex's invalidity claims. As a result, 3D Systems/DTM cannot convey them ''free and clear of any encumbrances.'' On the contrary, should 3D Systems/DTM license its stereolithography patents to, for example, Teijin Seiki, then Aaroflex would assert its rights under the DuPont patents against Teijin Seiki (or any other licensee of 3D Systems' Stereolithography patents) if the licensee attempts to sell stereolithography equipment in the United States.

For your background, Teijin Seiki acquired the Asian rights to DuPont's stereolithography patents about two years before Aaroflex acquired its North American rights under the DuPont patents. 3D Systems filed a patent infringement action against Teijin Seiki in Osaka, Japan in 1997—the same year in which 3D Systems brought its patent infringement action against Aaroflex. Given that they were both licensees under DuPont's stereolithography patents, Aaroflex and Teijin Seiki cooperated in asserting their defenses against the patent infringement actions of 3D Systems. Teijin Seiki successfully asserted an invalidation claim against one of 3D System's patents. 3D Systems appealed that decision. Teijin Seiki has since acquired a company called NTT–Data CMET Inc. I believe that 3D Systems and CMET had entered into a cross-licensing agreement previously to settle patent litigation. Thus, as a result of its acquisition of CMET, Teijin Seiki effectively became a party to that cross licensing agreement with 3D. Based upon that cross-licensing agreement, I believe that 3D Systems has since settled its Japanese litigation with Teijin Seiki. Since its acquisition of CMET, Teijin Seiki will no longer cooperate with Aaroflex in defending the action brought by 3D Systems.

In order to comply with the DoJ settlement terms, I expect 3D Systems to license its U.S. Stereolithography patents to Teijin Seiki/CMET. Such a licensing agreement will be a direct byproduct of the cross-licensing agreement between 3D Systems and Teijin Seiki/CMET and I believe it would be entered into with the intention to hinder Aaroflex's ability to succeed in its litigation with 3D Systems.

The United States District Court for the District of Columbia should modify the proposed Final Judgement to require that 3D Systems license (for use) DTM's sintering patents. The entry of the settlement terms as they currently exist would: (1) effectively encourage infringement of Aaroflex's patent rights under DuPont's patents; and (2) ensure

that any licensee of 3D Systems's stereolithography patents that attempts to sell products in the United States will have to defend itself against the assertion of Aaroflex's patent rights.

If you would like to discuss these comments, please contact me.

Yours truly,

Albert Young,
Chairman & Chief Executive Officer, Aaroflex, Inc., 8511 Rixlew Lane, Manassas, VA 20109, (703) 573–0690.

J. Robert Kramer II, Chief Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Dear Mr. Kramer,

I am writing to you in regards to the United States V. 3D Systems Corporation proposed final judgment and competitive impact statement. (civil action no. 1:01CV01237)

I am the General Manager of a leading rapid prototyping service bureau, Accelerated Technologies, Inc., and have been in this type of business since 1989. We utilize both the SLS and SLA technologies that 3D Systems now offers. Of most interest to ATI is the availability of materials for both processes. Currently, there are several vendors besides 3D Systems that sell resin for the SLA process but the only materials available for SLS are those sold by 3D Systems. These SLS materials are sold at a substantially higher price that what they could be purchased for from foreign competition. 3D Systems has made it clear that they would seek legal action against any customer of theirs that buys material from anyone other than themselves. We are being forced to pay 40% more for materials than our foreign competitors and are therefore unable to compete in most foreign markets.

It is also our belief that the SLS technology has the most potential for growth, especially in the area of Rapid Manufacturing. The availability of materials with advanced mechanical properties, such as Nylon and metal, make SLS the logical choice for this type of application. There is currently SLS equipment available that will produce direct metal parts for manufacturing that ATI is unable to acquire because of 3D's monopoly.

It is our understanding that 3D Systems is required to license either the SLS or SLA process to a competitor to satisfy the aforementioned final judgement. If that license were to be for the SLA process, we would see little change in current conditions. There would still be multiple vendors selling SLA resins at competitive prices and 3D would maintain their monopoly of SLS materials. It would also be very difficult for any SLA vendor to penetrate the strong market share that 3D holds.

We believe that a license granted for the SLS process would encourage more competition and would be of greater benefit to the entire industry.

Please feel free to call me with any questions.

Dated: November 12, 2001.

Regards,

Mike Durham,
General Manager.

November 21, 2001.

J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Re: Public Comment on the Settlement of United States v. 3D Systems Corporation and DTM Corporation

Dear Mr. Kramer,

I am the president of Advanced Manufacturing & Engineering Services, hereinafter referred to as Advanced. Advanced is a corporation located in Nevada, Iowa providing design engineering, rapid prototyping and plastic injection molding services to its customers. I wish to make the following comments on the proposed Final Judgement in the Department of Justice's case against the merger of 3D Systems and DTM Corporation.

In order to promote competition in the United States rapid prototyping industry, the proposed Final Judgement must be amended to require that 3D license its newly acquired selective laser sintering technology. As I understand it, the proposed Final Judgement permits 3D to choose which technology (stereolithography or selective laser sintering) it will license. This a mistake. Based upon the present conditions in the United States RP industry, it is a certainty that 3D will license its stereolithography technology, and by doing so 3D will be able to maximize its market power.

First, the rapid prototyping market in the United States for stereolithography technology has reached a point of saturation. I would estimate that three out of every four industrial rapid prototyping system in operation in the United States utilizes stereolithography technology. As a result, for the foreseeable future, the growth potential for stereolithography systems in the United States is very low. As evidence of this state of market saturation, one only need to look at the present rebate program offered by 3D. 3D is offering a rebate of up to $200,000.00 on its largest stereolithography system, a 29% reduction. It is readily apparent that 3D is experiencing a significant decrease in sales of its stereolithography systems. A newly licensed stereolithography firm would have to contend with this state of market saturation as well as with 3D's installed based of customers. Given that, its prospects for any measurable success would be slim. More likely, the newly licensed stereolithography would have little to no pro-competitive effect on the market for industrial rapid prototyping systems in the United States.

On the other hand, there is a substantial opportunity for growth in the United States market for industrial rapid prototyping systems employing selective laser sintering (SLS) technology. SLS prototypes are more durable and have a larger range of applications due to the variety of materials available. SLS is also moving in the direction of rapid manufacturing, meaning companies will not only produce prototypes, but finished products using this technology. Second, 3D is now the only supplier of sintering powder material in the United States. By licensing its technology to a stereolithography firm, 3D will maintain this monopoly position and continue to harm U.S. competition in the rapid prototyping industry. 3D currently charges extremely high prices for the powder material used in the SLS process. If allowed the powders could be purchased direct from the powder manufacturer for as little as $10.00/lb, 3D charges $65.00/lb. If competition were realized the cost of this material would level out to a more reasonable level. There is evidence of this in the European market where 3D competes with EOS. The same material there sells at $35.00/lb. This price differential in powder material does not allow U.S. companies the opportunities to compete on a global scale.

In conclusion, licensing a stereolithography firm will not promote competition in the United States rapid prototyping industry. Instead, it would only fortify 3D's present monopoly position. The proposed Final Judgement should be modified to require that 3D license its laser sintering patents to another company currently manufacturing and selling commercial SLS equipment. Presently EOS is the only other laser sintering firm in the world. Licensing EOS is the only way to replace the competition that has been lost by the merger of 3D and DTM.

I am willing to discuss these comments with you if you have any questions about the information that I have provided.

Sincerely,

Daryl Michael,
President, Advanced Manufacturing & Engineering Services.

Advanced Prototyping, Inc.

November 21, 2001.

J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re: Comment on Proposed Final Judgement in United States v. 3D Systems Corporation and DTM Corporation

Dear Mr. Kramer:

I write in response to the invitation for the submission of comments on the terms of the proposed final judgement in United States v. 3D Systems Corporation and DTM Corporation. I am the president of Advanced Prototyping, Inc. (''API''). API operates both stereolithography (''SL'') and laser sintering (''LS'') machines, which the Department of Justice refers to as rapid prototyping (''RP'') industrial equipment. API is an RP service bureau. As the DOJ is aware, RP ''service bureaus'' produce prototypes of molds, models, prototypes, as well as other three-dimensional objects at their customer's request. API utilizes powders (''LS material'') and resins (''SL material'') in conjunction with its LS and SL RP equipment to produce those objects for its customers. API provides RP services to commercial customers in the United States and Canada. API has been in business for 5 years and has over 400 customers. Service bureaus, like API, account for a significant amount of 3D's and DTM's sales of RP equipment as well as the sales of LS material and SL material in the United States.

Since the announcement of the proposed merger of 3D Systems, Inc. (''3D'') and DTM Corporation (''DTM''), API has been concerned about the adverse effects that the combination would have on the RP industry in the United States because of the elimination of competition between the SL and LS RP technologies. API was concerned that, as a result of the transaction, the merged company would have the ability to significantly raise the prices of its RP equipment as well as the LS material and the SL material (collectively ''RP materials'') used in the RP industrial equipment market to produce the three-dimensional objects. Additionally, API believed that the combination of 3D and DTM would hinder innovation in the RP industry. API was pleased to learn that the DOJ was similarly troubled by the proposed combination and filed a lawsuit to prevent it from occurring. However, after reviewing the proposed settlement terms agreed to by the DOJ, API remains concerned.

From its review of the proposed Final Judgement, API understands that the DOJ agreed to settle its lawsuit based upon a commitment from 3D to license (for use) either its LS-related patents or its SL-related patents to a company that is currently in the business of manufacturing and selling such RP equipment—leaving it to 3D to select which technology will be licensed. All such companies are located outside of the United States. Yet, the proposed Final Judgement does not seem to include any terms designed to ensure that the licensee successfully enters the United States RP market. Additionally, the DOJ apparently permitted the proposed transaction to close prior to the required licensing being finalized. The merger was completed in August of this year, and as a result the merged entity is presently enjoying the monopoly in the United States market for RP equipment and RP materials that the DOJ sought to eliminate.

Unfortunately, the proposed Final Judgement does not adequately address the adverse competitive effect of the combination of 3D and DTM. API's most significant concerns with the terms of the proposed Final Judgement are the following: (1) There remains a possibility of the permanent loss of a competing supplier of LS RP equipment and LS material in the United States; (2) it does not ensure that the licensee will successfully enter the United States; and (3) the monopoly position of 3D in the United States LS material market may remain undisturbed.

A Competing Supplier of LS RP Equipment and LS Material May Be Lost

As a result of the combination of 3D and DTM, the consumers in the United States RP industry have lost a competitive independent source of LS RP equipment and LS material. Nevertheless, the proposed Final Judgement does not require that 3D license its LS technology, but instead it permits 3D the option of licensing its SL technology. If 3D licenses its SL technology, then the competition in United States that existed prior to the merger will have been permanently lost. Moreover, after granting a license under its SL patents, 3D (an SL company) will undoubtedly aggressively promote its SL technology even more in an attempt to maintain its strong position in the United States markets for SL RP equipment and SL material. Meanwhile, 3D can be expected to give little attention to its newly-acquired LS business. Such lack of attention would necessarily harm U.S. consumers of LS RP equipment and LS material.

LS technology is generally regarded in the RP industry as having greater growth potential than SL technology. The LS technology produces a more durable and functional object, while objects produced through SL technology are more malleable. Also, the accuracy of the LS technology has been greatly improving over the last several years. The LS technology and the LS material are closer to achieving what is expected to be the future of the United States RP industry: Rapid manufacturing. Without an independent entity pushing for innovative developments in LS technology, 3D will be allowed to dictate the pace of that innovation. Given that 3D would be competing with its SL licensee and otherwise occupied with maintaining its SL market position, it will have no incentive to take any action (such as efforts to develop its LS technology) that may further erode its strength in the United States SL market. Consequently, API expects that innovative activity in United States in the field of LS technology can be expected to slow to a crawl or stop completely unless 3D is required to license its LS technology to an independent entity. If 3D is not required to do so, then United States customers in the RP industry will undoubtedly be harmed by the lack of competition from an independent entity that has the ability and incentive to conduct research and development in the field of LS technology.

Uncertainty of the Proposed Licensing Solution

The proposed Final Judgement makes no provision for the possibility that the licensee may not aggressively undertake to exercise its rights under the license, or the possibility that the licensee's attempt to enter the United States RP industry is unsuccessful. In the event that either one of these possibilities becomes a reality, the settlement terms will be effectively meaningless and 3D will continue to have the monopoly they presently have. The proposed Final Judgement should be amended in some fashion to account for the occurrence of either contingency. There should be some oversight of the selected licensee's operations in the United States, and a requirement that 3D license their relevant technology to another company if the initial licensee does not successfully enter the United States within a certain time period. We suggest that if the licensee does not make at least $20 million of sales in the United States over its first complete year of operations, then the DOJ should revisit the situation and decide if 3D should license its technology to another company, in order to promote competition.

Moreover, if 3D were to license its SL patents instead of its LS patents then the likelihood of the licensee failing to successfully enter the United States market would increase. Any SL licensee will be faced with the formidable task of penetrating 3D's well-established base of SL customers in the United States. The SL licensee would have to expend considerable time and resources before even having a hope of experiencing any success in the United States.

3D Is Free to Keep Its Monopoly on LS Material

The sale of RP materials represents a substantial portion of the costs for customers in the RP industry. For example, since we started our business API has spent 10% of our gross income on material. Following the merger of 3D and DTM, 3D is now one of two SL material suppliers in the United States. Should 3D choose to license its SL patents and not its LS patents, then 3D's monopoly of the United States market for LS material will continue. API believes that 3D will take aggressive action to exploit its position in the United States market for RP materials.

The District Court and the DOJ should be aware of the actions that 3D has taken since the settlement with the DOJ was reached and the merger was closed. Since that time, 3D has acquired RPC Ltd. (previously an independent Swiss SL material manufacturer and developer). Also, 3D's distribution and development agreement with Vantico Inc. (a manufacturer and developer of RP SL material) has terminated. 3D is currently involved in a dispute with Vantico about whether Vantico can sell its SL materials in the United States independent of 3D. Through those two actions, 3D has reduced the number of sellers of SL material in the United States from three to two. API expects to be paying more in the near future for the SL material that it must purchase in order to run its SL machines. When coupled with 3D's monopoly in the LS material market, United States consumers of RP material are harmed even further. In order to lessen the harm to competition in the United States RP materials market, the proposed Final Judgement should be modified to require that 3D license its patents that cover LS material regardless of whether it grants any license under its SL patent pursuant to its settlement with the DOJ.

Conclusion

The DOJ or the United States District Court for the District of Columbia should modify the proposed Final Judgement to require the licensing of 3D's LS technology in order to encourage innovation in SL technology, and to maintain a competing source of SL RP equipment and material. The proposed Final Judgement should also be modified so as to include terms that do more to ensure the successful entry of the licensee of 3D's RP technology into the United States RP market.

Please contact me if you have any questions about the information that API has provided in these Comments.

Sincerely yours,

Ernie Guinn,

President, Advanced Prototyping, Inc., 2269 Star Court, Rochester Hill, MI 48309, (248) 853–8256.

November 21, 2001.

Via Courier and Facsimile

J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re: Proposed Final Judgment in United States v. 3 D Systems Corporation and DTM Corporation

Dear Mr. Kramer:

EOS GmbH Electro Optical Systems (''EOS'') submits the following comments to the U.S. Department of Justice, Antitrust Division (''DOJ'' or the ''Antitrust Division''), regarding the settlement agreement reached between the Antitrust Division and 3D Systems Corporation (''3D'') and DTM Corporation (''DTM'') to settle DOJ's antitrust lawsuit against the merger of 3D and DTM. United States v. 3D Systems and DTM Corp., Civil Action No. 1:01CV01237 (D.D.C. filed June 6, 2001). EOS is a competitor of 3D and DTM in countries other than the United States, and EOS is a knowledgeable industry participant.

Introduction

The proposed Final Judgment has already permitted the merger of 3D and DTM (the ''Merger'') to occur, subject to provisions of the proposed Final Judgment, which DOJ asserts will adequately cure the harm to competition in the United States that the Merger has caused. However, EOS has serious concerns that the proposed Final Judgment does not adequately address the competitive problems that DOJ identified in its Complaint.

First, the proposed Final Judgment permits a significant period of monopoly for the combined 3D and DTM. By allowing the merger to be consummated prior to any divestiture being made, DOJ has permitted the creation, for at least a significant interim period, of the very monopoly that DOJ had challenged in its Complaint. 3D's unfettered monopoly power since the merger is raising additional barriers for potential new competitors to enter into in the market for industrial rapid prototyping (''RP'') systems and materials in the United States. Any potential Acquirer of the Divestiture Assets will face a thoroughly entrenched monopolist by the time it possibly could begin U.S. sales.[1]

Second, as a result of the Merger, the United States industrial RP systems and materials markets have lost the competition supplied by an independent laser sintering firm. The Antitrust Division's proposed Final Judgment, however, does not require that the specific type of competition that was lost be replaced. Rather, the proposed Final Judgment allows the merged parties to determine which of two differing technologies may be divested. Moreover, DOJ seems to have overlooked the fact that any Acquirer of the Divestiture Assets related to stereolithography, one of the two relevant technologies, may still encounter significant patent barriers controlled by third parties.

Third, DOJ did not properly consider the harm that the proposed Final Judgment is causing to third parties. EOS' ability to litigate certain intellectual property rights that it owns is being harmed as a result of the Merger, which the proposed Final Judgment has permitted.

Finally, the proposed Final Judgment contains several provisions that indicate that the Antitrust Division does not correctly understand what is required to begin competing in the industrial RP systems and materials market in the United States.

As a result of these infirmities in the proposed Final Judgment, EOS requests that DOJ or the Court modify the proposed Final Judgment. Specifically, EOS requests that the proposed Final Judgment be modified in order to require that 3D license its laser sintering patents regardless of whether 3D licenses its stereolithography patents. Also, EOS requests that the proposed Final Judgment be modified in order to prevent its entry from inflicting further injury on EOS.

In order to ensure that the issues presented by the terms of the proposed Final Judgment are adequately considered, EOS requests that the Court hold a hearing to evaluate whether the Antitrust Division has sufficiently protected the public interest in reaching the settlement agreement reflected in the proposed Final Judgment.

I. The RP Industry

A. RP Industry Background and Description of EOS

In its Complaint, DOJ accurately describes the fundamental aspects of the RP industry so that the public and the Court are able to understand the competitive effects of the Merger. To restate briefly these fundamental aspects, RP systems utilize ''computers and computer automated equipment to rapidly produce'' prototypes, molds, models, and other three-dimensional objects. See Complaint ¶ 10. The combined 3D/DTM manufactures and sells industrial RP systems that utilize the two most sophisticated technologies in the RP industry: Stereolithography and laser sintering. Stereolithography technology utilizes a liquid, photocurable plastic resin to create three-dimensional objects through radiation. Laser sintering technology creates three-dimensional objects by employing a plastic powder that is solidified through the heat and energy supplies by a laser. Consistent with the Antitrust Division's allegation in its Complaint, EOS estimates that 3D and DTM have a combined eighty percent share, by revenue, of the industrial RP systems and materials market in the United States.

EOS is a German corporation, headquartered near Munich. EOS manufactures and sells industrial RP systems and materials. The RP systems manufactured by EOS utilize laser sintering technology. EOS sells its laser sintering RP systems and materials primarily in Europe and Asia. EOS is the only company in the world other than DTM (now part of 3D since the Merger) that has developed and manufactured laser sintering RP systems and materials. The Antitrust Division has recognized that ''3D and DTM face rigorous competition from . . . Electro Optical Systems, based in Germany.'' See Competitive Impact Statement at 66 FR 49209.

However, EOS makes no sales of its laser sintering RP systems in the United States. This is primarily because of assertions by DTM, and now by 3D following the Merger, of certain U.S. patent barriers. This intellectual property barrier to sales in the United States by foreign companies is one reason that DOJ concluded that the United States constitutes a distinct geographic market for RP systems and materials. See Complaint ¶¶ 16–19. The DOJ also recognized that the patent rights controlled by 3D and DTM were a primary reason for the anticompetitive effects caused by the Merger. See Complaint ¶ 28. Similarly, 3D and DTM recognized the large patent barrier their combined portfolios represent. According to the Complaint, the investment banking firm retained by 3D to advise on the Merger reported that 3D's management believed that ''following the merger, [3D] will have a significantly strong patent portfolio to prevent others from competing in the United States.'' *Id.*

B. EOS's Relationship and Competition With 3D

EOS and 3D have a unusual relationship that DOJ and the Court must understand in order to appreciate the harm that the proposed Final Judgment, as explained in more detail below (see Section IV.), has had on EOS specifically and on possible new competition in the United States generally. The unusual relationship between 3D and EOS is that, while EOS is a competitor of 3D, EOS is also a licensee under all of 3D's patents. EOS utilizes the patents that it licenses from 3D, as well as other technology EOS owns, to produce laser sintering RP systems that compete with 3D's RP Industrial Equipment.

Prior to the Merger, 3D owned an extensive patent portfolio that both 3D and EOS believe cover significant portions of both the stereolithography and the laser sintering technologies used in the RP industry. In a series of transactions between 3D and EOS in 1997, EOS licensed from 3D the exclusive right to produce and sell laser sintering RP systems under the 3D patents. See August 27, 1997 License Agreement between 3D Systems Corporation and EOS GmbH (''1997 3D/EOS Licensing Agreement'') (Attachment A). Following the execution of the 1997 3D/EOS Licensing Agreement, and until the Merger, 3D manufactured and sold only stereolithography RP systems. EOS manufactures and sells only laser sintering RP systems. As a result of the 1997 3D/EOS Licensing Agreement, both companies in part use technology protected by the same patents. Since the 1997 3D/EOS Licensing Agreement became effective, 3D and EOS have been significant competitors for RP systems in Europe and Asia, but not in the United States, where DTM's assertions of intellectual property barriers have inhibited EOS from entering the market.

C. EOS Competition with DTM

At the time that 3D and EOS entered into the 1997 3D/EOS Licensing Agreement, DTM

[1] To extent possible, EOS uses terms as defined in the Complaint and the proposed Final Judgment. Capitalized terms denote the definitions in the Complaint and the proposed Final Judgment, unless otherwise indicated.

was making commercial sales of its laser sintering RP systems and materials. DTM's and EOS' laser sintering RP systems use similar technologies and similar sintering RP material. DTM and EOS directly compete in Europe, Asia, and elsewhere, but not in the United States.

D. The Inability of EOS To Compete in the United States Has Resulted in Much Higher U.S. Prices

The competition between EOS and DTM has greatly benefited customers of industrial RP systems in Europe and Asia, the areas where EOS primarily competes with DTM (now with 3D). As a result of that competition in Europe, customers pay much less for sintering RP material in Europe than in the United States. Due to the lack of competition in the United States, sintering RP material has, on average over the last several years, cost United States customers about three times more than European customers. At the present, U.S. customers of DTM are paying $60 to $65 per pound for DTM's DuraForm®, which EOS believes accounts for about 80% of the material used in DTM's laser sintering RP systems. European customers are paying about $20 to $22 per pound for the same DuraForm® material. The cost of the sintering RP material, which is a continuing and substantial cost that users of RP systems incur, is a very important consideration in the purchase and use of RP systems. Over the life of an RP system, it is not unusual for a user to spend more for the material used in the RP system than the original cost of the RP system. The Antitrust Division has recognized this U.S./Europe price difference, and it was a significant reason that DOJ concluded that the United States is a separate market.

Due to the large discrepancy between the price of laser sintering RP material in the United States as compared to Europe, the growth of laser sintering technology has been inhibited in the United States. Laser sintering RP systems and materials now account for about 55% of all RP industry purchases in Europe. In the United States, however, laser sintering RP systems and materials account for only about 30% of all RP industry purchases. The United States is the largest market in the world for industrial RP systems and material, accounting for almost 45% of all purchases of industrial RP systems, material, and related services. EOS believes that the slower growth rate of laser sintering technology in the United States, despite being the largest market in the world for RP technology, is primarily (if not solely) a result of the much higher U.S. prices for laser sintering materials.

E. EOS' Attempts To Enter U.S. Market

As the United States is the largest market in the world for RP systems and materials, EOS has been attempting to enter into this large market in order to offer its line of laser sintering RP systems and materials. However, as described earlier, EOS has been confronted with DTM's assertion of patent barriers for laser sintering RP systems and materials. In order to settle the legal issues raised by DTM's aggressive position and in an attempt to gain open access to the United States market for industrial RP systems and materials, EOS initiated a lawsuit against DTM in the Central District of California. DTM also filed a complaint against EOS in a related proceeding.

II. The Final Judgment Permits a Significant Period of Monopoly for the Merged 3D and DTM

The proposed Final Judgment has permitted 3D and DTM to merge, despite the adverse independent competitive effects of the Merger cited by DOJ in the Complaint. DTM's corporate existence has ceased, and it is now part of 3D. 3D now unquestionably enjoys a monopoly in the United States RP Industry, as described in the Complaint. See Complaint ¶ 20–30. The proposed Final Judgment purports to remedy the adverse competitive effects of this monopoly in the future by requiring that 3D license its patents to a new competitor. Regardless of the impact that the licensing will have, in the interim period, the merged 3D/DTM has a monopoly. Under the terms of the proposed Final Judgment, this interim period will be a minimum of 120 to 180 days, the time in which 3D has to affect the required divestitures. If the 3D does not affect the divestitures, a trustee will be appointed to divest the assets, which would take additional time. As a practical matter, it will take any Acquirer of the Divestiture Assets at least six months, and probably at least a year, from the date of obtaining the license to establish a sufficient sales and service force in the United States to begin meaningful competition with 3D's monopoly.

A. The Merged Entity's Monopoly Period Will Create Additional Entry Barriers for Any Acquirer of the Divestiture Assets

This period in which 3D enjoys an unchallenged monopoly will create additional barriers to any new competitor's successful entry into the U.S. market. The merged entity already has a large base of installed equipment in the United States. The period before which any new competitor in the United States can be expected to realistically begin competition will allow 3D to increase this installed base. This period provides an opportunity for 3D to bundle its systems, materials, and services without any competitive threat. For this period, which may well be as long as a year, U.S. customers of the merged entity will have no alternative source for RP systems or materials.

Additionally, any Acquirer of the Divestiture Assets will face vigorous competition from 3D, which now can offer a full range of stereolithography and laser sintering RP systems and materials. The proposed Final Judgment's requiring only that 3D divest either its stereolithography patents or its laser sintering patents to establish a new U.S. competitor will make successful entry against a 3D/DTM product line very difficult.

The proposed Final Judgment should have required that the merged 3D/DTM license *both* technologies to an appropriate Acquirer or Acquirers. The restrictions on competition in the United States caused by the Merger are so substantial that a more complete remedy should have been a fundamental condition for the Merger to proceed. This would be the only way to ensure that a competitor or competitors could offer U.S. customers a range of competitive alternatives similar to what the merged 3D and DTM can offer.

B. During the Period in Which 3D Has Had a Monopoly, 3D Has Engaged in Additional Anticompetitive Behavior

Following the settlement with DOJ and during this period in which 3D has possessed a monopoly, 3D has engaged in additional conduct that by itself may violate the antitrust laws. Specifically, this conduct includes the acquisition of RPC Ltd. of Switzerland, previously a competitor of 3D for sales of plastic resins utilized in the stereolithography RP systems. *See* ''3D Systems Completes Acquisition of RPC,'' September 19, 2001 News Release by 3D (Attachment B). During this period, 3D has also attempted to eliminate competing sales of plastic resins by Vantico Inc., 3D's current supplier of resins. See ''3D Systems and Vantico Terminate Relationship, August 24, 2001 News Release by 3D (Attachment C).'' By these actions, 3D, which currently makes about 80% of the U.S. sales of plastic resin, is attempting to reduce the number of plastic resin suppliers in the United States from three to two. This conduct may violate the same antitrust laws under which 3D was sued by DOJ. This conduct does not directly affect EOS, as EOS does not sell plastic resins, but DOJ and the Court should be aware of this conduct and consider it when evaluating the adequacy of the proposed Final Judgment.

III. In Order To Preserve Competition in the Industrial RP Systems Market, the Acquirer Should Be an Independent Laser Sintering Firm

A. Actual Loss of Competition Is the Elimination of an Independent Laser Sintering Competitor

Prior to the Merger, DTM was the only company in the United States that manufactured and sold industrial laser sintering RP systems and materials. As a result of the Merger permitted by DOJ, U.S. purchasers in the industrial RP systems and materials market have lost an independent laser sintering competitor. The proposed Final Judgment does not, however, include a requirement that 3D license its laser sintering patents to a competitor, which would directly replace the competition that has been lost.

The Antitrust Division has acknowledged the beneficial effects caused by the presence of an independent laser sintering firm in the United States industrial RP systems and materials market. In the Competitive Impact Statement, DOJ stated that ''[c]urrently, 3D and DTM offer the most sophisticated systems in the industry and compete directly against each other in the development, manufacture, and sale of industrial RP systems.'' Competitive Impact Statement at 66 FR 49200, 49209 (September 26, 2001). In the Complaint, DOJ correctly recognized that:

[t]he direct competition between 3D and DTM has benefited the purchasers and users of industrial RP systems through lower prices for systems, lower prices for materials, and improved products. In addition, the two

companies would likely remain the most vigorous competitors in the industrial RP systems market as the market continues to grow and mature, If 3D's acquisition of DTM is permitted to proceed, the substantial competition between the two leading manufacturers of industrial RP systems will be permanently eliminated, resulting in increased prices and lessened product innovation. Complaint ¶26.

DOJ also correctly described that ''[t]he competition between 3D and DTM has been the driving force behind the innovative industrial RP system technology.'' Complaint ¶ 22 (emphasis added). See also Competitive Impact Statement at 66 FR 49209. The United States market for industrial RP systems and materials may permanently lose this ''driving force'' of competition between stereolithography and laser sintering technologies unless an independent laser sintering firm becomes a competitor in the United States. 3D licensing its laser sintering patents to a new U.S. entrant should be an absolute and minimum requirement of the proposed Final Judgment.

B. Licensing Only a Stereolithography Company Will Not Preserve Competition

Through the above-referenced statements in the Complaint and the Competitive Impact Statement, it is evident that DOJ understands the vigorous competition brought to the United States industrial RP systems and materials market by an independent laser sintering firm. Nevertheless, DOJ erroneously asserts that the proposed Final Judgment will ''ensure that competition that would have otherwise been eliminated as a result of the proposed acquisition will be preserved.'' Competitive Impact Statement at 66 FR 49209. When the realities of the United States industrial RP systems marketplace are examined, it is also evident that 3D's divestiture to a stereolithography, company would not preserve competition in the United States market for RP systems and materials.

The United States market for industrial RP stereolithography systems has reached a point of saturation. There are substantially more stereolithography RP systems than laser sintering RP systems in operation in the United States. 3D is a stereolithography company, and it derived more than two times as much revenue as DTM during fiscal year 2000. Competitive Impact Statement at 66 FR 49208–09. 3D recently announced the sale of its 2,000th RP system. See ''3D Systems Sells 2,000th Machine,'' May 29, 2001 News Release by 3D (Attachment D). Members of the RP Industry estimate that three out of every four industrial RP systems operating in the United States utilize 3D's stereolithography technology.

Through its present customer rebate program, 3D has effectively acknowledged that the U.S. industrial RP systems market for stereolithography has reached a point of saturation. 3D is currently offering customers cash rebates as high as $200,000, or about 20%–30% for purchasing 3D's stereolithography RP systems. Letter from Dwight Williams, Vice-President Sales for Americas, 3D Systems, dated October 23, 2001 (Attachment E). 3D has not offered similar rebates on sintering RP systems. This indicates that 3D has to offer substantial rebates on its stereolithography systems in order to sell them into this market full of stereolithography RP systems, but 3D does not have to offer rebates in order to sell its sintering systems. Any stereolithography firm that acquires the Divestiture Assets would not only have to contend with 3D's large installed base of customers, but also with a saturated United States market. As a result, with its complete product line of industrial RP systems and materials, 3D will be able to leverage its considerable market power to adversely effect the newly-licensed stereolithography company's attempt to enter the United States market.

Laser sintering RP technology has greater growth prospects than stereolithography RP technology in the United States. Laser sintering RP systems currently account for approximately 55% of all RP industry purchases in Europe, but only about 30% of all industrial RP purchases in the United States. The principal cause of this slower growth in the United States is the much higher prices charged by DTM (now 3D) for laser sintering RP material in the United States than those charged in Europe. The price for laser sintering material is approximately 200% more than the price for the same material in Europe. See Section I.D above. Recognizing this price difference, many potential customers located in the United States have expressed an interest in purchasing EOS laser sintering industrial RP systems and materials. Moreover, United States customers who are familiar with EOS' industrial RP systems are attracted to its features (such as its large build volume and higher operating efficiency) that differentiate it from 3D's industrial RP laser sintering systems. However, because of DTM's aggressive assertion of its patents, EOS has been unable to meet this market demand opportunity. Without competition from an independent laser sintering RP company, the substantial growth prospects for laser sintering RP technology will not be realized, and competition in the RP industry will be irreparably harmed.

C. Any Stereolithography Acquirer May Encounter Additional Patent Barriers to U.S. Market Entry

Aside from having to content with 3D's substantial installed base of stereolithography customers, a newly licensed stereolithography company would face an additional patent barrier controlled by a third party. Aaroflex, Inc. (''Aaroflex'') is the exclusive North American licensee of the stereolithography technology of E.I. du Pont de Nemours and Company (''Du Pont''). Aaroflex is currently involved in litigation with 3D over the scope, enforceability, and validity of their respective stereolithography patent portfolios. Aaroflex has stated that it will assert its rights under the DuPont patents to prevent any other company from selling stereolithography RP systems in the United States. Consequently, should 3D divest its technology to a stereolithography company, the potential new competitor's entry into the United States market for industrial RP systems and materials could be substantially impeded by a patent dispute. DOJ has overlooked this potential obstacle to successful U.S. competition by a new stereolithography company. Despite DOJ's statements in the Competitive Impact Statement, the proposed Final Judgment does not lift all of the patent entry barriers in the industrial RP systems and materials market in the United States for stereolithography equipment.

D. Teijin Sieki/CMET Is Not a Suitable Acquirer of 3D's Patent Rights

The Antitrust Division has recognized Teijin Seiki [2] of Japan as a potential Acquirer of the Divestiture Assets. Competitive Impact Statement at 66 Fed. Reg. 49209. Teijin Seiki currently manufactures and sells stereolithography RP Equipment in Asia. Teijin Seiki is therefore a potential Acquirer of the Divestiture Assets under the terms of proposed Final Judgment.

After DOJ filed the Complaint to challenges the Merger, but before the filing of the proposed Final Judgment, the president of Teijin Seiki sent a letter to EOS mentioning how both EOS and Teijin Seiki might be interested in bidding for assets that 3D and DTM might have to divest to resolve the antitrust challenge to the Merger. See Letter from Ken Sahara, President, CMET Inc. to Dr. Hans Langer, President, EOS GmbH, dated July 23, 2001 (Attachment F). Though Mr. Sahara acknowledged that ''[a]t this stage, I am not sure, it is the proper time or not,'' he invited EOS to meet and to ''discuss or exchange information about Market, Products, and others.'' EOS interprets this communication from Teijin Seiki as an invitation to collude, either regarding the bidding process for the Divestiture Assets or regarding competition generally. Demonstrating an awareness of the impropriety of the contact and the invitation, Mr. Sahara closed the letter with a request to ''[p]lease treat this proposal as a confidential matter between you and I.''

DOJ has previously challenged similar invitations to collude as an attempted violation of the antitrust laws. See. e.g., *United States v. American Airlines,* 570 F. Supp. 654 (N.D. Tex 1983), rev'd, 743 F.2d 1114 (5th Cir. 1984), cert. dismissed, 474 U.S. 1001 (1985). the willingness of the president of Teijin Seiki to engage in such potentially anticompetitive, apparently unethical or illegal conduct establishes that Teijin Seiki is not a suitable Acquirer of the Divestiture Assets. DOJ and the Court should consider this in the evaluation of a potential Acquirer.

IV. The Proposed Final Judgment Has Harmed EOS' Independent Attempt To Enter the Industrial RP Systems and Materials Market in the United States

Under the Antitrust Penalties and Procedures Act (''APPA''), the Court must evaluate the proposed Final Judgment submitted by DOJ. See 15 U.S.C. 16(b)–16 (h) (1994). It is well established that ''Congress, in passing the (APPA), intended to prevent 'judicial rubber stamping' of the Justice Department's proposed consent decrees.''

[2] Teijin Seiki recently acquired another Japanese company called NTT-Data CMET, Inc. Following the acquisition, Teijin Seiki has operated under the CMET trade name.

United States v. Microsoft Corp., 56 F.3d 1448, 1458 (D.C. Cir. 1995) (citation omitted). Specifically, the Court must make an independent determination of whether entry of the proposed Final Judgment is ''in the public interest.'' 15 U.S.C. 16(e). Among the factors that the Court is to consider in conducting its public interest inquiry is whether entry of the proposed Final Judgment ''will result in any positive injury to third parties.'' 15 U.S.C. 16(e)(2); see also *Microsoft Corp.,* 56 F.3d at 1461–62. By permitting the Merger to close prior to remedying the competitive harm, the proposed Final Judgment is causing injury EOS that the Court should consider in its evaluation of whether the enter the proposed Final Judgment without modification.

A. The Proposed Final Judgment Is Hearing EOS' Ability To Litigate Issues Related to Certain Intellectual Property Rights of EOS

As described in Section I.B. above, EOS acquired certain intellectual property rights from 3D through the 1997 3D/EOS Licensing Agreement. These rights include an exclusive license to all 3D patents then existing and applied for prior to August 2002, applicable to a field of use for laser sintering. See Attachment A. The 1997 3D/EOS Licensing Agreement also contains a provision that EOS will not assert against 3D ''any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by [3D] under the licensed patents, at any time, for any reason, during the term of the License Agreement'' (the ''Non-Suit Provision''). See 1997 3D/EOS Licensing Agreement § 2.1(a) (Attachment A).

In December 2000, EOS filed a lawsuit against DTM in an attempt to open the United States industrial RP systems market to competition from EOS. Since 3D has acquired and merged with DTM, 3D has taken the position that EOS may not maintain any claim of patent infringement against 3D because of the Non-Suit Provision. In fact, 3D recently submitted a motion for summary Judgment in the action based entirely on its interpretation of the Non-Suit Provision in the 1997 3D/EOS Licensing Agreement. See 3D Systems, Inc.'s Motion for Summary Adjudication Regarding Damages Under the 3D Patents and the accompanying Memorandum of Points and Authorities in Support Thereof (without attachments) (Attachment G). White EOS strongly disagrees with 3D's interpretation of the license agreement as well as its interpretation of the applicable law, at a minimum 3D's argument has complicated and will prolong the litigation. At worst, if the District Court of the Central District of California accepts 3D's position, EOS will effectively be stripped of its ability to enforce its patent rights in the United States—rights that it acquired originally from 3D. As a result of the proposed Final Judgment's permitting the Merger, EOS is currently, and may be permanently, injured in its ability to enforce its intellectual property rights in the United States. This is an unusual and idiosyncratic anticompetitive effect, but this additional obstacle to a potential new U.S. competitor is a directly created by the Merger and the proposed Final Judgment.

EOS' ability to enforce its patents should not inhibited by the terms of the settlement agreement reached between DOJ and 3D/DTM. Accordingly, the proposed Final Judgment must be modified to prohibit 3D from asserting that EOS cannot enforce intellectual property rights that EOS acquired from 3D.

B. The Merger Has Created Additional Barriers for any Potential Entrants Into the United States Market for Industrial RP Systems and Materials

As described above, the Merger has created a company that can offer both stereolithography and laser sintering industrial RP systems and materials. See Section II.A. above. Meanwhile the Acquirer will only be able to offer industrial RP systems that utilize either stereolithography technology or laser sintering products. As a result, EOS or any other Acquirer will be at a substantial disadvantage to 3D. This effect has been exacerbated by DOJ's permitting 3D and DTM to close the Merger before the Acquirer has obtained the Divestiture Assets. To correct this obstacle to either a stereolithography or a laser sintering competitor's entry, the proposed Fund Judgment should be modified to require both a stereolithography and a sintering Acquirer.

V. Several Miscellaneous Provisions of the Proposed Final Judgment Indicate that DOJ Misunderstands Some Fundamental Concepts of the RP Industry

A. DTM's Plant in Austin, Texas Cannot Be Acquired

Included among the Divestiture Assets is an option for the Acquirer to purchase DTM's plant located in Austin, Texas (the ''Plant''). Proposed Final Judgment ¶ II.G(3); see also Competitive Impact Statement at 66 Fed. Reg. 49210. Through its due diligence, EOS has learned that DTM (now 3D) is merely a lessee of the Plant. As as result, contrary to DOJ's apparent belief, the Acquirer cannot purchase or acquire the Plant. The Acquirer may only assume DTM's lease. The proposed Final Judgment also contains a provision that reads as follows: ''Defendants shall warrant to the Acquirer of the Divestiture Assets that each tangible asset will be operational on the date of sale.'' Proposed Final Judgment ¶ IV.K. In this type of industry, there are no tangible operating assets to transfer. Moreover, the proposed Final Judgment fails to include a requirement that 3D/DTM transfer any employment contracts associated with the Plant. So, DOJ has negotiated a divestiture that only amounts to an option to assume a lease. The inclusion of the option to ''purchase'' the Plant does not provide an Acquirer with any assistance in establishing a presence in the United States market for industrial RP systems and materials. This provision in the proposed Final Judgment suggests that DOJ does not understand what divestiture commitments it has extracted from 3D and DTM.

B. The Peoposed Final Judgment Does Not Permit Potential Acquirers To Obtain Information on Necessary Service Personnel of the 3D and DTM

Another aspect of the proposed Final Judgment which suggests that DOJ does not comprehend the requirements of affecting a successful entry into the United States market for industrial RP systems and materials is its failure to include the service personnel of 3D/DTM as part of the required due diligence. The proposed Final Judgment only requires that 3D/DTM provide the Acquirer, after the Acquirer has been determined, ''information relating to the personnel involved in sales, marekting and manufacturing of RP Industrial Equipment in the Selected Technology to enable the Acquirer to make offers of employment * * *.'' Proposed Final Judgment ¶ IV.I. Service personnel are omitted, and this omission is particularly troubling. EOS had previously conveyed to DOJ the importance of having access to service personnel. EOS had clearly communicated that obtaining competent and experienced service personnel was essential to establishing a viable presence in the United States market for industrial RP systems. In fact, EOS identified the task of identifying and hiring knowledgeable service personnel as one of the most significant barriers to entry in the United States industrial RP systems market. The Federal Trade Commission has recognized the importance of including a requirement in its orders involving the divestiture of technology that the defendants facilitate the transfer of knowledgeable personnel. Bureau of Competition, Federal Trade Commission, A Study of the Commission's Divestiture Process (1999) at 27–28, and at 36–37. Requiring the transfer of knowledgeable personnel is necessary to ensure that the Acquirer has the ability to exploit its newly acquired technological rights. *Id.*

Aside from its failure to include service personnel as part of the initial due diligence process, the Antitrust Division did not require that 3D/DTM share *any* personnel information with any potential Acquirer until the Acquirer has been identified. Proposed Final Judgment ¶ IV.I. Consequently, in submitting their offers to 3D, potential Acquirers must attempt to value the Divestiture Assets without any information on personnel. In light of the information that has been provided to DOJ and its experience with negotiating divestiture orders, it is difficult to conceive of a procompetitive explanation for DOJ's failure to require that 3D provide timely due diligence information on all types of its personnel (sales, marketing, manufacturing, and service) to potential Acquirers.

C. The Schedule Established by the Proposed Final Judgment Dictates That Public Comments Must be Submitted Prior to the Identification of an Acquirer

Finally, the schedule established for completing the divestiture required by the proposed Final Judgment allowed the deadline for the submission of public comments to pass before 3D selected an Acquirer. This schedule makes it impossible to address concretely the actual effect that the proposed Final Judgment will have on competition in the United States market for industrial RP systems and materials. There is no reason why DOJ could not have required that 3D identify its proposed Acquirer prior to the expiration of the period for submitting

public comments. In fact, EOS submits that if DOJ had done so, then the public comments would have been much more useful to the Antitrust Division's evaluation of the competitive merits of 3D's proposed Acquirer and the Court's determination of whether the proposed Final Judgment sufficiently protects the public interest. The Court should modify the proposed Final Judgment to allow a 30-day comment period after an Acquirer has been selected by 3D, but before approval by DOJ.

Conclusion

EOS does not seek a better treatment for itself than the proposed Final Judgment allows other potential Acquirers. EOS is seeking to identify what is necessary to ensure that it or some other Acquirer has the resources required to compete adequately in the United States. For the reasons discussed above, EOS recommends that DOJ or the Court modify the proposed Final Judgment so that a new competitor will be permitted to sell laser sintering RP systems and material in the United States, without regard to whether 3D licenses its stereolithography technology. United States customers of laser sintering RP systems and material should be guaranteed an independent competitive source of supply. EOS also requests that the proposed Final Judgment be modified to prohibit 3D from asserting that EOS is precluded from enforcing its patent rights against 3D in the pending litigation.

Further, EOS requests that the court conduct a hearing to examine more carefully the adequacy of the competitive relief that DOJ has agreed to in the proposed Final Judgment.

Should you have any questions about the information that EOS has provided or if you would like additional information, please do not hesitate to contact me.

Sincerely yours,

Dr. Hans Langer,
Chief Executive Officer, EOS GmbH Electro Optical Systems, 49 (89) 85685–111.

David J. Laing,
Baker & McKenzie, U.S. Antitrust Counsel to EOS GmbH Electro Optical Systems.

License Agreement

Agreement, effective as of the 27th day of August, 1997, between 3D Systems Corporation, having its principal office at 26081 Avenue Hall, Valencia, California, and 3D Systems GmbH, having its principal office at Röntgenstraëette 41, D–64291, Darmstadt, Germany (both hereinafter called ''*Licensor*'') and EOS Gmbh Electro Optical Systems, having a place of business at Pasinger Str. 2, D–82152 Planegg, Munich, Germany (hereinafter called ''*Licensee*'') (being sometimes hereinafter referred to individually as a *Party* and collectively as the ''*Parties*'');

Witnesseth

Whereas, Licensor and *Licensee* are, contemporaneously herewith, entering into a settlement, purchase and transfer agreement (''Purchase Agreement'') under which they are, *inter alia,* settling all Court and other patent-related proceedings pending between *Licensor* on the one hand, and *Licensee* and its customers on the other; and

Whereas, the Purchase Agreement also covers a purchase by *Licensor* of certain assets of *Licensee*; and

Whereas, in partial consideration of the settlement of litigation between the Parties, and the acquisition by *Licensor* of *Licensee*'s business unit known as the ''*Stereos*'' product line, *Licensor* is willing to grant to *Licensee* throughout the world under its Licensed Patents a license upon the terms and conditions set forth hereinbelow;

It is Agreed:

Article I—Definitions

1.1 Licensed Patents shall mean the following patents to the extent, and only to the extent, applicable to the field of Laser Sintering:

(a) All U.S. and foreign patents, including reissued and reexamined patents and utility models owned by *Licensor* as of the effective date of this Agreement, and all patents and utility models assigned from EOS to 3D; and

(b) U.S. and foreign patents and utility models, which may issue to *Licensor* on patent and utility model applications filed prior to August 20, 2002, or filed subsequent thereto, but receiving, or entitled to receive, the benefit of a filing date prior to August 20, 2002, including any patents of addition and utility models, and further including any extensions, renewals, continuations, reexaminations, and/or reissues thereof.

1.2 Laser Sintering shall mean and include only apparatus, methods and supplies for producing three-dimensional objects, layer-by-layer, from (a) coated or uncoated powders not contained within a solidifiable fluid, through sintering by a laser or other heat source, (b) dry polymer-coated powders, through curing by an IR laser or other heat source, and (c) coated or uncoated powders in a mixture with a liquid, in which the liquid is no greater than 15 percent of the total volume;

1.3 Stereolithography shall mean and include apparatus, methods and supplies for producing three-dimensional objects layer-by-layer from photocurable fluids;

1.4 Jetting R.P. shall mean and include apparatus, methods and supplies for producing three-dimensional objects layer-by-layer from jettable materials for hot melt ink jet technology that are solid at room temperature.

Article II—The License

2.1 *License Grant.* Upon execution of this Agreement, *Licensor* hereby grants to *Licensee,* an exclusive, worldwide, personal, non-transferable and paid-up license under the Licensed Patents, to make, use, lease, sell, offer for sale, and import, products solely for use in the field of Laser Sintering; provided, however, that such license is subject to the following limitations:

(a) *Licensee* expressly agrees not to assert against *Licensor,* or vendees or customers, mediate or immediate, of *Licensor,* any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by *Licensor* under the Licensed Patents, at any time, for any reason, during the term of this License Agreement;

(b) The license shall only be effective during the term of this License Agreement.

2.2 *Release. Licensor* hereby grants to *Licensee* and its prior customers, mediate and immediate, of products respectively sold and used, a paid-up release under the Licensed Patents.

2.3 *Sublicensing.* During the term of this License Agreement, the license hereby granted shall include the right of *Licensee* to grant written sublicenses; provided, however, that *Licensee* agrees to deliver to *Licensor* a true and correct copy of each and every sublicense entered into by *Licensee* within thirty (30) days after execution thereof, and shall promptly advise *Licensor* in writing of any modification (and supply same) for termination of each sublicense. Upon termination of this License Agreement for any cause, any and all existing sublicenses hereunder shall thereupon be assigned to *Licensor.* This shall be made a condition of any such sublicense that may be granted by *Licensee. Licensee* agrees that one-half (½) of any royalty income received by *Licensee* in any form, whether in monies or other valuable consideration (but not including license rights as received, for example, under a cross-license agreement), whether by agreement or as a result of litigation or otherwise, shall be shared equality (i.e., 50/50) with *Licensor.*

2.4 No license is granted by *Licensor* to *Licensee,* either directly or by implication, estoppel or otherwise, under any patents other than patents included in the Licensed Patents, or for any field other than the field of Laser Sintering.

2.5 *Licensee* agrees to mark every licensed product manufactured or sold by it under this Agreement, and to require same of any sublicensees, in accordance with the applicable statutes of the country of manufacture and sale.

Article III—Enforcement of Patents

3.1 In the event *Licensee* becomes aware of any actual or threatened infringement of a patent which is included in the Licensed Patents, *Licensee* shall have the right to bring, at its own expense, an infringement action to enforce the infringed-upon patent. In the event it is determined by a court of competent jurisdiction, after all appeals or right to appeal have been completed, that *Licensor* is an indispensable party to any such litigation, then *Licensor* agrees to be joined in any such litigation, provided that *Licensee* agrees to pay for all costs incurred by *Licensor* in connection with such joinder, including *Licensor's* own attorneys' fees as well as any court costs, travel and living expenses, and all other costs incurred in connection therewith. Furthermore, in respect of any litigation under the Licensed Patents, whether brought by *Licensee* or brought pursuant to Article 3.2, in the event of any discovery proceedings involving *Licensor, Licensee* agrees to pay for all costs incurred by *Licensor*, including internal personnel costs involved in discovery at an hourly rate representing the cost to *Licensor* for any such employees, as well as any travel and living expenses, together with all other costs and expenses.

3.2 In the event a third party brings an action to obtain a declaration of patent invalidity or non-infringement (a ''DJ

Action'') based upon or related to allegations of infringement by *Licensee* with respect to the field of Laser Sintering, against either *Licensee* or *Licensor*, or both with respect to a patent which is included in the Licensed Patents:

3.2.1 *Licensee* shall be required to defend said DJ Action at its cost and expense, whether such DJ Action is against *Licensor* or *Licensee*, or both.

3.3 In the event a litigation subject to 3.1 or 3.2.1 involves an assertion of invalidity of any Licensed Patent, *Licensor* shall have the right, but not the obligation, to participate in such litigation at its own cost and expense, and thereby to control the litigation insofar as the issue of validity is concerned.

Article IV—Term of License, Termination

4.1 The term of this Agreement shall, unless otherwise terminated as provided in Article 4.2, extend for the life of the last to expire of the Licensed Patents and shall thereupon terminate.

4.2 *Licensor* may terminate this Agreement, in whole, or with respect to any patent included in the Licensed Patents, in the event of any breach of the non-compete provision (set forth in Article 2, paragraph 7, ''Prohibition of Competition'' of the Purchase Agreement between the Parties dated August 27, 1997), unless such breach with due regard to all circumstances is immaterial or unless the party in breach of Prohibition of Competition shows that such breach was committed for reasons beyond its reasonable control. Furthermore, *Licensor* shall have the right to terminate this Agreement, in whole or with respect to any patent included in the Licensed Patents, in the event that at any time during the term hereof, EOS or its affiliated companies, or Dr. Hans J. Langer (who shall indicate his agreement with this provision by his subscription hereto) engage in any manner in the manufacture, sale or use of Stereolithography products or Jetting R.P. (other than as permitted in the above-noted non-compete provision).

4.3 Any termination pursuant hereto shall not relieve *Licensee* from any obligation or liability accrued hereunder prior to such termination, not rescind or give rise to any right to rescind anything done or any payments made, or other consideration given hereunder, or in the Purchase Agreement dated August 27, 1997, or any other consideration given hereunder prior to the time of such termination, and shall not affect in any manner any remedies of *Licensor* arising out of this Agreement prior to such termination.

V—Warranty

5.1 *Licensor* warrants and represents that it has the full right and power to grant the license under the Licensed Patents as set forth herein, and that there are no outstanding agreements, assignments or encumbrances inconsistent with the provision of this Agreement other than as expressly set forth herein. Licensor makes no other representation or warranty, express or implied, nor does licensor assume any liability in respect of any infringement of any patent or other right of third parties due to licensee's activities under this agreement except as expressly set forth herein. By way of example, but not of limitation, licensor makes no representation or warranty of commercial utility, merchantability or fitness for a particular purpose, or that operating under the license herein granted will not infringe any patent or other property right of others (other than the right to license hereunder). In no event shall licensor be liable for any claim or loss incurred by licensee (including, without limitation, compensatory or exemplary damages, lost profits, lost sales or business, expenditures, investments or commitments in connection with any business, or loss of any goodwill) irrespective of whether licensor has been informed of, knows of, or should have known of the likelihood of such damages, except as expressly otherwise provided in this agreement. This limitation applies to all causes of action in or with respect to the agreement, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other sorts.

5.2 Nothing in this Agreement shall be construed as:

(a) A warranty or representation by LICENSOR as to the validity or scope of any Licensed Patent; or

(b) A warranty or representation that anything made, used, sold, or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents of third persons; or

(c) A requirement that LICENSOR shall file any patent application, secure any patent, or maintain any patent in force; or

(d) An obligation to bring or prosecute actions or suits against third parties for infringement of any patent; or

(e) An obligation to furnish any technical or other information concerning pending patent applications; or

(f) Conferring a right to use in any advertising, publicity or otherwise, any trademark or trade name of LICENSOR; or

(g) Granting by implication, estoppel or otherwise, any licenses or rights under patents other than the Licensed Patents.

Article VI—Assignments

6.1 This Agreement shall not be assigned by *Licensee,* nor shall it pass by succession in ownership of all, substantially all or any part of *Licensee's* business interests, without the prior written consent of *Licensor.* Any attempted assignment or passage by succession shall be void.

Article VII—Communication

7.1 Any notice or other communication required or permitted to be made or given to a party hereto pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to the Party by certified or registered mail, postage prepaid, addressed to it at its address set forth, or to such other address as it shall designate by written notice to the other Party as follows:

In the case of Licensor: Chief Executive Officer, 3D Systems Corporation, 26081 Avenue Hall, Valencia, CA 91355.

In the case of Licensee: Geshäftsführer, EOS GmbH Electro Optical Systems, Pasinger Str. 2, D–82152 Planegg, Munich, Germany.

VIII—Miscellaneous

8.1 *Execution.* This Agreement will not be binding upon the Parties until it has been signed hereinbelow on behalf of each Party, in which event it shall be effective as of the date first above written. No amendment or modification hereof shall be valid or binding upon the Parties unless made in writing and signed as aforesaid. The effectiveness of this Agreement shall be subject to the completion of the Settlement, Purchase and Transfer Agreement between the Parties dated August 27, 1997 and, if such agreement is not completed, or is thereafter held invalid, void ab initio, or otherwise rendered ineffective, then this agreement shall be void ab initio as well.

8.2 *Integration.* This Agreement embodies the entire understanding of the Parties and shall supersede all previous communications, representations or undertakings, either verbal or written between the Parties relating to the subject matter hereof.

8.3 *Indemnification. Licensee* agrees to indemnify and hold harmless *Licensor,* its officers, employees and agents from and against any and all claims, damages and liabilities asserted by third parties, both government and private, arising from *Licensee's* assertion of rights under Licensed Patents and the sale and use of products licensed hereunder.

8.4 *Anonymity. Licensee* shall have no right to use the names or other designation of *Licensor* in connection with any sales or promotion of products licensed hereunder without the express consent of *Licensor.*

8.5 *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

8.6 *Governing Law and Dispute Resolution.* This Agreement shall be governed and interpreted in accordance with the substantive laws of the State of California irrespective of any choice of law rules in the State of California or in any other jurisdiction. The parties agree that any action for relief based in whole or in part on this Agreement (or the breach thereof) or otherwise relating in whole or in part to this Agreement shall be filed in, and the parties consent to personal jurisdiction and venue in, the Federal and State Courts closest to the above-identified place of business of 3D Systems, Inc. in Valencia (Los Angeles County), California having subject matter jurisdiction over such action. In any such action between the parties, the prevailing party shall be entitled to recover (in addition to any other relief awarded or granted) its reasonable costs and expenses (including attorneys' fees) incurred in the proceeding. This Agreement has been concluded in English (American legal usage) and if translated into German for any purpose, in case of discrepancy, the English text shall prevail.

8.7 *Headings, Tense and Gender.* The headings of the several sections are inserted for convenience of reference only, and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

In this Agreement, where the context so permits, the singular shall include the plural, and vice versa, and references to a particular gender shall include any other gender.

8.8 *No Waiver.* Failure by any Party to enforce any provision of this Agreement or assert a claim on account of breach hereof shall not be deemed a waiver of its right to enforce the same or any other provision hereof on the occasion of a subsequent breach.

8.9 *Remedies.* The remedies provided in this Agreement are not and shall not be deemed to be exclusive and shall be in addition to any other remedies which any Party may have at law or in equity.

8.10 *Independent Contractors.* The Parties hereto are independent contractors and are not and shall not be considered as joint venturers, partners, employers, or agents of each other, and none shall have the power to bind or obligate the other except as set forth in this Agreement.

8.11 *Force Majeure.* No Party hereto shall be liable in damages or have the right to cancel this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control, including but not limited to acts of God, government restrictions, wars or insurrections.

8.12 *Counterparts.* This Agreement may be executed in three (3) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

In Witness Whereof, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

3D Systems Corporation.

Sid Alpert, Vice President, General Counsel.

Witness: Brenda L. Webb.

EOS GmbH Electro Optical Systems

Hans J. Langer, Chief Executive Officer.

Witness: Elmor Dimmelmeier.

News Releases

3D Systems Completes Acquisition of RPC

Newly Branded Stereolithography Materials To be Developed and Manufactured in 2002

Contacts: Jeff Krinks, Public Relations Manager,
(661) 295–5600, ext. 2910,
Krinksj@3dsystems.com.
Trudy Self, Self & Associates, (818) 880–5437, *tmself@aol.com.*

Valencia, Calif., Sept. 19, 2001—3D Systems Corp. (Nasdaq: TDSC) today announced it has completed its acquisition of materials developer and manufacturer RPC Ltd.

RPC, now a wholly owned subsidiary of 3D Systems, will continue to manufacture and distribute from its headquarters in Marly, Switzerland, where it has developed 16 stereolithography (SL) materials for SLA® systems.

''When our current obligation for SL material development ends in February 2002, we will work with RPC to further enhance our SL material product lines and develop new materials,'' said Grant Flaharty, senior vice president of worldwide sales and marketing for 3D Systems. ''The combination of RPC and 3D Systems allows us to add a greater materials focus to the high-quality hardware customers have come to expect. We plan to provide a full range of materials with comparable or improved properties.''

RPC's materials are fully compatible with 3D Systems' SLA product line and provide a variety of properties, including durability, heat resistance and detailed surface finish. Any questions regarding RPC materials should be directed to RPC at (41) 26 439 95 90 or *www.rpc.ch.*

About 3D Systems

Founded in 1986, 3D Systems provides solid imaging products and solutions that help reduce the time and cost of designing products and facilitate direct and indirect manufacturing. Its systems utilize patented technologies that create physical objects from digital input.

3D Systems currently offers the ThermoJet® solid object printer, stereolithography (SLA®) systems and selective laser sintering (SLS®) systems, as well as related software and materials. Product pricing in the U.S. ranges from $49,995, for the ThermoJet printer, to $799,000 for the high-end SLA 7000 system. The company licenses the complementary 3D Keltool® process, a method for producing steel mold inserts, and currently is developing systems that use composite paste materials for direct manufacturing. In August, 3D Systems merged with DTM Corp.

More information on the company is available at *www.3dsystems.com,* or by phoning 888/337–9786, extension 791, or 661/295–5600 internationally. An investor packet can be obtained by calling 800/757–1799.

About RPC

Based in Marly, Switzerland, RPC develops and distributes a complete range of materials used in SLA solid imaging systems. Since its founding in 1997, the company's R&D efforts have concentrated on thermosetting and photopolymer materials as well as laser technology. The company has introduced 16 resins for all three laser configurations on the SLA machines.

Note to editors: ThermoJet, SLA, SLS, Keltool and the 3D logo are registered trademarks of 3D Systems.

Certain statements in this news release may include forward-looking statements that express the expectation, prediction, belief or projection of 3D Systems. These statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance and achievement of 3D systems to be materially and adversely different from any future results, performance or achievement expressed or implied by these forward-looking statements. Factors that may cause actual results to differ from the forward-looking statements contained in this release and that may affect the company's prospects in general include, but are not limited to: worldwide economic conditions; successful enhancement of the current RPC product line in a timely manner; RPC's ability to produce sufficient quantities of material to meet customer needs; actions of competitors, particularly materials producers, all of which have considerably more resources at their disposal than 3D Systems; actions of customers and their acceptance of RPC's products, and such other factors as are described in the companies' filings with the Securities and Exchange Commission, including annual reports on Form 10–K for the year ended Dec. 31, 2000, quarterly reports on Form 10–Q for the quarters ended March 31 and June 30, 2001, and 3D Systems' current reports on Form 8–K filed on April 6, April 10, and Sept. 4, 2001.

News Releases

3D Systems and Vantico Terminate Relationship

3D Systems Agree To Acquire RPC Ltd.

Contacts:
Jeff Krinks, Public Relations Manager (3D Systems), (661) 295–5600, ext. 2910, *krinksj@3dsystems.com.*
Trudy Self, Self & Associates (3D Systems), (818) 880–5437, *tmself@aol.com.*

Valencia, Calif., Aug. 24, 2001—3D Systems Corp. (Nasdaq: TDSC) today announced the severance of its distributor and joint development agreements with Vantico Inc., a subsidiary of Vantico International. 3D Systems has been the exclusive worldwide distributor (except for Japan) of Vantico liquid resins use in stereolithography systems.

Under the terms of the distributor, 3D Systems will continue to distribute Vantico resins for a period of six months. After that period, the distribution agreement will no longer limit 3D Systems from sourcing and developing resins independently.

3D Systems' termination of the joint development agreement with Vantico will prohibit the two companies from exploiting, for a period of three years, any proprietary information owned or developed by the other party. However, the parties dispute the meaning and impact of this provision, and, though conversations between the parties continue, arbitration proceedings have begun regarding this matter.

3D Systems believe a significant portion of the Vantico resins currently used in 3D Systems machines were developed and enhanced by 3D Systems and that its proprietary information is pervasive in a substantial portion of Vantico's products currently being manufactured, as well as those under development. As a result, 3D Systems believes that Vantico would be prevented from separately marketing those products, unless the companies reach a subsequent agreement.

''These developments present a great opportunity for 3D Systems to further enhance the materials currently used in our systems while maintaining our existing base of materials recurring revenue,'' said Brian K. Service, 3D Systems' president and chief executive officer. ''During this transition period and beyond, we expect to continue to provide quality materials to our customers and further position ourselves to be a much stronger supplier of materials in the future.''

''We will continue to be the exclusive distributor of Vantico materials for the next six months and may arrange with Vantico to

continue to distribute its materials beyond that time,'' Service added. ''We believe that we will continue to be able to offer our customers a full range of materials that are either substitutable or offer improved speed, accuracy, surface finish and functionality. It is our goal to provide as smooth a transition to our customers as possible.''

3D Systems also announced it has signed a letter of intent to acquire Rapid Prototyping Chemicals (RPC) Ltd. of Marly, Switzerland. RPC is an independent supplier of stereolithography resins.

''We are excited about adding RPC's materials offerings to the 3D Systems family of solid imaging products,'' said Grant Flaharty, senior vice president of worldwide sales and marketing for 3D Systems. ''This proposed acquisition reflects our focus on materials versatility and our commitment to providing the best solid imaging solutions for our customers.''

''RPC offers a wide range of materials that have been well received in the market. Our intention is to continue this trend and further enhance the synergy of our systems and materials,'' Flaharty said.

About 3D Systems

3D Systems provides solid imaging products and services that substantially reduce the time and cost required to design, test and manufacture products. The company's systems utilize patented technologies that create physical objects from digital input.

3D Systems currently offers the ThermoJet® office printer and SLA® industrial systems, which include proprietary software and materials. Products pricing in the U.S. begins at $49,995 for the company's entry-level printer and extends up to $799,000 for its feature-rich industrial SLA 7000 system. The company also licenses the 3D Keltool® process, a complementary application that produces injection molding and die casting inserts from SLA system master patterns. In February 2001, 3D Systems announced it acquired OptoForm, a French company that has developed direct composite manufacturing systems that use paste materials. In April 2001, the company announced the signing of a definitive merger agreement to purchase DTM Corp., and it expects to complete the merger this month.

Based in Valencia, Calif., 3D Systems was founded in 1986 and is recognized as a world technology leader in solid imaging. For additional information, visit the company's website at *www.3dsystems.com* or phone 888/337–9786, ext. 788. For an investor packet, call the company's shareholder communications service at 800/757–1799.

About DTM Corporation

DTM develops, manufactures and markets advanced rapid prototyping and manufacturing systems, including the Sinterstation® 2500plus and Vanguard systems. A growing number of manufacturers and service bureaus worldwide use these systems to rapidly create 3–D prototypes, parts, molds, tooling and casting patterns.

All Sinterstation SLS® systems utilize a process called selective laser sintering to create 3–D objects from computer-aided design (CAD) data. The Sinterstation system creates the part in a matter of hours using a CO2 laser to fuse together layers of powdered plastic, metal or ceramic powers. The results are durable 3–D parts produced in a fraction of the time it would typically take using other traditional methods.

Among the companies currently using Sinterstation systems are manufacturers such as BMW, Boeing, Pitney Bowes, Rockwell International, Volvo Penta and others. In addition, numerous service bureaus throughout the world include Sinterstation systems in their offerings to companies with only an occasional need for rapidly produced functional prototypes and parts. Parts and prototypes made on Sinterstation systems also are used in non-industrial settings, such as science and medicine. For more information on DTM's systems, customers and applications, visit the company's website at *www.dtm-corp.com.*

About RPC

Based on Marly, Switzerland, RPC develops and distributes a complete range of materials used in SLA solid imaging systems. Since its founding in 1997, the company's R&D efforts have concentrated on thermosetting and photopolymer materials as well as laser technology. The company has introduced 13 resins for all three laser configurations on the SLA machines and anticipates 7% to 10% market growth this year for its materials. For more information, visit *www.rpc.ch*.

Note to editors: ThermoJet, SLA, Keitool and the 3D logo are registered trademarks of 3D Systems. Sinterstation and SLS are registered trademarks, and DuraForm and Vanguard are trademarks, of DTM Corporation.

Certain statements in this news release may include forward-looking statements which express the expectation, prediction, belief or projection of 3D Systems. These statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance and achievement of 3D Systems to be materially and adversely different from any future results, performance or achievement expressed or implied by these forward-looking statements. Factors that may cause actual results to differ from the forward-looking statements contained in this release and that may affect the company's prospects in general include, but are not limited to: the funding of amounts of capital adequate to provide for the working capital needs of the company; actions of competitors and customers; reliance on single or limited suppliers, the ability to timely and cost-effectively identify and obtain or independently develop resins adequate for use with 3D Systems' products, the negotiation and execution of definitive documents to acquire RPC, the efficient integration of DTM into the business of 3D Systems, and such other factors as are described in the companies' filings with the Securities and Exchange Commission, including annual reports on Form 10–K for the year ended Dec. 31, 2000, quarterly reports on Form 10–Q for the quarters ended March 31 and June 30, 2001, and 3D Systems' current reports on Form 8–K filed on April 6 and April 10, 2001.

News Releases

3D Systems Sells 2,000th Machine

Includes 100 SLA 7000 Systems Shipped

Contacts:

Jeff Krinks, Public Relations Manager, (661) 295–5600, ext. 2910, *krinksj@3dsystems.com.*

Trudy Self, Self & Associates, (818) 880–5437, *tmself@aol.com.*

Valencia, Calif., May 29, 2001—3D Systems Corp. (Nasdaq: TDSC) today announced the sale of its 2,000th solid imaging system. The company also reached a milestone by shipping its 100th high-end SLA® 7000 system since its introduction in February 1999.

''We're pleased that, throughout 3D Systems' 15-year history, our products have continued to gain market acceptance,'' said Chuck Hull, company founder and chief technology officer. ''Even as we celebrate the 2,000th system sold, we look forward to accelerating our growth via new technologies and solutions.''

Hull added, ''We anticipate the functionality of our new Viper si2™ SLA system will be attractive to the marketplace—much like its predecessor, the SLA 250 system. And we're excited about our current R&D work with non-liquid material systems, which will address the growing market for rapid tooling and direct and indirect in-line manufacturing applications.''

The first solid imaging machine off 3D Systems' production line in 1986 was the SLA 1 system. Subsequent machines included the SLA 190, 250, 350 and 500 systems. In 1996, 3D Systems introduced its first solid object modeler, the Actua™ printer, which was replaced in 1999 by the ThermoJet® printer.

In 2000, 3D Systems shipped 387 systems globally with revenues of $109.7 million. its $27.9 million revenues for first-quarter 2001 were 21.3% greater than its first-quarter 2000 revenues.

100th SLA 7000 System Shipped

Reaching another milestone, 3D Systems shipped the 100th high-end SLA 7000 system to The Boeing Company for use at its PhantomWorks facility in St. Louis. 3D Systems introduced the SLA 7000 system in February 1999 and shipped 29 that year and 57 in 2000.

''We've used stereolithography technology since 1989 for aircraft configuration and marketing models,'' said Ed Langenderfer, prototype design specialist engineer at Boeing's PhantomWorks, ''Our main application of the technology is wind-tunnel testing.''

According to Langenderfer, the group recently used stereolithography for the development of the U.S. Air Force's Unmanned Combat Air Vehicle (UCAV). ''We made various flaps and aileron configurations to verify computer analyses. And we're planning to move into more advanced tooling and manufacturing applications with our SLA systems.''

Grant Flaharty, senior vice president of worldwide sales and marketing at 3D Systems, said, ''We are pleased that the SLA 7000 system continues to gain acceptance in

the market. As our installed base of high-end systems grows, we have more opportunities for ongoing support and materials sales. In 2000, our materials sales accounted for 23% of total revenue.''

About 3D Systems

3D Systems provides solid imaging products and services that substantially reduce the time and cost required to design, test and manufacture products. The company's systems utilize patented technologies that create physical objects from digital input.

3D Systems currently offers the ThermoJet® office printer and SLA® industrial systems, which include proprietary software and materials. Product pricing in the U.S. begins at $49,995 for the company's entry-level printer and extends up to $799,000 for its feature-rich industrial SLA 7000 system. The company also licenses the 3D Keltool® process, a complementary application that produces injection molding and die casting inserts from SLA system master patterns. In February 2001, 3D Systems announced it acquired OptoForm, a French company that developed stereolithography systems that use paste materials. In April 2001, the company announced the signing of a definitive merger agreement to purchase DTM Corporation, contingent on, among other conditions, closing the loan funding.

Based in Valencia, Calif., 3D Systems was founded in 1986 and is recognized as the world technology and market leader in solid imaging. For additional information, visit the company's website at *www.3dsystems.com* or phone 888/337–9786, ext. 775. For an investor packet, call the company's shareholder communications service at 800/757–1799.

Note to editors: Actua is a trademark; and ThermoJet, SLA, Keltool and the 3D logo are registered trademarks of 3D Systems.

Certain statements in this news release may include forward-looking statements which express the expectation, prediction, belief or projection of 3D Systems. These statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance and achievement of 3D Systems to be materially different from any future results, performance or achievement expressed or implied by these forward-looking statements. Factors that may cause actual results to differ from the forward-looking statements contained in this release and that may affect the company's prospects in general include, but are not limited to: changes in general and industry-wide economic and business conditions; the availability of capital on acceptable terms; the funding of amounts adequate to acquire DTM Corporation and provide for the working capital needs of 3D Systems under the definitive loan document; the results of the inquiry by the Department of Justice into the acquisition by 3D Systems of DTM Corporation; actions of competitors and customers; the uncertain outcome of litigation, including the class action lawsuit filed in connection with the acquisition of DTM Corporation; the impact of competitive products and pricing; the availability and acceptance of products generally; the extent to which the companies are able to develop new products and markets for their products; and such other factors as are described in 3D Systems' filings with the Securities and Exchange Commission, including its annual report on Form 10–K for the year ended Dec. 31, 2000, its quarterly report on Form 10–Q for the quarter ended March 30, 2001, and its current reports on Form 8–K filed on April 6 and April 10, 2001.

October 23, 2001.

Dear Friend,

With the federal government taking steps to spur the economy, 3D Systems has developed various programs to provide our customer's with the solutions they need to continue their growth and expansion. This Instant Rebate Program * provides accessibility to solid imaging systems that have greatly enhanced the solid imaging and manufacturing process.

We believe that businesses will recover from these difficult conditions and there will be a continue demand for cost effective solutions.

THE INSTANT REBATE PROGRAM FOR SOLID IMAGING SYSTEMS

Solid imaging system	Instant rebate offer
SLA 7000 system	$200,000 instant rebate *.
SLA 5000 system	$100,000 instant rebate *.
SLA 3500 system	$50,000 instant rebate *.

*Instant Rebate Program is based on standard list U.S. prices, and may not be combined with any other promotions or discounts. Offer valid until December 15, 2001. The Instant Rebate Program is restricted to U.S.-based companies and the shipment of systems are limited to U.S. locations. All shipment of systems must occur by December 31, 2001.

3D Systems is offering the Instant Rebate Program for business that are making capital investments. Attractive leasing programs are available; including six-month free financing,[1] to assist you in making your year-end capital purchase decision and allow you to update or increase your solid imaging capacity.

To express your interest in these attractive offerings, please contact 3D Systems at 1 (888) 337–9786, or (661) 295–5600 ext 2882.

Sincerely,
Dwight Williams,
VP Sales for Americas, 3D Systems.

CMET

EOS GmbH, Pasinge, Strasse 2, D–82152 Planegg Munchen, Germany, President, Dr. Hans J. Langer.

Dear Dr. Langer,

Please accept my discourteous manner to write a letter directly to you. At first, I would like to introduce our company and myself.

My name is Ken Sahara and I am president of CMET Inc. CMET Inc. is not a big company but a leading company of the Stereolithography (SLA) market in Asia. Last December NTT-Data CMET Inc. was acquired by TEIJIN SEIKI Co., Ltd. and changed its name to CMET Inc. I was dispatched to CMET Inc. as a president from TEIJIN SEIKI Co., Ltd. at that time. And, at this April Stereolithography business of TEIJIN SEIKI integrated to CMET.

At the beginning of this July, TEIJIN SEIKI and CMET were requested from United States Department of Justice (DOJ) regarding the Marge of 3D Systems and DTM to make a presentation about the will and the way to enter the SLA or SLS market in the USA.

At that time, we heard that your company, EOS also has a keen interest to enter the USA market and already made a good presentation to DOJ.

At the moment, we suppose that EOS and CMET are waiting for the judge of DOJ to step up the next stage.

At this stage, I am not sure, it is proper time or not. But, I believe that we can discuss or exchange information about Market, Products and others. Because, your company and our company are not competitive company in the market and I am convinced that such discussion will help to make each company's short or mid-term strategy.

If you can agree with my proposal to discuss, I am very happy to meet you soon in your company or in our company. Your E-mail answer is more convenient for me.

Again, please accept my apology to write you direct. I do hope that you will be able to spare time to write your answer. Please treat this proposal as a confidential matter between you and I.

Sincerely yours,
Ken Sahara,
President, CMET Inc.

THOMAS, WALTON & GRAVES LLP, Philip J. Graves (SB#: 153441), 550 South Hope Street, Suite 1000, Los Angeles, California 90071, Telephone: (213) 488–1600, Facsimile: (213) 228–0256.

Attorneys for Defendants 3D SYSTEMS, INC., DTM CORPORATION, and COMPRESSION, a division of MOLL INDUSTRIES, INC.

United States District Court for the Central District of California Southern Division

[Case No. SA CV 00–1230 DOC (MLGx)]

EOS GMBH Electro Optical Systems, Plaintiff, v. 3d Systems, Inc., DTM Corporation, and Compression, a division of MOLL Industries, Inc., Defendants and Related Actions

3D Systems, Inc.'s Notice of Motion and Motion in Support of its Motion for Summary Adjudication Re Damages Under the 3D Patents Against EOS GmbH Electro Optical Systems; Declaration of Philip J. Graves in Support Thereof

Date: December 10, 2001.
Time: 8:30 a.m.
Ctrm: 9D, Honorable David O. Carter.
To All Parties and to Their Attorneys of Record:

Please Take Notice that on December 10, 2001, at 8:30 a.m. or as soon thereafter as the matter may be heard, before the Honorable David O. Carter, in the above-entitled Court located at 411 West Fourth Street, Suite 1053,

[1] No payments for six-months, certain restrictions apply.

Santa Ana, California 92701, Defendant 3D Systems Inc. (''3D'') will and hereby does move for summary adjudication under Rules 56(d) of the Federal Rules of Civil Procedure and Rule 56–4 of the Local Rules of the United States District Court for the Central District of California, that plaintiff EOS GmbH Electro Optical Systems (''EOS'') shall recover no relief, by way of damages, injunction or otherwise, as against 3D under U.S. Patent No. 4,929,402, U.S. Patent No. 5,554,336, U.S. Patent No. 5,630,981, U.S. Patent No. 5,059,359, U.S. Patent No. 5,137,662, U.S. Patent No. 5,174,931, U.S. Patent No. 5,182,056, U.S. Patent No. 5,184,307, U.S. Patent No. 5,345,391, U.S. Patent No. 5,609,812, U.S. Patent No. 5,609,813, U.S. Patent No. 5,711,911, U.S. Patent No. 5,779,967, U.S. Patent No. 5,785,918 and U.S. Patent No. 5,814,265 based upon the manufacture, use, sale or offer for sale of any laser sintering system that has occurred or shall occur after August 31, 2001.

This Court should grant 3D summary adjudication as to this issue for the following reasons. First, EOS is precluded under the August 27, 1997 3D–EOS License Agreement from asserting any claims for infringement under the licensed 3D patents against 3D based on the manufacture, use, sale or offer for sale of any apparatus, including laser sintering systems. Second, on August 31, 2001, DTM was merged into 3D and ceased to exist; accordingly, it is now 3D, not DTM, that is making and selling the accused laser sintering systems. These facts are undisputed; indeed, this Court has already found both of these facts to be true in prior Orders entered in this case. Thus, there is no genuine issue regarding the fact that EOS is entitled to recover no damages or other relief as against 3D under the licensed 3D patents based upon the manufacture or sale of the accused laser sintering systems after August 31, 2001.

This motion is made following the conference of counsel pursuant to Rule 7–3 of the Local Rules of the United States District Court for the Central District of California, which took place on October 16 and November 7 and 9, 2001. Counsel for 3D informed counsel for EOS by letter on October 17, 2001, that 3D intended to move for summary adjudication that EOS may recover no damages based on 3D's manufacture, use, sale and offering for sale of laser sintering systems, and that therefore any damages recovered by EOS in this action shall only run for the period up to and including August 30, 2001. (Graves Decl. ¶ 2; Ex. 1) Subsequently, on November 7, 2001, counsel for 3D and counsel for EOS discussed the grounds for 3D's motion for summary adjudication and the evidence that would be pertinent to adjudication of the motion. (Graves Decl. ¶ 3) On November 9, 2001, counsel engaged in further discussion regarding these matters. (Graves Decl. ¶ 4) No resolution was accomplished. (Graves Decl. ¶ 5)

This Motion is based on this notice of motion, the supporting memorandum of points and authorities, the separate statement of uncontroverted facts and conclusions of law, the declarations of A. Sidney Alpert, Karen Shotting and Philip J. Graves, the attached exhibits, all papers and pleadings on file herein, and such other evidence as the Court may receive at or before the hearing on this matter.

Dated: November 12, 2001.

Thomas, Walton & Graves LLP.

Philip J. Graves,

Attorneys for Defendants 3D Systems, Inc., DTM Corporation, and Compression, a division of Moll Industries, Inc.

Declaration of Philip J. Graves

I, Philip Graves declare as follows:

1. I am a partner at the law firm of Thomas, Walton & Graves LLP (''TWG''), counsel of record for 3D Systems, Inc. (''3D'') in the case entitled *EOS GmbH Electro Optical Systems, et al. v. DTM Corp., at al.,* Case No. SA CV 00–1230 DOC (MLGx). I am a member in good standing of the State Bar of California and have been admitted to practice before this Court. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. On October 17, 2001, I notified Michael Gannon, counsel for EOS GmbH Electro Optical Systems (''EOS''), by letter of 3D's intention to move for summary adjudication that EOS may recover no damages based on 3D's manufacture, use, sale and offering for sale of laser sintering systems, and that therefore any damages recovered by EOS in this action shall only run for the period up to and including August 30, 2001. A true and correct copy of this letter is attached hereto as Exhibit 1.

3. On November 7, 2001, Mr. Gannon and I discussed the grounds for 3D's motion for summary adjudication and the evidence that would be pertinent to adjudication of the motion.

4. On November 9, 2001, Mr. Gannon and I engaged in further discussion regarding these matters.

5. No resolution was accomplished.

Executed on November 12, 2001, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Philip Graves.

Thomas, Walton & Graves LLP, Lawyers

October 17, 2001.

By Facsimile

Michael D. Gannon, Esq., Baniak Pine & Gannon, 150 North Wacker Drive, Ste. 1200, Chicago, Illinois 60606.

Re: EOS GmbH Electro Optical Systems v. DTM Corporation and *Compression, Case No. SACV 00–1230 DOC*

Dear Mike:

Supplementing my letter of yesterday on this subject, I am writing pursuant to Local Rule 7.4.1 to inform you that 3D Systems, Inc. (''3D'') intends to move for leave to file a supplemental or amended pleading that seeks a declaratory judgment against EOS GmbH Electro Optical Systems (''EOS'') to the effect that 3D's manufacture, use, sale and offering for sale of laser sintering systems (or any other type of rapid prototyping system) does not and will not constitute infringement of any patents licensed to EOS pursuant to the August 27, 1997 3D–EOS License Agreement.

3D also intends to move for summary adjudication that EOS may recover no damages in the above-referenced action based on 3D's manufacture, use, sale and offering for sale of laser sintering systems, and that therefore if EOS establishes any right to damages based on DTM Corporation's manufacture, use, sale and offering for sale of laser sintering systems, such damages shall only run for the period up to and including August 30, 2001.

Please give me a call at your earliest convenience to discuss whether EOS is willing to stipulate to the filing of 3D's amended or supplemental pleading, and to entry of the other relief that will be sought by 3D.

Sincerely,

Philip J. Graves.

Proof of Service

State of California, County of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1511 West Beverly Blvd., Los Angeles, CA 90026.

On November 12, 2001, I served the foregoing document described as *3D Sytems, Inc.'s Notice of Motion and Motion in Support of its Motion for Summary Adjudication re Damages Under the 3D Patents Against EOS GmbH Electro Optical Systems; Declaration of Philip J. Graves in Support Thereof* on the interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows: Kenneth L. Wilton, Small Larkin LLP, 10940 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90024.

I caused such envelope to be delivered by hand to the offices of each interested party.

Executed on November 12, 2001 at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

James McLean.

Thomas, Walton & Graves LLP, Philip J. Graves (SB#: 153441), 550 South Hope Street, Suite 1000, Los Angeles, California 90071, Telephone: (213) 488–1600, Facsimile: (213) 228–0256.

Attorneys for Defendants 3D Systems, Inc., DTM Corporation, and Compression, a division of Moll Industries, Inc.

United States District Court for the Central District of California Southern Division

[Case No. SA CV 00–1230 DOC (MLGx)]

EOS GMBH Electro Optical Systems, Plaintiff, v. 3D Systems, Inc., DTM Corporation, and Compression, a division of Moll Industries, Inc., Defendants And Related Actions

3D Systems, Inc.'s; Memorandum of Points and Authorities in Support of its Motion for Summary Adjudication Re Damages Under the 3D Patents Against EOS GmbH Electro Optical Systems; Declarations of Karen Shotting, A. Sidney Alpert and Philip Graves in Support Thereof

Date: December 10, 2001.
Time: 8:30 a.m.
Ctrm: 9D, Honorable David O. Carter.

Proof of Service

State of California, County of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 550 S. Hope Street. Suite 1000, Los Angeles, CA 90071–2644.

On November 12, 2001, I served the foregoing document described as 3D Systems, Inc.'s Notice of Motion and Motion in Support of its Motion for Summary Adjudication Re Damages Under the 3D Patents against EOS GmbH Electro Optical Systems; Declaration of Philip J. Graves in Support Thereof on each interested party, as follows: Michael H. Baniak, Michael D. Gannon, Baniak Pine & Gannon, 150 North Wacker Drive, S. 1200, Chicago, IL 60606.

I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. In the ordinary course of business under that practice, it would be deposited with U.S. Postal Service on the same day that it is collected and processed, with postage thereon fully prepaid at Los Angeles, California. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated in the affidavit.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 12, 2001 at Los Angeles, California.

Nancy R. Fischer.

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Statutes

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I. Preliminary Statement

Defendant 3D Systems, Inc. (''3D'') hereby moves for summary adjudication that plaintiff EOS GmbH Electro Optical Systems (''EOS'') may recover no damages or other relief as against 3D or nominal defendant DTM under the 3D patents asserted by EOS in this action based upon the manufacture, use, sale or offer for sale of any of the accused laser sintering systems that occurs after August 31, 2001. 3D's motion rests on the following *two* undisputed facts:

• EOS expressly agreed in the August 27, 1997 3D–EOS License Agreement that EOS shall not assert against 3D ''any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by [3D] under the Licensed Patents, at any time, for any reason, during the term of this License Agreement.''

• DTM Corporation (''DTM'') was merged into 3D on August 31, 2001, with 3D as the surviving entity.

EOS cannot create a genuine issue as to either of these facts; indeed, this Court has already found them to be true, in rulings on prior motions in this case. These facts foreclose any opportunity that EOS might otherwise have had to recover damages or other relief under the licensed 3D patents based upon the manufacture or sale of the accused laser sintering systems after August 31, 2001, because those activities are now being carried on by 3D, which succeeded as a matter of law to DTM's laser sintering operations.

Accordingly, this Court should grant 3D's motion for summary adjudication that EOS is entitled to no relief under the licensed 3D patents as against 3D or nominal defendant DTM for any manufacture, use, sale or offer for sale of the accused laser sintering systems that occurs after August 31, 2001.

II. Statement of Facts

A. The 3D–EOS License Agreement

On August 27, 1997, 3D and EOS[1] entered into an agreement pursuant to which 3D licensed EOS under (i) all U.S. and foreign patents ''owned by LICENSOR as of the effective date of this Agreement,'' and (ii) all U.S. and foreign patents ''which may issue to LICENSOR,'' on applications filed prior to August 20, 2002, but only in the field of laser sintering. (SUF No. 1; Alpert Decl. ¶ 2; Ex. 1, ¶ 1.1, at p. 31) EOS expressly agreed not to assert against 3D ''any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by LICENSOR under the Licensed Patents, at any time, for any reason, during the term of this Licensed Agreement.'' (SUF No. 2; Ex. 1, ¶ 2.1(a), at p. 31) The License Agreement has an integration clause, and a provision stating that it is to be interpreted according to the substantive law of California. (SUF Nos. 3–4; Ex. 1, ¶ 8.2, at p. 36)

B. EOS' Infringement Suit

On December 14, 2000, EOS filed suit against DTM and Compression, alleging infringement of certain of the 3D patents that 3D had licensed to EOS. On March 16, 2001, this Court ordered EOS to join 3D (the licensor of the patents under which EOS is suing DTM and Compression) as an involuntary plaintiff, because 3D had not licensed all substantial rights under the patents to EOS. (Graves Decl. ¶ 2; Ex. 2 at p. 40) Central to this Court's ruling was its determination that ''*3D itself may still make products using the licensed patents*'', citing to paragraph 2.1 of the License Agreement. (Ex. 2, at p. 40) EOS filed and served its

[1] While the License Agreement identifies EOS, 3D Systems GmbH and 3D Systems Corporation (''3D Corp.'') as the contracting parties, 3D contemplated that 3D (the entity that owned the licensed patents) would be bound by and receive the benefit of the License Agreement. (Alpert Decl. ¶ 5) In any event, the License Agreement was assigned from 3D Corp. to 3D as of August 31, 2001. (SUF No. 5; Ex. 5 at p. 54)

Third Amended Complaint, naming 3D as an involuntary plaintiff, on May 7, 2001; in its Third Amended Complaint, EOS asserted fifteen licensed 3D patents against DTM and Compression. (SUF No. 6; Graves Decl. ¶ 3; Ex. 6, ¶¶ 6–20, 22)

C. 3D's Merger with DTM

On August 31, 2001, 3D filed with the California Secretary of State an Agreement of Merger between 3D and DTM. (SUF No. 7; Ex. 3 at pp. 45–46) 3D also filed a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of 3D, and a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of DTM. (SUF No. 7; Ex. 3 at pp. 47–50) Pursuant to these documents, DTM was merged into 3D, and its corporate existence extinguished. (SUF No. 8) Cal. Corp. Code § 1107(a). The laser sintering operations of the now-defunct DTM were acquired by 3D as a result of the merger. Cal. Corp. Code § 1107(a).

On October 17, this Court granted 3D's motion for reconsideration regarding realignment, and realigned 3D as a defendant. The Court explicitly held that ''On August 31, 2001, 3D merged DTM into 3D. DTM now no longer exists.'' (Ex. 4, at p. 52)

III. Statement of Law

Summary adjudication is appropriate on particular facts and issues as to which no genuine issue of material fact exists, regardless of whether the motion disposes of an entire claim. Rule 56–4, C.D. Cal. Local Rules. ''Summary judgment is as appropriate in a patent case as in any other.'' *Avia Group Int'l Inc.* v. *L.A. Gear California, Inc.,* 853 F.2d 1557, 1561 (Fed. Cir. 1988) (affirming summary adjudication of willful infringement). Once the movant has shown the absence of a genuine issue of fact, the non-moving party has the burden of coming forth with specific evidence to demonstrate the existence of a genuine issue of material fact; mere denials or conclusory statements are insufficient. *Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 256 (1986); Fed. R. Civ. P. 56(e). ''To create a genuine issue of fact, the nonmovant must do more than present some evidence on an issue it asserts is disputed.'' *Avia Group,* 853 F.2d at 1560. As explained by the Supreme Court: ''If the evidence is merely colorable, * * * or is not significantly probative, summary judgment may be granted. *Anderson,* 477 U.S. at 249–50 (citations omitted)

IV. Argument

A. This Court Must Apply California Substantive Law to the Interpretation of the 1997 3D–EOS License Agreement

The License Agreement provides that ''[t]his Agreement shall be governed and interpreted in accordance with the substantive laws of the State of California irrespective of any choice of law rules in the State of California or in any jurisdiction'' (Ex. 1, ¶ 8.6 at p. 36) Thus, this Court must apply California law in interpreting paragraph 2.1(a) of the License Agreement.

Because jurisdiction in this case is predicated on 28 U.S.C. § 1338 rather than on diversity, the Court should look to federal common law rather than state law to determine the enforceability of the choice of law provision contained in the License Agreement. *Wang Laboratories, Inc.* v. *Kagan,* 990 F.2d 1126, 1128 (9th Cir. 1993). Federal courts generally apply the choice of law rules set forth in the Restatement (Second) of Conflicts of Laws. *Chan* v. *Society Expeditions, Inc.,* 123 F.3d 1287, 1297 (9th Cir. 1997). Under the Restatement, 'courts should enforce the parties' choice of law if the issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.'' *Id.* (quoting Restatement (Second) Conflict of Laws § 187(1)). Here, the issue is whether EOS may sue 3D under the licensed patents, and the parties did in fact resolve that issue by an explicit provision in the contract—paragraph 2.1(a). (Ex. 1, at p. 31) Accordingly, this Court must enforce the parties' choice of California substantive law.

In addition, even if the issue were not subject to explicit resolution in the License Agreement (and, of course, it is), this Court would still be impelled to enforce the parties' choice of California law:

''unless the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice or application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and that state would be the state of applicable law in the absence of a choice-of-law clause.''

Id. (quoting Restatement (Second) Conflict of Laws § 187(2)). Here, California has a substantial relationship to the parties and the transaction because 3D is headquartered and incorporated in California. (Shotting Decl. ¶ 4) Similarly, EOS can make no showing that Germany has a materially greater interest than California in the interpretation of the License Agreement—indeed, in light of the fact that the particular provision at issue protects the right of a California corporation to make and sell products in California and elsewhere, it is difficult to divine how any other jurisdiction could have an interest in this matter as substantial as that of California. Accordingly, this Court must enforce the parties' choice of California substantive law.

Finally, it bears noting that even if this Court were to find California law applicable to the choice of law question. California courts routinely enforce such choice of law provisions under the standards set forth in the Restatement. *E.g., Nedlloyd Lines B.V. v. Seawinds Ltd.*, 3 Cal. 4th 459, 464–65, 11 Cal. Rptr. 2d 330 (1992) (''In determining the enforceability of arm's-length contractual choice-of-law provisions, California courts shall apply the principles set forth in Restatement section 198, which reflects a strong policy favoring enforcement of such provisions.''); Cal. Civ. Code § 1646.5 (''the parties to any contract, agreement, or undertaking, contingent or otherwise, relating to a transaction involving in the aggregate'' at least $250,000, ''may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not the contract, agreement, or undertaking or transaction bears a reasonable relation to this state.'').

B. EOS May Not Assert Any Claims for Infringement Under the Licensed 3D Patents Against 3D

The 3D–EOS License Agreement provides as follows:

''LICENSEE expressly agrees not to assert against LICENSOR any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by LICENSOR under the Licensed Patents, at any time, for any reason, during the term of this License Agreement.''

(SUF No. 2; Ex. 1, ¶ 2.1(a), at p. 31) The licensee is EOS; the licensor is 3D. The language could not possibly be more clear: EOS may not sue 3D for infringement based on the manufacture, use, sale or offer for sale of any apparatus—including laser sintering systems—under the licensed 3D patents.

This Court has already examined paragraph 2.1 of the License Agreement and ruled that it means exactly what it says: ''3D itself may still make products using the licensed patents.'' (Ex. 2, at p. 40) In January, DTM filed a motion to dismiss EOS' complaint on the ground, inter alia, that EOS lacked standing to sue under the licensed 3D patents without joining 3D as a plaintiff because the 1997 3D–EOS License Agreement did not grant to EOS ''all substantial rights'' in the patents. EOS opposed the motion, arguing that it did in fact obtain all substantial rights in the patents. On March 16, this Court granted DTM's motion in part, ruling that EOS lacked standing to sue without joining 3D because its rights in the patents were insubstantial. The Court, as an initial matter, noted that the limitations of paragraph 2.1(a) ''prohibit EOS from asserting claims in infringement against 3D and its vendees or customers during the term of the Agreement.'' (Ex. 2, at 39) The Court reviewed EOS' arguments, and then held as follows:

''However, the Court agrees with Defendants that other provisions of the Agreement render the rights obtained by EOS insubstantial. First, 3D itself may still make products using the licensed patents. Agreement § 2.1(a). This right is a significant one when considering whether substantial rights have been transferred.''

(Ex. 2, at 40) Thus, this Court has already visited the issue of whether EOS may assert the licensed 3D patents against 3D based on 3D's manufacture and sale of the accused laser sintering systems, and has held that it may not. The Court's determination that paragraph 2.1(a) prohibits EOS from asserting claims of infringement against 3D, and that 3D itself may make and sell products using the licensed patents, is entitled to finality as law of the case because EOS can show no grounds on which to reopen the issue. *Magnesystems, Inc.* v. *Nikken, Inc.,* 933 F. Supp. 944, 948–49 (C.D. Cal. 1996).

Moreover, even if this Court had not already resolved this issue in its March 16 Order, application of California contract law would lead ineluctably to the same result. A patent license is a contract governed by

ordinary principles of state contract law. *McCoy* v. *Mitsuboshi Cutlery, Inc.,* 67 F.3d 917, 920 (Fed. Cir. 1995). California law provides that ''[t]he language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.'' Cal. Civ. Code § 1638. In addition, ''[w]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; . . . .'' Cal. Civ. Code § 1639. Thus, a party's ''subjective intent or understanding cannot be used to establish an intent independent from the express written terms of the agreement.'' *Sunniland Fruit, Inc.* v. *Verni,* 233 Cal. App. 3d 892, 898, 284 Cal. Rptr. 824 (1991).

It is well established that the interpretation of an unambiguous contract is solely a question of law, unless the interpretation turns on the credibility of extrinsic evidence. *Brobeck, Phleger & Harrison* v. *Telex Corp.,* 602 F.2d 866, 871–72 (9th Cir. 1979) (applying California law; citation omitted); *Parsons* v. *Bristol Development Co.,* 62 Cal. 2d 861, 865 (1965). Extrinsic evidence is not admissible to vary the terms of the contract, but only to prove a meaning to which the language of the contract is ''reasonably susceptible.'' *Brobeck,* 602 F.2d at 871–72; *Sunniland Fruit,* 233 Cal. App. 3d at 898. If the court finds that the language of the contract is unambiguous and not reasonably susceptible to the meaning suggested by the extrinsic evidence, then the case is particularly amenable to disposal on summary judgment because interpretation of the unambiguous contract is solely a question of law. *Brobeck,* 602 F.2d at 871–72; *Government Systems Advisors, Inc.* v. *United States,* 847 F.2d 811, 812 n.1 (Fed. Cir. 1988) (noting that under Federal Circuit law ''[c]ontract interpretation is a matter of law and thus amenable to decision on summary judgment.'').

Thus, California courts enforce unambiguous contracts containing exculpatory provisions similar to that contained in the 3D–EOS License Agreement according to their terms. For example, in *Appalachian Ins. Co.* v. *McDonnell Douglas Corp.,* 214 Cal. App. 1, 262 Cal. Rptr. 716 (1989), Western Union entered into a contract with McDonnell Douglas pursuant to which McDonnell was to manufacture an upper stage rocket for a Western Union communications satellite. The contract contained a provision stating that ''under no circumstances will [McDonnell] be liable to Purchaser under or in connection with this Agreement, for any tort, negligence, strict liability, contract or other legal or equitable theory, ...'' *Id.* at 12. In addition, the parties agreed to extend their inter-party waiver of liability ''to their respective contractors and subcontractors . . .''

Id. at 14. After the rocket failed, five insurance companies that paid a portion of the resulting claim filed suit against McDonnell and two of the subcontractors. The trial court granted summary adjudication in favor of the defendants, based on exculpatory clauses in the contract between the insured and McDonnell, and the court of appeals affirmed. Noting that ''[t]he language of the instrument must govern its interpretation if it is clear and explicit,'' the court rejected the plaintiffs' argument that the exculpatory provision regarding the subcontractors should be construed to reflect the intent set forth in the contrary provision of a related agreement:

''To ignore the differences in the language used in the two agreements would violate a fundamental rule of contract interpretation, that is, the words of a contract, if clear, must govern its interpretation. The words of the McDonnell Douglas/Western Union contract are clear; they unambiguously preclude a suit by Western Union against McDonnell Douglas' respective contractors and subcontractors, i.e., against Morton Thiokol and Hitco.''

Id. at 18. Similarly, here, EOS has unambiguously agreed not to sue 3D under the licensed patents based on 3D's manufacturing and sales activities at any time, for any reason. Under California law, the Court must enforce the contract. Accordingly, EOS cannot assert its patent infringement claims against 3D based upon 3D's manufacture and sale of the accused laser sintering systems.

C. Because EOS May Not Sue 3D Under the Licensed 3D Patents, EOS Cannot Obtain Damages Under Those Patents for any Manufacturing or Sales of the Accused Laser Sintering Systems That Occurred After August 31, 2001, the Date That DTM was Merged Into 3D

The undisputed evidence shows that on August 31, 2001, 3D filed with the California Secretary of State an Agreement of Merger between 3D and DTM. (SUF No. 7; Ex. 3) 3D also filed a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of 3D, and a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of DTM. (SUF. No. 7; Ex. 3) Pursuant to these filings, DTM was merged into 3D as of August 31, 2001, with 3D as the surviving entity. (SUF No. 8) The legal effect of these filings was that DTM's corporate existence was extinguished as of August 31, 2001.[2] Cal. Corp. Code §§ 1103, 1107(a); *Asher v. Pacific Power and Light Co.,* 249 F. Supp. 671, 677 (N.D. Cal. 1965). In recognition of these facts, this Court ruled on October 17 that ''[o]n August 31, 2001, 3D merged DTM into 3D. *DTM now no longer exists.*'' (Ex. 4, at p. 52) Thus, the Court need not revisit this issue, because its prior ruling is entitled to finality as law of the case. *Magnesystems,* 933 F. Supp. at 948–49.

As a result of the merger, 3D succeeded to the assets of DTM, including its laser sintering manufacturing and sales operations. Cal. Corp. Code § 1107(a). EOS cannot possibly fabricate a genuine issue as to the fact that it is now 3D, *not* DTM, that is making and selling the accused laser sintering systems, because the merger extinguished the existence of DTM *as a matter of law.* Cal. Corp. Code ¶ 1107(a). Accordingly, EOS is not entitled to obtain any damages or other relief based on the conduct of 3D in manufacturing and selling the accused laser sintering systems after August 31, 2001, because EOS agreed in paragraph 2.1(a) of the License Agreement not to assert any of the licensed patents against 3D ''based on the manufacture, use, sale or offer for sale of any apparatus made or sold by [3D] under the Licensed Patents, at any time, for any reason.'' (Ex. 1, ¶ 2.1(a), at p. 31)

[2] California law governs the effect of the merger, because the surviving entity–3D–is a California corporation. Cal. Corp. Code § 1108(b). (Shotting Decl. ¶ 4)

V. Conclusion

For the reasons set forth above, the Court should grant 3D's motion for summary adjudication that EOS may recover no damages or other relief as against 3D or nominal defendant DTM under the licensed 3D patents based upon the manufacture, use, sale or offer for sale of any of the accused laser sintering systems that occurs after August 31, 2001.

Dated: November 12, 2001.

Thomas, Walton & Graves LLB.

Philip J. Graves,

Attorneys for Defendants 3D Systems, Inc., DTM Corporation, and Compression, a division of Moll Industries, Inc.

[FR Doc. 02–4699 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 12, 2001, Chiragene, Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances to supply their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections 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 May 13, 2002.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–5792 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substance; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001, (66 FR 38321), High Standard Products Corp., 14441 Beach Boulevard, #225, Westminster, California 92683, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture analytical reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of High Standard Products Corp. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated High Standard Products Corp. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–5794 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 31, 2001, ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by renewal and by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Fentanyl (9801)	II

The firm plans to bulk manufacture amphetamine, methamphetamine, and fentanyl for customers and to bulk manufacture the phenylacetone for the manufacture of the amphetamine. The bulk 2,5-dimethoxyamphetamine will be used for conversion into a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections 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 May 13, 2002.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–5793 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Market Street Market; Denial of Application

On or about August 27, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Market Street Market (MSM), located in Chehalis, Washington, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated November 2, 1998, 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 MSM that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received September 6, 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 MSM 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 Administrator finds that on or about November 2, 1998, an application was received by the DEA Chemical Operations Registration section on behalf of MSM for DEA registration as a distributor of the three above-mentioned List I chemicals.

MSM is a convenience store located in Chehalis, Washington. At all relevant times, it was owned and operated by Chol Jung Kim and his wife Hy Suk Kim (hereinafter collectively referred to as the Kims). In the Fall of 1998, MSM attempted to purchase 20 cases of pseudoephedrine from a distributor located in Columbus, Ohio. When DEA learned of this attempted purchase, personnel from the DEA Seattle Field Division contacted the Kims and alerted them to the dangers of List I chemicals, including pseudoephedrine, being diverted to the illicit manufacture of methamphetamine. The Kims assured DEA personnel that MSM would limit its sales to two bottles per customer. Subsequently, on or about November 2, 1998, MSM submitted the present application for DEA registration as a distributor of List I chemicals.

The DEA Seattle Field Division received information that documented MSM's purchase of 718 bottles of 100 count 60 mg. pseudoephedrine tablets from a single distributor between October and December, 1998. On March 24, 1999, DEA Headquarters received a letter from a registered manufacturer of pseudoephedrine located in New Jersey informing DEA that MSM had recently purchased 144 bottles of 100 count 60 mg. pseudoephedrine tablets, and that MSM had placed an identical order in January, 1999. DEA's investigation reveals that these amounts of pseudoephedrine exceed the legitimate retail needs of MSM.

On March 5, 1999, DEA investigators conducted a pre-registration inspection of MSM. During an interview at this time, the Kims were again warned about the dangers of the diversion of List I chemicals, including pseudoephedrine, to the illicit manufacture of methamphetamine. At this time, the Kims were provided with copies of official DEA notices and various criminal statutes pertaining to the diversion of listed chemicals and the duties and obligations of List I chemical registrants. The Kims again assured DEA investigators that they would limit their sales to two bottles per customer.

On March 25, 1999, a confidential source purchased 17 bottles of 60 count 60 mg. pseudoephedrine tablets from the Kims at MSM. Thereafter, a confidential source and an undercover detective from a State of Washington law enforcement agency made five purchases of pseudoephedrine tablets at MSM between December, 2000, and February, 2001.

The first undercover buy took place on December 29, 2000, when the confidential source purchased ten bottles of 100 count 60 mg. pseudoephedrine tablets from the Kims at MSM. The second undercover buy took place on January 4, 2001, when the confidential source purchased 20 bottles of 100 count 60 mg. pseudoephedrine tablets from the Kims at MSM. At this time, one of the Kims stated that MSM would be willing to sell pseudoephedrine in half-case quantities (a case contains 144 bottles). On January 11, 2001, the undercover detective purchased 20 bottles of 100 count 60 mg. pseudoephedrine tablets from the Kims at MSM. On January 18, 2001, the undercover detective made the fourth buy, purchasing 25 bottles of 120 count 60 mg. pseudoephedrine tablets from the Kims at MSM. The fifth undercover buy took place on February 15, 2001, when the undercover detective purchased 35 bottles of 100 count 60 mg. pseudoephedrine from the Kims at MSM.

On March 23, 2001, a Federal Search Warrant was executed at MSM, and the Kims were arrested for violations of the Controlled Substances Act relating to their purchases and sales of pseudoephedrine List I chemical products. During the search, a total of 50,214 dosage units of List I chemical products as well as $44,408 in United States currency was seized.

On April 4, 2001, MSM's State of Washington license to handle over-the-counter chemicals, including pseudoephedrine, expired. MSM failed to renew the license, and as a result, MSM is not currently authorized by the State in which it seeks DEA registration to handle the List I chemicals listed in its application. The DEA investigation revealed that MSM purchased at least 451,800 dosage units of pseudoephedrine between August 1, 1999, and August 1, 2000. This amount of pseudoephedrine well exceeds the legitimate needs of MSM. DEA had delayed acting on MSM's application because of MSM's association with other targets of criminal investigations.

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).

As a preliminary matter, DEA consistently has held that a retail store operates under the control of its owners, stockholders, or other employees, and therefore the conduct of these individuals is relevant in evaluating the fitness of an applicant for registration. See, e.g., Rick's Pharmacy, 62 FR 42,595 (1997); Big T Pharmacy, Inc. 47 FR 51,830 (1982). The conduct of the Kims is therefore relevant in determining the fitness of MSM for DEA registration.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA investigation revealed that MSM and the Kims actively participated in the diversion of List I chemicals, in that on

at least five occasions they distributed the List I chemical pseudoephedrine knowing or having reasonable cause to believe that said chemical would be diverted to the illicit manufacture of a controlled substance.

Regarding factor two, the applicant's compliance with applicable law, the Administrator finds that MSM through its owners/operators the Kims significantly violated applicable law by selling the List I chemical pseudoephedrine in quantities and under circumstances sufficient to engender a reasonable belief that the chemical would be diverted to the manufacture of a controlled substance. Despite having been extensively briefed twice by DEA personnel in the Fall of 1998 and in March of 1999 concerning the risks of diversion of listed chemical products, including being served with official DEA written notifications and guidelines concerning the obligations and responsibilities of listed chemical registrants, the Kims subsequently significantly violated applicable law. During a two-week period from December 29, 2000, to January 11, 2001, the Kims sold an undercover confidential source at least 5,000 dosage units of pseudoephedrine.

During the next four weeks, from January 18, 2001, to February 15, 2001, the Kims sold an undercover detective (introduced to the Kims by the undercover confidential source) an additional 6,500 dosage units of pseudoephedrine. The Administrator finds that, given the Kim's obvious knowledge of the dangers of diversion, as directly transmitted to them orally and in writing by DEA, the sale of these quantities of pseudoephedrine to the same individuals within such a relatively short time frame, certainly gave rise to a reasonable belief, if not knowledge, that the pseudoephedrine would be diverted to the manufacture of a controlled substance, in violation of 21 U.S.C. 841(d)(2) and 841(g)(1). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)).

Regarding factor three, the investigative file reveals that Hy Suk Kim was arrested April 29, 1998 for Washington State violations involving possession of drug paraphernalia and a drug violation.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that MSM and the Kims actively participated in distributing the List I chemical pseudoephedrine knowing or having reasonable cause to believe it would be diverted to the manufacture of a controlled substance, as set forth in factor two.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that on two separate occasions, the Kims stated to DEA personnel that MSM only sold List I chemical products in quantities not exceeding two bottles per customer. The DEA investigation revealed that, on at least five occasions over a six-week period, the Kims sold in quantities of 10, 20, 20, 25, and 35 bottles to an undercover confidential source and an undercover detective. The Kims additionally stated to the undercover detective that they were willing to sell in half-case quantities (72 bottles). The Administrator finds this lack of candor, taken together with MSM's and the Kim's demonstrated cavalier disregard of the law and responsibilities concerning the distribution of listed chemicals, makes questionable MSM's and the Kim'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).

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of MSM.

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 Market Street Market be denied. This order is effective April 11, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–5795 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Parole Commission

[5 U.S.C. Section 552b]

Public Announcement; Pursuant To The Government In the Sunshine Act (Public Law 94–409)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m. Thursday, March 14, 2002.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of Previous Commission Meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

3. Adoption of retroactive application of 28 CFR 2.80.

4. Adoption of informal policy regarding participation in employment training.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 7, 2002.

Michael Stover,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 02–5959 Filed 3–8–02; 11:32 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

[5 U.S.C. Section 552b]

Public Announcement; Pursuant To The Government In the Sunshine Act (Public Law 94–409)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 10:30 a.m., Thursday, March 14, 2002.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately four cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 7, 2002.

Michael Stover,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 02–5960 Filed 3–8–02; 11:32 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

RIN 1219–AB20

Mine Rescue Teams

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of public meeting.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public meeting to gather ideas and suggestions from the mining community on the current state of availability, quality and preparedness of mine rescue teams. The ideas and suggestions will be considered by MSHA in determining what actions can be taken to improve mine rescue capabilities.

DATES: The public meeting will be held on March 28, 2002.

ADDRESSES: The public meeting will be held at the following location: National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia 25813–9426, Phone: 304–256–3257.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984. He can be reached at *nichols-marvin@msha.gov* (Internet e-mail), 703–235–1910 (Voice), or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION:

I. Background

In the wake of several mine disasters, Congress promulgated the Federal Mine Safety and Health Act of 1977 (Mine Act). Congress believed that the ready availability of mine rescue capability in the event of an accident would be vital to protect miners. Accordingly, § 115(e) of the Mine Act required the Secretary of Labor to publish regulations requiring that mine rescue teams be available for rescue and recovery work at each underground mine. Section 115(e) also allowed mine operators to make cooperative arrangements to provide for the availability of mine rescue teams.

On July 3, 1980, (45 FR 46992), MSHA promulgated a new part 49, in title 30 of the Code of Federal Regulations, that included requirements for mine rescue teams in the coal and metal and nonmetal mining industries. The purpose of the rule was to implement § 115(e) of the Mine Act by ensuring the availability of rescue teams at underground mines in case of a mine emergency.

The regulation generally requires two mine rescue teams per mine and allows outside coverage teams. To limit the expense, many mines now choose to contract for mine rescue service. Existing part 49 places no restrictions on the number of mines a contractor can agree to cover.

In 1995, MSHA hosted a Mine Emergency Preparedness Conference at the National Mine Health and Safety Academy in Beckley, West Virginia. Attendees included mine rescue association members, mine rescue team trainers and captains, operators, state and federal government officials, educators, and international representatives. Issues addressed at the conference included the need to (1) increase the numbers of qualified mine rescue personnel, (2) improve the availability of trained mine rescue teams, (3) assure the quality of contract teams, and (4) provide incentives for mine operators to maintain mine rescue teams. One outcome of this conference was the establishment of a committee to study the issues identified at the conference and to make recommendations to MSHA on ways to address those issues.

In 1998, MSHA established the Mine Rescue Team Initiative Committee to investigate a decline in the number of available mine rescue teams, to make recommendations for maintaining the quality of existing mine rescue teams, and to emphasize MSHA's commitment to mine rescue. MSHA conducted interviews with industry and labor, and state agencies to gather input from all facets of the mining community. Given the passage of time since the committee completed its work, we are conducting a meeting to gather current information concerning mine rescue capabilities.

II. Public Meeting

MSHA will conduct a public meeting to gather input from interested parties on the subject of mine rescue teams, quality and preparedness.

We will conduct the meeting in an informal manner, and a court reporter will make a verbatim transcript of the proceeding.

The meeting is open to the public and will begin at 9:00 a.m. and finish after the last speaker.

Upon request, after all scheduled speakers have made an oral statement, we will allow members of the public to speak at the meeting on a first-come, first-serve basis. However, if there are no additional speakers after the last scheduled speaker, the meeting will be adjourned.

Send your requests to make oral presentations to MSHA, Office of Standards, Regulations, and Variances; 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Phone or fax requests may be made at voice: 703–235–1910; or fax: 703–235–5551. You may also request to speak when you sign in at the meeting.

In addition to making an oral statement, any member of the public may submit written statements, and other data to MSHA representatives at the meeting.

This meeting will give mine operators, miners and their representatives, and other interested parties an opportunity to present their views on the actions that can be taken to result in more effective mine rescue team capabilities.

We are specifically interested in comments addressing the issues described below, although parties are encouraged to submit comments on any relevant mine rescue team issue. Information received will help us resolve these issues and determine the most effective way to address the changing needs of the underground mining industry and its mine rescue team capability.

A. Availability of Mine Rescue Teams

How can mine operators be encouraged to provide for more mine rescue team capability?

B. Mine Rescue Team Membership

How should an individual's employment history in underground mining affect that individual's ability to serve on a mine rescue team?

C. Training for Mine Rescue Team Members

Should additional training be required for a former mine rescue team member who rejoins a team which still uses the same breathing apparatus?

Should there be joint training of mine rescue teams not located at the same rescue station?

For mine rescue teams not located at the same rescue station, how many hours of joint training would be required?

Should both teams participate concurrently in MSHA-supported rescue contests or MSHA emergency response drills (MERD)?

Should teams that participate in a MSHA-supported mine rescue contest or MERD exercises earn ''training credit'' for each participating member?

D. Instructor Qualifications

How should an individual's employment history in underground mining affect that individual's ability to serve as a mine rescue team instructor?

E. Equipment Availability, Maintenance, and Testing Requirements

Comments from the mining community have suggested that the costs associated with the current equipment requirements prevent some mine operators from establishing a mine rescue team.

In light of today's mine rescue team needs, what type, amount, maintenance and testing of equipment is appropriate to ensure the same level of protection for miners?

F. Incentives

A recommendation was received by the Agency to consider an incentive in the form of penalty reductions for mine operators that establish and maintain mine rescue teams.

The Agency believes this type of incentive would be prohibited by the Mine Act. We would, however, welcome suggestions on other types of incentives which would encourage operators to establish their own mine rescue teams.

Dated: March 7, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–5947 Filed 3–11–02; 8:45 am]

BILLING CODE 4510–43–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, March 21, 2002, and Friday, March 22, 2002, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on March 21, and at 9 a.m. on March 22.

Topics for discussion include: Assessing the Medicare benefit package; changes in medical practice and the delivery of care—implications for the Medicare benefit package; changes in private sector benefit packages—implications for the Medicare benefit package; supplementing the Medicare benefit package: Medicaid, Medigap, retiree health care, and the role of Medicare+Choice; total spending and sources of payment for beneficiaries' health care; coverage of and payment for non-physician practitioners; beneficiaries' access to Medicare hospice care; Medicare coverage of cardiac rehabilitation programs and pulmonary rehabilitation services; Medicare benefit package: preliminary findings; criteria for evaluating potential changes to the Medicare benefit package; options for changing the Medicare benefit package, and reviewing the SGR update for 2003.

Agendas will be mailed on March 12, 2002. The final agenda will be available on the Commission's website (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 1730 K Street, NW., Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 02–5921 Filed 3–11–02; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL SCIENCE FOUNDATION

Request for Clearance; Public Information Collection Requirements To Be Submitted to the Office of Management and Budget; Notice

AGENCY: National Science Foundation.

ACTION: Request for clearance: Public information collection requirements to be submitted to the Office of Management and Budget (OMB).

SUMMARY: The National Science Foundation (NSF) is announcing plans to request extension of approval for this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB extend clearance of this collection for at least 3 years.

DATES: Written comments should be received by May 13, 2002, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*, and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Lauren Wittenberg, NSF Desk Officer.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Cross-Site Evaluation of the National Science Foundation's Directorate for Education and Human Resources' Urban Systemic Program.

OMB Approval Number: 3145–0186.

Expiration Date of Approval: July 31, 2002.

Abstract:

The National Science Foundation (NSF) requests a three-year clearance for an evaluation of the Urban Systemic Program (USP), a study that has been on-going since October 1999 first under OMB 3145–0136 and now under OMB 3145–0186. Due to a change in OMB terms of clearance for OMB 3145–0136, NSF established an independent clearance for the USP study under the terms of an emergency clearance.

USP began in 1999 when NSF made competitive awards of up to $3 million per year, for up to 5 years, to 5 urban school districts. Since then, the program has made awards to 13 additional districts in 2000, and another 9 districts in 2001. The USP represents one of NSF's major investments in improving science and mathematics education in

urban school systems across the country, and having third-party evaluation is important in order for the agency to interpret the worthiness of the investment.

NSF uses the data to: (1) Determine whether to modify or extend the USP concepts and (2) share best practices and lessons learned about reform in mathematics and science education for K–12 schools.

Specifically, during the first two years of the USP Cross-Site Evaluation, the third-party, COSMOS Corporation of Bethesda, MD, has produced reports for others at NSF (*e.g.*, the National Science Board). Though there are other sources of such documentation, the information provided by the Cross-Site team is valued because the team is not associated in any way with the program sites. Second, the Division of Educational System Reform uses the information to supplement its annual *program monitoring.* Third, NSF will use the information, both to assess its investment in the USP program and potentially to help to guide the design of future programs, such as the Mathematics and Science Partnerships.

During the extended period of clearance, the cross-site evaluation will conduct site visits to the first 18 districts that received USP awards and will collect student achievement data in mathematics and science from all of the districts. This data collection complements earlier efforts already undertaken by the Cross-Site team under earlier OMB clearance.

Respondents: State, local or tribal governments.

Number of Respondents: 378.

Burden on the Public: 270 hours.

Dated: March 7, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–5870 Filed 3–11–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

OMB Submission and Review

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 66 FR 48280, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send e-mail to *tpierce@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Outcomes and Impacts of The NSF Minority Postdoctoral Research Fellowships (MPRF) Program.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Notice of Intent to Seek Approval to Establish an Information Collection.

Abstract: Outcomes and Impacts of The NSF Minority Postdoctoral Research Fellowships (MPRF) Program.

Proposed Project: The National Science Foundation (NSF), through its Minority Postdoctoral Research Fellowships (MPRF) Program within the Directorates of Biosciences and Social and Behavioral Sciences, manages a program, established in 1990 that is designed to prepare minority scientists for positions of scientific leadership in academia, government, and industry. To achieve this, funding is provided through the program to enable new PhDs in BIO and SBE fields from underrepresented minority groups to have an opportunity to start their career by conducting fully funded independent research for several years. Approximately 12 fellowships are funded each year.

The purpose of the proposed study is to examine the results of the Program in the form of the awardees' career outcomes.

Use of the Information: The information will be used by NSF to understand the extent to which this program assists awardees in beginning their research careers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 157.

Estimated Total Annual Burden on Respondents: 78.5 hours—157 respondents at ½ hour per response.

Frequency of Responses: One time.

Dated: March 6, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–5871 Filed 3–11–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–02384–CivP; EA 99–290; ASLBP No. 02–797–01–CivP]

Earthline Technologies; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.205, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic

Safety and Licensing Board is being established to preside over the following proceeding:

Earthline Technologies, Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of Earthline Technologies (previously known as RMI Environmental Services) for a hearing regarding an Order issued by the Deputy Executive Director for Materials, Research, and State Programs, dated January 15, 2002, entitled ''Order Imposing Civil Monetary Penalty'' (67 FR 3,917 (Jan. 28, 2002)).

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents and other materials shall be filed with the Panel Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 6th day of March 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–5873 Filed 3–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of March 11, 18, 25, April 1, 8, 15, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 11, 2002

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

Monday, March 25, 2002

1:00 p.m. Discussion of Intergovernmental Issues (Closed)

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)

Week of April 15, 2002—Tentative

There are no meetings scheduled for the Week of April 15, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on March 5 and 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held on March 8, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

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: March 7, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–6014 Filed 3–8–02; 12:52 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25453; File No. 812–12550]

Jefferson Pilot Financial Insurance Company, et al.; Notice of Application

March 6, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (''1940 Act'').

Applicants: Jefferson Pilot Financial Insurance Company (''Jefferson Pilot Financial''), and its JPF Separate Account A (''JPF Account A''), JPF Separate Account C (''JPF Account C''), JPF Variable Annuity Separate Account (''JPF VA Account''), JPF Variable Annuity Separate Account II (''JPF VA Account II''); and Jefferson Pilot LifeAmerica Insurance Company (''JP LifeAmerica'') and its JPF Separate Account B (''JPF Account B'') (all collectively, the ''Applicants'').

SUMMARY OF THE APPLICATION: Applicants request an order pursuant to Section 26(c) of the 1940 Act to permit certain registered unit investment trusts to substitute shares of certain underlying portfolios for shares of certain other portfolios.

FILING DATE: The Application was filed on June 14, 2001, and amended on February 28, 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 Secretary of the Commission 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 April 1, 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 issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street,

NW, Washington, DC 20549–0609. Applicants, c/o Jorden Burt, LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007–0805, Attention: Christopher S. Petito, Esq.

FOR FURTHER INFORMATION CONTACT: Martha Atkins, Attorney, at (202) 942–0668, or William J. Kotapish, Assistant Director, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Applicants Jefferson Pilot Financial and JP LifeAmerica (''Insurance Company Applicants''), are affiliated companies wholly owned by Jefferson-Pilot Corporation, a North Carolina corporation. Jefferson Pilot Financial is a stock-life insurance company chartered in 1903 in Tennessee, redomesticated to New Hampshire in 1991, and redomesticated to Nebraska effective June 12, 2000. It is engaged primarily in the sale of annuities and life insurance. JP LifeAmerica is a stock life insurance company chartered in 1897 in New Jersey. It is a wholly-owned subsidiary of Jefferson Pilot Financial and is engaged primarily in the sale of individual annuities and life insurance.

2. JPF Account A was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on August 20, 1984 in accordance with the laws of the State of Tennessee and is registered as a unit investment trust under the 1940 Act. It is now governed by the laws of the State of Nebraska, as a result of Jefferson Pilot Financial's redomestication. JPF Account A is used to fund certain variable life insurance policies issued by Jefferson Pilot Financial.

3. JPF Account C is a segregated asset account of Jefferson Pilot Financial. It was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on August 3, 1993, in accordance with the laws of the State of New Hampshire and is registered as a unit investment trust under the 1940 Act. It is now governed by the laws of the State of Nebraska, as a result of Jefferson Pilot Financial's redomestication. JPF Account C is used to fund certain variable life insurance policies issued by Jefferson Pilot Financial.

4. JPF VA Account was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on November 18, 1999 in accordance with the laws of the State of New Hampshire and is registered as a unit investment trust under the 1940 Act. It is now governed by the laws of the State of Nebraska, as a result of Jefferson Pilot Financial's redomestication. JPF VA Account is used to fund certain variable annuity contracts issued by Jefferson Pilot Financial.

5. JPF VA Account II was established by Alexander Hamilton Life, a predecessor of Jefferson Pilot Financial, as a separate investment account under the laws of the State of Michigan on January 24, 1994. On August 1, 2000, Alexander Hamilton Life, together with the Separate Account, was merged into Jefferson Pilot Financial. The Separate Account survived the merger intact. It is now governed by the laws of the State of Nebraska. It is registered as a unit investment trust under the 1940 Act. JPF VA Account II is used to fund certain variable annuity contracts issued by Jefferson Pilot Financial.

6. JPF Account B is a segregated asset account of JP LifeAmerica. It was established by JP LifeAmerica pursuant to a resolution of its Board of Directors on March 2, 1994, in accordance with the laws of the State of New Jersey and is registered as a unit investment trust under the 1940 Act. JPF Account B is used to fund certain variable life insurance policies issued by JP LifeAmerica.

7. The above-noted segregated asset accounts are referred to as the ''Separate Account Applicants.'' Certain variable annuity contracts and variable life insurance policies issued by the Insurance Company Applicants through the Separate Account Applicants are referred to herein as ''Contracts.'' The variable interests under the Contracts are registered with the Commission under the Securities Act of 1933 (the ''1933 Act'').

8. Oppenheimer Bond Fund/VA (''OVAF Bond''), Oppenheimer Strategic Bond Fund/VA (''OVAF Strategic Bond'') and Oppenheimer Capital Appreciation Fund/VA (''OVAF Capital Appreciation'') are separate series of Oppenheimer Variable Account Funds (''OVAF''). (Oppenheimer Bond Fund/VA and Oppenheimer Strategic Bond Fund/VA are sometimes collectively referred to as the ''OVAF Bond Funds''.) OVAF was organized as a Massachusetts business trust in 1984. It offers its shares in ten series and two classes. The class of OVAF shares purchased by the Separate Account Applicants is offered at net asset value and is not subject to Rule 12b–1 fees. OVAF is registered as an open-end management investment company under the 1940 Act, and its shares are registered as securities under the 1933 Act. OVAF shares are sold only to insurance company separate accounts to fund variable annuity contracts and variable life insurance policies. Oppenheimer Funds, Inc., serves as investment adviser to all three OVAF funds. Oppenheimer Funds, Inc., is not affiliated with the Insurance Company Applicants.

9. JPVF Global Hard Assets Portfolio (''JPVF Global Hard Assets'') is a separate series of Jefferson Pilot Variable Fund, Inc. (''JPVF''). JPVF was organized as a Maryland corporation on October 19, 1984. It offers its shares in fifteen series. Its shares are offered at net asset value and are not subject to Rule 12b–1 fees. JPVF is registered as an open-end management investment company under the 1940 Act, and its shares are registered as securities under the 1933 Act. Its shares are sold only to separate accounts of Jefferson Pilot Financial and its affiliates to fund variable annuity contracts and variable life insurance policies, and to qualified retirement plans. Jefferson Pilot Investment Advisory Corporation (''JPIA''), like the Insurance Company Applicants, is a wholly-owned subsidiary of Jefferson-Pilot Corporation. JPIA acts as manager for JPVF Global Hard Assets and has retained Van Eck Associates to act as sub-adviser. Van Eck Associates is not affiliated with the Insurance Company Applicants.

10. If the requested substitution order is granted, Administrative Class shares of the PIMCO Total Return Bond Portfolio (''PIMCO Total Return Bond'') of the PIMCO Variable Insurance Trust (''PIMCO VIT'') will be substituted for shares of the OVAF Bond Funds. PIMCO VIT was organized as a Delaware business trust on October 3, 1997. It offers its shares in thirteen series and two classes. Administrative Class Shares, which the Separate Account Applicants purchase, are offered at net asset value and are not subject to Rule 12b–1 fees. However, they have a service fee, which is used to reimburse financial intermediaries who provide non-distribution services relating to this class of shares. PIMCO VIT is registered as an open-end management investment company under the 1940 Act, and its shares are registered as securities under the 1933 Act. Both classes of shares currently are sold only to separate accounts to fund variable annuity contracts and variable life insurance policies. They also may be sold to qualified pension and retirement plans. Pacific Investment Management Company (''PIMCO'')

serves as investment adviser to PIMCO Total Return Bond. PIMCO is not affiliated with the Insurance Company Applicants.

11. If the requested substitution order is granted, Initial Class Shares of the Growth Portfolio (''Fidelity VIP Growth'') of the Fidelity Variable Insurance Products Fund (''VIP Fund'') will be substituted for shares of OVAF Capital Appreciation. VIP Fund was organized as a Massachusetts business trust on November 13, 1981. It offers its shares in six series and three classes. Initial Class Shares, which the Separate Account Applicants purchase, are offered at net asset value and are not subject to Rule 12b–1 fees. Initial Class Shares are sold to insurance company separate accounts to fund variable annuity contracts and variable life insurance policies and to certain qualified retirement and pension plans. VIP Fund is registered as an open-end management investment company under the 1940 Act and its shares are registered as securities under the 1933 Act. Fidelity Management & Research Company (''FMR'') serves as investment adviser to Fidelity VIP Growth. FMR is not affiliated with the Insurance Company Applicants.

12. If the requested substitution order is granted, shares of JPVF World Growth Stock Portfolio (''JPVF World Growth Stock'') will be substituted for shares of JPVF Global Hard Assets. JPVF World Growth Stock is a series of JPVF. JPIA serves as investment adviser to JPVF World Growth Stock, and has retained Templeton Investment Counsel LLC (''Templeton''), an indirect wholly-owned subsidiary of Franklin Resources, Inc., to act as sub-adviser. Templeton is not affiliated with the Insurance Company Applicants.

13. In 2000 and early 2001, the Insurance Company Applicants reviewed the investment options available under the Contracts. This review had several goals. One was to standardize the array of investment options so that the same options would be available under all of the contracts offered by the Insurance Company Applicants. A second goal was to reduce duplication of investment options. A third goal was to eliminate or replace investment options that in Applicants' view were not performing well or were not popular with contract owners. As relevant to the Application, this review resulted in the following recommendations:

- Replace the OVAF Bond Funds with PIMCO Total Return Bond,
- Replace OVAF Capital Appreciation with Fidelity VIP Growth, and
- Eliminate JPVF Global Hard Assets as an investment option under the Contracts, and substitute shares of JPVF World Growth Stock (referred to collectively as the ''Substitutions'').

Applicants submitted the Application to implement those recommendations. (OVAF Bond, OVAF Strategic Bond, OVAF Capital Appreciation, and JPVF Global Hard Assets are referred to collectively as the ''Replaced Portfolios;'' PIMCO Total Return Bond, Fidelity VIP Growth, and JPVF World Growth Stock are referred to collectively as the ''Replacement Portfolios.'')

14. Each Insurance Company Applicant will redeem for cash all of the shares of each Replaced Portfolio that it currently holds on behalf of its respective Separate Account Applicants at the close of business on the date selected for the Substitutions. Each Insurance Company Applicant, on behalf of its respective Separate Account Applicants, will simultaneously place a redemption request with each Replaced Portfolio and a purchase order with the corresponding Replacement Portfolio, so that each purchase will be for the exact amount of the redemption proceeds. As a result, at all times monies attributable to contract owners then invested in the Replaced Portfolios will remain fully invested and will result in no change in the amount of any contract owner's contract value, death benefit or investment in the applicable Separate Account Applicant.

15. The full net asset value of the redeemed shares held by the Separate Account Applicants will be reflected in the contract owners' accumulation values or annuity unit values following the Substitutions. The Insurance Company Applicants hereby undertake to assume all transaction costs and expenses relating to the Substitutions, including any direct or indirect costs of liquidating the assets of the Replaced Portfolios, so that the full net asset value of redeemed shares of the Replaced Portfolios held by the Separate Account Applicants will be reflected in the contract owners' accumulation values or annuity unit values following the Substitutions.

16. Applicants anticipate that until the Substitutions occur, the manager of each Replaced Portfolio will conduct the trading of portfolio securities in accordance with the investment objectives and strategies stated in the Replaced Portfolios' prospectuses and in a manner that provides for the anticipated redemptions of shares held by the Separate Account Applicants.

17. After the Substitutions, each Insurance Company Applicant will treat each division currently invested in a Replaced Portfolio as one division with the division currently invested in the corresponding Replacement Portfolio.

18. Each of the Contracts gives the relevant Insurance Company Applicant the right, consistent with the requirements of Section 26(c) of the 1940 Act, to eliminate or add divisions, combine two or more divisions, or substitute one or more underlying mutual funds or portfolios for others in which one or more divisions are invested. These contractual provisions have also been disclosed in the prospectuses or statements of additional information relating to the Contracts.

19. The Insurance Company Applicants will schedule the Substitutions to occur after issuance of the requested order and any required state insurance department approvals. Affected contract owners will not incur any fees or charges as a result of the Substitutions, nor will the rights or obligations of the Insurance Company Applicants under the Contracts be altered in any way. The proposed Substitutions will not have any adverse tax consequences to contract owners. The proposed Substitutions will not cause Contract fees and charges currently being paid by existing contract owners to be greater after the proposed Substitutions than before the proposed Substitutions. The proposed Substitutions will not be treated as transfers for the purpose of transfer limits or assessing transfer charges. The Insurance Company Applicants will not, with respect to shares substituted, exercise any right they may have under the Contracts to collect transfer fees or impose any additional restrictions on transfers for a period of at least 30 days following mailing of the notice of the proposed Substitutions referred to below (the ''Free Transfer Period''). During the Free Transfer Period, transfers will be permitted without that transfer being counted against any limits on free transfers under the Contracts.

20. The Insurance Company Applicants supplemented the prospectuses for the Contracts to reflect the proposed Substitutions. Within five days after the Substitutions, each Insurance Company Applicant will send to its respective contract owners written notice of the Substitutions (the ''Notice'') identifying the shares of the Replaced Portfolios that have been eliminated and the shares of the Replacement Portfolios that have been substituted. Each Insurance Company Applicant will include in such mailing the applicable prospectus supplement for the Contracts of the relevant Separate Account Applicant describing

the Substitutions. The Insurance Company Applicants also will mail a copy of prospectuses for the Replacement Portfolios to contract owners who have not already received a copy of those prospectuses in the ordinary course.

21. Contract owners will be advised in the Notice that during the Free Transfer Period, they may transfer all assets, as substituted, to any other available division without limit or charge and without that transfer being counted against any limit on free transfers under their Contract.

Applicants' Legal Analysis

22. Section 26(c) of the 1940 Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(c) of the 1940 Act was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five (5) days after the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

23. The purposes, terms, and conditions of the Substitutions are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Simply put, contract owners will be assessed no charges in connection with the Substitutions, and their annual fund expense ratios are expected to decrease. In addition, to the extent a contract owner does not wish to participate in the Substitutions, he or she is free to transfer to any other option available under the relevant Contract and, during the Free Transfer Period, no transfer fee will be charged and the transfer will not be counted against any limit on free transfers under the Contracts. Moreover, as discussed below, in three of the four proposed substitutions, the proposed Replacement Portfolio has investment objectives and policies that are substantially similar in all material respects to those of the Replaced Portfolio. In the fourth proposed substitution, involving JPVF Global Hard Assets, the proposed Replacement Portfolio has the most similar investment objective of funds currently available under the Contracts, and better long-term performance and lower expenses than the Replaced Portfolio.

24. Applicants submit that the Substitutions do not present the type of costly forced redemption or other harms that Section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

a. The Substitutions will continue to fulfill contract owners' objectives and risk expectations, because the Replacement Portfolios corresponding to the OVAF Replaced Portfolios have objectives, policies, and restrictions substantially similar in all material respects to the objectives, policies, and restrictions of the OVAF Replaced Portfolios, and JPVF World Growth Stock has investment objectives and policies most similar to JVF Global Hard Assets;

b. After receipt of the Notice informing a contract owner of the Substitutions, a contract owner may request that his or her assets be reallocated to another division at any time during the Free Transfer Period without any limit or charge, and without the transfer being counted against any limit on free transfers under the Contracts. This right also will be granted to contract owners of variable annuity Contracts who are receiving variable payments based on the Replaced Portfolios. The Free Transfer Period provides sufficient time for contract owners to consider their reinvestment options;

c. The Substitutions will be at net asset value of the respective shares, without the imposition of any transfer or similar charge;

d. Each Insurance Company Applicant has undertaken to assume all expenses and transaction costs, including, but not limited to, legal and accounting fees and any brokerage commissions, in connection with the Substitutions involving their respective Separate Account Applicants;

e. The Substitutions will in no way alter the contractual obligations of the Insurance Company Applicants or the rights and privileges of contract owners under the Contracts;

f. The Substitutions will in no way alter the tax benefits to contract owners;

g. The Substitutions are expected to confer certain economic benefits on contract owners by virtue of lower expenses, as described below;

h. At the time of the Substitutions, the aggregate fees and expenses under each Replacement Portfolio are expected to be lower than those of the corresponding Replaced Portfolio;

i. Each Insurance Company Applicant and its affiliates currently do not, and will not for a period of three years from the date of the order requested herein, receive any direct or indirect benefit from Fidelity VIP Growth or its adviser (or its adviser's affiliates) at a higher rate, as a percentage of such Applicant's separate account assets invested in the Replacement Portfolio, than it had received from the corresponding Replaced Portfolio, its adviser, and/or its adviser's affiliates, including, without limitation, 12b-1, shareholder service, administrative or other service fees, revenue sharing or other arrangement, either with specific reference to Fidelity VIP Growth or as part of any overall business arrangement;

j. Each Insurance Company Applicant agrees that for a period of two years after the effective date of the Substitutions, it will not increase the Contract charges or the total separate account charges of the divisions that invest in PIMCO Total Return Bond for those contract owners whose Contracts were issued before May 1, 2001, except to the extent of any increase in premium or similar taxes charged by a state or other locality. Each Insurance Company Applicant further agrees that if the total operating expenses for PIMCO Total Return Bond (taking into account any expense waiver or reimbursement) for any fiscal quarter for the two-year period following the effective date of the Substitutions exceed on an annualized basis the relevant Maximum Portfolio Expense Limit as stated below (which is the lower of the expense ratios for the two corresponding Replaced Portfolios as of December 31, 2000), each Insurance Company Applicant will make a corresponding reduction (through waiver or reimbursement) in the separate account expenses for that quarter of the division that invests in PIMCO Total Return Bond for contract owners whose Contracts were issued before May 1, 2001. The Maximum Portfolio Expense Limits for PIMCO Total Return Bond is 0.76%. Applicants submit that it is appropriate to apply this expense limit only to Contracts issued before May 1, 2001, because the OVAF Bond Funds were not available under Contracts purchased on or after that date, and accordingly owners of Contracts purchased on or after that date have never had an expectation of being

able to invest in those Replaced Funds; and

k. Each Insurance Company Applicant agrees that for a period of two years after the effective date of the Substitutions it will not increase the Contract charges or the total separate account charges of the divisions that invest in JPVF World Growth Stock for those contract owners affected by the Substitution for JPVF Global Hard Assets shares, except to the extent of any increase in premium or similar taxes charged by a state or other locality. Each Insurance Company Applicant further agrees that if the total operating expenses for JPVF World Growth Stock (taking into account any expense waiver or reimbursement) for any fiscal quarter for the two-year period following the effective date of the Substitutions exceed on an annualized basis the relevant Maximum Portfolio Expense Limit as stated below (which is the expense ratio for JPVF Global Hard Assets as of December 31, 2000), each Insurance Company Applicant will make a corresponding reduction (through waiver or reimbursement) in the separate account expenses for that quarter of the division that invests in JPVF World Growth Stock for contract owners affected by the Substitution for JPVF Global Hard Assets shares. The Maximum Portfolio Expense Limit for JPVF World Growth Stock is 1.10%.

25. As described below, the OVAF Replaced Portfolios and the corresponding Replacement Portfolios have investment objectives and policies that are substantially similar in all material respects, and JPVF World Growth Stock has investment objectives and policies that are most similar among funds available under the Contracts to those of JPVF Global Hard Assets.

26. OVAF Bond's primary investment objective is to seek a high level of current income. As a secondary goal, OVAF Bond seeks capital appreciation when consistent with its goal of high current income. The fund invests primarily in investment grade debt securities, U.S. government securities, and money market instruments. The fund also may invest up to 35% of its assets in high yield debt securities, other below investment grade debt securities, and other investments such as preferred stock. The fund may invest in securities of any maturity.

27. PIMCO Total Return Bond's investment objective is to seek maximum total return, consistent with preservation of capital and prudent investment management. The ''total return'' sought by the fund consists of income earned on its portfolio securities and capital appreciation, if any. The fund invests primarily in investment grade debt securities. It may also invest up to 10% of its assets in certain high yield securities. It also may invest up to 20% of its assets in securities denominated in foreign currencies and may invest beyond that limit in U.S. dollar-denominated foreign securities. The average portfolio duration usually varies between three and six years, depending on the adviser's forecast as to interest rates.

28. Applicants represent that PIMCO Total Return Bond has objectives, policies, and restrictions substantially similar in all material respects to the objectives, policies and restrictions of OVAF Bond. Both funds invest primarily in high-quality, fixed-income instruments. While PIMCO Total Return Bond places more emphasis on capital appreciation, it appears that both funds rely significantly upon the income from their portfolio investments to earn investment return. Accordingly, Applicants believe that PIMCO Total Return Bond will continue to fulfill the investment objectives and risk expectations of contract owners who want a fixed-income investment option.

29. Applicants believe that the total return orientation of PIMCO Total Return Bond may be more attractive to contract owners. Variable annuities and life insurance are designed to be long-term investments. Accordingly, Applicants believe that owners of variable products may prefer a fixed income investment alternative that is oriented toward total return (i.e., both income and capital appreciation) because it can invest in some types of fixed income investments that do not generate significant current income. In addition, Applicants note that PIMCO Total Return Fund, which has the same investment adviser and similar investment objectives, but is offered to retail and institutional investors, reportedly was the largest bond mutual fund in the United States with assets of $43.5 billion as of March 31, 2001.

30. OVAF Strategic Bond's investment objective is to seek a high level of current income principally derived from interest on debt securities. The fund invests in three market sectors: debt securities of foreign governments and companies; U.S. government securities; and lower-rated, high-yield securities of U.S. and foreign companies. Under normal market conditions, the fund invests in each sector. However, the fund is not obligated to do so. At times, it may invest 100% of its assets in a single sector, if the adviser believes that the fund can achieve its objectives without undue risk. The fund does not seek capital appreciation.

31. Applicants represent that PIMCO Total Return Bond has objectives, policies, and restrictions substantially similar in all material respects to the objectives, policies and restrictions of OVAF Strategic Bond. Both funds are bond funds. While PIMCO Total Return Bond has total return rather than a high level of income as its investment objective, income usually has been and will be a significant portion of both funds' return. While OVAF Strategic Bond has more flexibility in the allocation of its assets among different sectors of the fixed income securities market, both funds can invest in the same types of fixed income securities. Accordingly, Applicants believe that PIMCO Total Return Bond will continue to fulfill contract owners' investment objectives and risk expectations. Moreover, Applicants believe that the total return orientation of PIMCO Total Return Bond may be more attractive to contract owners.

32. OVAF Capital Appreciation's investment objective is capital appreciation. The fund invests primarily in the common stocks of well-known established companies that the adviser believes may appreciate in value over the long-term. The adviser looks primarily for companies with a high potential for growth, using fundamental analysis of the companies' finances and management, as well as other factors. Although the adviser currently emphasizes mid-capitalization and large-capitalization issuers, the fund can invest in issuers of all sizes.

33. Fidelity VIP Growth's investment objective is to seek to achieve capital appreciation. It usually invests primarily in common stocks. The adviser looks for companies that it believes have above-average growth potential. The adviser selects investments using fundamental analysis of each issuer's financial condition, industry position, and other factors. The fund may invest in domestic and foreign issuers of all sizes. As of December 31, 2000, 7.2% of the fund's assets were invested in foreign securities.

34. Applicants represent that Fidelity VIP Growth has objectives, policies, and restrictions substantially similar in all material respects to the objectives, policies and restrictions of OVAF Capital Appreciation. Both funds are growth equity funds with a primary investment objective of capital appreciation. Both funds select stocks using fundamental analysis. Both funds can invest in issuers of all sizes. While Fidelity VIP Growth, unlike OVAF Capital Appreciation, may invest in foreign equity securities, it does so only to a limited extent. The broader scope

of permissible investments for Fidelity VIP Growth should not preclude a substitution, given the overall similarity in the two funds' investment orientation. Accordingly, Applicants believe that substituting Fidelity VIP Growth for OVAF Capital Appreciation will continue to fulfill contract owners' investment objectives and risk expectations.

35. JPVF Global Hard Assets has as its investment objective long-term capital appreciation by globally investing primarily in ''Hard Asset Securities.'' Income is a secondary consideration. Hard Asset Securities are equity and debt securities of companies that are directly or indirectly involved to a significant extent in the exploration, development, production or distribution of precious metals, ferrous and non-ferrous metals, fossil fuels, forest products, real estate or other basis non-agricultural commodities. This fund also may invest in securities and structured notes whose value is linked to the price of a hard asset commodity or a commodity index. The fund seeks investment opportunities worldwide. Normally, the fund will invest in at least three countries, including the United States.

36. JPVF World Growth Stock's investment objective is long-term capital growth, which it seeks to achieve through a flexible policy of investing primarily in stocks of companies organized in the United States or any foreign nation. The fund also may invest in debt obligations of domestic and foreign companies.

37. Applicants have determined to eliminate JPVF Global Hard Assets as an investment option under the Contracts because this fund has not attracted sufficient investor interest. JPVF Global Hard Assets has been in operation since August 1, 1985. As of December 31, 2001, it had $4.2 million in net assets. Applicants represent that as of December 31, 2001, it was the smallest series of JPVF and the least popular investment option available under the Contracts.

38. Over the past five years, the fund's net assets have declined. Applicants submit that the lack of owner interest also may be attributable to the fund's negative long-term performance. Applicants also note that despite positive performance in 1999, which continued into 2000, the fund's net assets declined in 2000. Accordingly, Applicants do not expect that, in the foreseeable future, contract owner interest in the fund will increase significantly.

39. Because of the low asset level in the fund, its expense ratio is higher than most of the other investment options available under the Contracts. While the management fee is comparable to the fee charged other equity funds available under the Contracts, the other expenses are significantly higher because they are spread over a smaller asset base. Because the fund's asset base is not expected to increase significantly, Applicants expect that the comparatively high level of the fund's expense ratio will continue.

40. For the foregoing reasons, Applicants believe that it would serve contract owners' interests to eliminate JPVF Global Hard Assets as an investment option under the Contracts. Applicants believe that JPVF World Growth Stock is an appropriate substitute for JPVF Global Hard Assets because its objectives, policies, and restrictions are most similar to the objectives, policies, and restrictions of JPVF Global Hard Assets. Both portfolios seek long-term capital appreciation in their investment objectives. Both portfolios can invest in both equity and debt instruments. And while JPVF World Growth Stock is not limited to the narrow sector focus of JPVF Global Hard Assets, both portfolios invest in a mix of domestic and foreign securities, both debt and equity. Accordingly, Applicants believe that JPVF World Growth will permit contract owners who wish to diversify into the global securities assets class to satisfy that need.

41. The following table sets forth the total net assets for each of the Replaced Portfolios and the corresponding Replacement Portfolios:

TOTAL NET ASSETS

[In thousands of dollars; Dec. 31, 2001 (unaudited)]

Replaced portfolios	Amount	Replacement portfolios	Amount
OVAF Bond	695,900	PIMCO Total Return Bond	357,899
OVAF Strategic Bond	350,400	Same	.....
OVAF Capital Appreciation	1,979,900	Fidelity VIP Growth	11,485,436
JPVF Global Hard Assets	4,227	JPVF World Growth Stock	118,932

The net asset information for JPVF Global Hard Assets and JPVF World Growth Stock shown in the table above also represents the net assets of the corresponding divisions under the Contracts, because these two Funds are available only under the Contracts.

42. The management fee and total expenses for each Replacement Portfolio are less than or equal to the fees and expenses of the corresponding Replaced Portfolio. Applicants note that each Insurance Company Applicant is entitled to receive a service fee from the adviser for each of the OVAF Replaced Portfolios and the corresponding Replacement Portfolios, in return for providing certain administrative support services to the funds. Notwithstanding the payment of service fees by the advisers to those two Replacement Portfolios, both of those Replacement Portfolios have lower expense ratios than the OVAF Replaced Portfolios, as set forth in the table below.

EXPENSE RATIOS AS OF DEC. 31, 2000

[As a percentage of average daily net assets]

OVAF Bond:	
Management Fee	0.72
Other Expenses	0.04
Total Expenses	0.76
OVAF Strategic Bond:	
Management Fee	0.74
Other Expenses	0.05
Total Expenses	0.79
OVAF Capital Appreciation:	
Management Fee	0.64
Other Expenses	0.03
Total Expenses	0.67
JPVF Global Hard Assets:	
Management Fee	0.75
Other Expenses	0.35
Total Expenses	1.10
PIMCO Total Return Bond:	
Management Fee	0.25
Service Fee	0.15

EXPENSE RATIOS AS OF DEC. 31, 2000—Continued

[As a percentage of average daily net assets]

Other Expenses	0.26
Total Expenses (before reduction)	0.66
Expense Reduction	0.01
Total Expenses (after reduction)	0.65
Fidelity VIP Growth:	
Management Fee	0.57
Other Expenses	0.08
Total Expenses	0.65
JPVF World Growth Stock:	
Management Fee	0.75
Other Expenses	0.10
Total Expenses	0.85

43. The Insurance Company Applicants represent that they currently do not, and for a period of three years from the date of the requested Order will not, receive any direct or indirect benefit from Fidelity VIP Growth or its adviser (or its adviser's affiliates) at a higher rate, as a percentage of such Applicant's separate account assets invested in the Replacement Portfolio, than it had received from the corresponding Replaced Portfolio, its adviser, and/or its adviser's affiliates, including, without limitation, 12b-1, shareholder service, administrative or other service fees, revenue sharing or other arrangement, either with specific reference to Fidelity VIP Growth or as part of any overall business arrangement. In addition, each Insurance Company Applicant has agreed to a two-year expense limitation with respect to PIMCO Total Return Bond and JPVF World Growth Stock, as set forth in paragraphs 24(j) and (k) above.

44. Applicants submit that each of the Replacement Portfolios has sufficient assets to achieve economies of scale. Accordingly, it is expected that the lower expense ratios should continue.

45. The following chart sets forth the average annual total returns for each of the Replaced Portfolios and the corresponding Replacement Portfolios.

AVERAGE ANNUAL TOTAL RETURNS AS OF DEC. 31, 2000

[In percent]

Portfolio	One year	Five years or since inception	Ten years or since inception
OVAF Bond	6.10	5.02	7.58
OVAF Strategic Bond	2.63	5.76	[1] 5.71
PIMCO Total Return Bond	10.15	[2] 5.95	.....
OVAF Capital Appreciation	−0.23	22.69	19.45
Fidelity VIP Growth	−10.96	19.31	20.04
JPVF Global Hard Assets	8.19	−8.81	−1.74
JPVF World Growth Stock	1.54	11.65	13.02

[1] Since May 3, 1993.
[2] Since Dec. 31, 1997.

AVERAGE ANNUAL TOTAL RETURNS AS OF SEPTEMBER 30, 2001 (UNAUDITED)

[In percent]

Portfolio	YTD	One year	Five years or since inception	Ten years or since inception
OVAF Bond	9.52	11.91	6.59	7.24
OVAF Strategic Bond	0.54	0.32	4.22	[1] 5.26
PIMCO Total Return Bond	8.13	12.31	[2] 6.94	.....
OVAF Capital Appreciation	−24.34	−30.64	12.14	14.73
Fidelity VIP Growth	−29.52	−38.19	8.68	12.72
JPVF Global Hard Assets	−18.86	−15.63	−13.84	−3.12
JPVF World Growth Stock	−15.81	−14.70	5.92	9.41

[1] Since May 3, 1993.
[2] Since Dec. 31, 1997.

46. As shown in the total return chart, the total returns of PIMCO Total Return Bond have been higher than the returns of OVAF Strategic Bond for the corresponding periods. As to OVAF Bond, the total returns of PIMCO Total Return as of December 31, 2000, upon which Applicants based their decision to seek a substitution, also were higher than the returns of OVAF Bond. Since the beginning of 2001, however, OVAF Bond has had a higher return than PIMCO Total Return Bond. However, PIMCO Total Return Bond's one-year return and return since inception (on 12/31/97) still are higher than OVAF Bond's performance for the corresponding periods. PIMCO Total Return Bond's one-year return still is higher than OVAF Bond's one-year performance. Applicants submit that these short-term fluctuations are not significant and do not detract from the appropriateness of PIMCO Total Return Bond as a substitution for OVAF Bond.

47. While the one-year and five-year returns for Fidelity VIP Growth as of December 31, 2000, were lower than the corresponding returns for OVAF Capital Appreciation, Applicants submit that a significant portion of that difference was attributable to the year 2000, in which the U.S. stock markets and growth stocks in particular dropped significantly. Over the 10-year period ending December 31, 2000, the average annual return for Fidelity VIP Growth was higher than the average annual return for OVAF Capital Appreciation. Since the beginning of 2001, OVAF Capital Appreciation has declined less than Fidelity VIP Growth, such that OVAF Capital Appreciation's unaudited five-year and 10-year returns, measured as of September 30, 2001, also are higher than Fidelity VIP Growth's returns. Applicants argue that while the difference may appear significant, it

reflects more the effect of the starting point from which return is measured: in contrast, from January 1, 1991 (the starting point for the 10-year returns reported as of December 31, 2000) to September 30, 2001, the average annual return of the OVAF Capital Appreciation and Fidelity VIP Growth are 14.96% and 14.72%, respectively. In light of the long-term perspective that is particularly appropriate under variable contracts, Applicants believe that the longer-term results are more significant for contract owners. Even with year-to-date losses factored in, Applicants submit that Fidelity VIP Growth's 10-year performance is comparable to the 10-year performance of OVAF Capital Appreciation.

48. Applicants submit that although the one-year return for JPVF World Growth Stock as of December 31, 2000, was lower than the corresponding return for JPVF Global Hard Assets, the five- and 10-year returns were significantly higher. Moreover, JPVF World Stock Growth Stock's unaudited total returns as of September 30, 2001, for all periods shown were higher than the corresponding returns of JPVF Global Hard Assets. Accordingly, in light of the long-term perspective that is particularly appropriate under variable contracts, Applicants believe that JPVF World Growth Stock's performance further supports its appropriateness as a substitute for JPVF Global Hard Assets.

49. While there is no guarantee that past performance will continue, Applicants believe that the foregoing return data support the view that the Substitutions are not expected to diminish performance or otherwise adversely affect Contract values.

50. Applicants request an order of the Commission pursuant to Section 26(c) of the 1940 Act to permit them to effect the Substitutions on the terms set forth in this Amended Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–5878 Filed 3–11–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held the following additional meetings during the week of February 25, 2002:

Closed meetings were held on Thursday, February 28, 2002 at 5:45 p.m., and Friday, March 1, 2002 at 4:00 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meetings. Certain staff members who had an interest in the matter were also present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matter at the closed meetings.

The subject matter of the closed meetings held on Thursday, February 28, 2002 and Friday, March 1, 2002 was:

Regulatory matter concerning financial markets.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 6, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–5927 Filed 3–7–02; 4:19 pm]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 3889]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Friday, April 12, 2002 at 2:00 p.m. in the Diplomatic Reception Rooms. The meeting will last until approximately 3:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on November 16, 2001 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 200l through December 31, 2001. Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by April 1, 2002, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: February 28, 2002.

Gail F. Serfaty,

Secretary, Fine Arts Committee, Department of State.

[FR Doc. 02–5913 Filed 3–11–02; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF STATE

[Public Notice 3912]

Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Tuesday, March 26, 2002, in Room 600, 301 4th St., SW, Washington, DC from 12 Noon to 3:30 p.m.

The Commission, reauthorized pursuant to Public Law 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will discuss direction for a new executive director, and general update on the effectiveness of public diplomacy initiatives.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

Dated: March 6, 2002.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–5914 Filed 3–11–02; 8:45 am]

BILLING CODE 4710–11–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending February 22, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11618.

Date Filed: February 19, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SEA 0135 dated 22 February 2002; Mail Vote 207—TC23/TC123 Europe-South East Asia; Standard Revalidation Resolution 002 r1–r25; Intended effective date: 1 October 2002.

Docket Number: OST–2002–11632.

Date Filed: February 20, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0900 dated 15 February 2002; Mail Vote 200—Resolution 010c; New Fare Construction Package; Intended effective date: 1 April 2002.

Docket Number: OST–2002–11637.

Date Filed: February 20, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0549 dated 22 February 2002; Mail Vote 205—Resolution 010f; TC3 Special Passenger Amending Resolution between China (excluding Hong Kong SAR and Macau SAR) and Japan; Intended effective date: 1 April 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–5912 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 22, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–11658.

Date Filed: February 21, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 14, 2002.

Description: Application of Linea Aerea Puertorriquena, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property, and mail.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–5911 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Freedom Airlines, Inc. D/B/A America West Express for Issuance of New Certificate Authority

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2002–3–3), Docket OST–01–11206.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Freedom Airlines, Inc. d/b/a America West Express fit, willing, and able, and (2) awarding it a certificate to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than March 20, 2002.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–01–11206 and addressed to Department of Transportation Dockets (SVC–124, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: March 6, 2002.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–5909 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–11724]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0071 and 2115–0038

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Official Logbook, and (2) Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before May 13, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–11724] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. *Caution:* Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(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 notice. Comments and material received from the public, as well as documents mentioned in this notice 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.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2002–11724], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Official Logbook.

OMB Control Number: 2115–0071.

Summary: The official logbook contains information about the voyage, the vessel's crew, drills, and operations conducted during the voyage. Its entries identify all particulars of the voyage, including the name of the ship, the official number, the port of registry, the tonnage, the names and the numbers of the merchant mariners' documents of the master and crew, the nature of the voyage, and the class of ship. It also contains entries for the vessel's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to Logbooks, and miscellaneous entries.

Need: 46 U.S.C. Chapter 113 requires that most merchant vessels maintain an official logbook. The logbook contains information about the vessel, voyage, and crew. Lack of these particulars would make it difficult for a seaman to verify vessel employment and wages, and for the Coast Guard to verify compliance with laws and regulations concerning vessel operations and safety procedures. The logbook serves as an official record of recordable events occurring at sea such as births, deaths, marriages, disciplinary actions etc. Absent the logbook there would be no official civil record of these events. Log entries are accepted by the courts as proof that the event recorded occurred. If this information was not collected, the Coast Guard's program for safety of commercial vessels would suffer, as there would be no official record of voyages by U.S. merchant vessels. Similarly, those seeking to prove that an event occurred would not have any record available.

Respondents: Shipping companies.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,750 hours a year.

2. *Title:* Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures.

OMB Control Number: 2115–0038.

Summary: The collection of information requires respondents to provide to the Coast Guard, on two applications (CG–2554 and CG–4143), vital information about private aids to navigation.

Need: 33 CFR parts 66 and 67 authorize the Coast Guard to collect and process the information furnished from applications for private aids to ensure that the aids appropriately mark the associated hazard or waterway.

Respondents: Owners of private aids to navigation.

Frequency: On occasion.

Burden Estimate: The estimated burden is 3,037 hours a year.

Dated: March 4, 2002.

N. S. Heiner,

Acting Director of Information and Technology.

[FR Doc. 02–5806 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11781]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: MERPAC will meet on Tuesday, April 9, 2002, from 8 a.m. to 4 p.m. and on Wednesday, April 10, 2002, from 8 a.m. to 3 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before March 26, 2002. Written material and requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before March 26, 2002.

ADDRESSES: MERPAC will meet on both days at the MEBA Engineering School, 27050 St. Michaels Road, Easton, MD 21601. Further directions regarding the location of the MEBA School may be obtained by contacting Mr. Lee Kincaid at (410) 822–9600. Send written material and requests to make oral presentations to Commander Brian J. Peter, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570, or e-mail *mgould@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of April 9, 2002 Meeting

The full committee will meet to discuss the objectives for the meeting. The committee will then break up into the following working groups: Task Statement 30, concerning utilization of military sea service and training for merchant marine licenses; Task Statement 31, concerning manning on vessels engaged in domestic service; and, Task Statement 32, concerning updating Automatic Radar Plotting Aid (ARPA) and radar observer training. New working groups may be formed to address any new issues or tasks. At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of April 10, 2002 Meeting

The agenda includes the following:

(1) *Introduction*.

(2) *Working Group Reports*:

(a) Task Statement 30, concerning utilization of military sea service and training for merchant marine licenses.

(b) Task Statement 31, concerning manning on vessels engaged in domestic service.

(c) Task Statement 32, concerning updating ARPA and radar observer training.

(3) *Other items to be discussed*:

(a) Standing Committee—Prevention Through People.

(b) Other items brought up for discussion by the committee or the public.

Procedural

Both meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than March 26, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than March 26, 2002. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than March 26, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: March 6, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–5875 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Boone and Scenic Valley Railroad

[Docket Number FRA–2001–10817]

The Boone and Scenic Valley Railroad seeks a waiver of compliance, number FRA–2001–10817, from the Inspection and Maintenance Standards for Steam Locomotives, 49 CFR Part 230, published November 17, 1999. Section 230.3(c) of the standards requires steam locomotives having flue tubes replaced prior to September 25, 1995, have a 1,472 service day inspection [49 CFR 230.17] performed prior to being allowed to operate under the requirements. The Boone and Scenic Valley Railroad seeks this waiver for one locomotive, number JS 8419, which had the flue tubes replaced and was returned to service in 1998. The Boone and Scenic Valley Railroad was unaware of the requirement to file for special consideration and failed to meet the cut off filing date of January 18, 2001.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–10817) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on March 6, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–5800 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket No. FRA–2002–11371]

Applicant: CSX Transportation, Inc., Mr. Gregory C. Martin, Ph.D., P.E., Chief Mechanical Officer, Engineering and Quality Assurance, 500 Water Street J344, Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks relief from the requirements of the Rules, Standards and Instructions, Title 49 CFR part 236 § 236.586, to the extent that a visual inspection of the track receiver bars and associated conduit, in the winter months on locomotives equipped with Ultra Cab cab signal equipment, not be required if track receiver bars are packed with ice and snow.

Applicant's justification for relief: Ultra Cab equipment has a cab signal self test feature which checks to see if the cab signal track receiver bars are in the circuit. It verifies the track receiver bars and associated wiring are not open or shorted and that it can pass 100 Hz through them. Removal of snow and ice is very time consuming and labor intensive. In some instances, this is almost impossible, unless the locomotive is shopped in a warm shop to thaw. CSX does not believe having to go to this extreme to satisfy a rule was the intent of the FRA.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after

that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 6, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–5803 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2002–11415]

Applicant: Union Pacific Railroad Company, Mr. Phil M.. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance and removal of two automatic signals; one approach ''D'' signal, and conversion of an automatic signal to an operative ''D'' signal. The two westbound automatic signals that are proposed to be removed are approach signals to a controlled signal that governs train movements from the Julesburg branch onto the UP main line at Julesburg, Colorado. The eastbound automatic signal is proposed to be converted to an operative ''D'' signal. These signals are located at M.P. 0.7 on the Julesburg Subdivision. The eastbound ''D'' signal that is proposed to be removed is located at M.P. 2.0.

The reason given for the proposed changes is due to decreased traffic from the Julesburg branch, the signals are no longer needed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 6, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–5801 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–11414

Applicant: Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance and removal of a switch machine, power-operated derail and four controlled signals; 163L, 163R, 164L, and 164R, at Cyanamid, Louisiana, M.P. 16.5, on the Livonia Subdivision.

The reason given for the proposed changes is that these signals protected a crossover switch location that had been retired at an earlier time. Due to removal of the crossover and decrease in traffic on the spur caused by removal of connection to a foreign railroad, the control point is no longer needed. The mainline signals are being retired to eliminate a short block between the existing location and a controlled power switch location at M.P. 17.1.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately

present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on March 6, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–5802 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[DOCKET NO. MARAD–11788]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 13, 2002.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Maritime Administration, MAR–250, 400 Seventh St., SW., Washington, D.C. 20590. Telephone: 202–366–0284; FAX 202–493–2288, or e-mail: rita.jackson@marad.dot.gov.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for Admission to the U.S. Merchant Marine Academy.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0010.

Form Numbers: KP–2–65

Expiration Date of Approval: October 31, 2002.

Summary of Collection of Information: The collection consists of Parts I, II, and III of Form KP 2–65 (U.S. Merchant Marine Academy Application for Admission.) Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy.

Need and Use of the Information: The information is necessary to select the best qualified candidates for the U.S. Merchant Marine Academy.

Description of Respondents: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Annual Responses: 2,500

Annual Burden: 12,500 hours

Dated: March 7, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–5910 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10944; Notice 2]

Advanced Bus Industries, Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Advanced Bus Industries, LLC, (ABI) of Marysville, Ohio, has determined that approximately 68 Mauck Special Vehicles (MSV) with tag axles, manufactured between May 31, 1995 and February 2, 2000, do not meet the requirements of paragraph S5.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 105, ''Hydraulic and Electric Brake Systems.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), ABI petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and filed an appropriate report pursuant to 49 CFR Section 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published on November 14, 2001, with a 30-day comment period (66 FR 57151). NHTSA received no comments on this application.

ABI is the original equipment manufacturer of the MSV. ABI manufactures the MSV as a complete bus, which is then purchased by city transit organizations, or as a shell, which is purchased by up-fitters that customize and sell it to a first purchaser.

The four-wheel independent suspension of the MSV is augmented by a tag axle with small wheels. The tag axle is manufactured by Dexter, has a maximum support capacity of 3,500 pounds, and is installed behind the MSV's two rear wheels. A supporting force of 1,500 pounds is provided by the tag axle via the air pressure inside the two air-filled rubber springs mounted between the tag axle and the MSV chassis.

Vehicle braking is provided by the hydraulic, caliper-disc service brakes on the four main wheels. The two small wheels of the tag axle are not fitted with brakes. The lack of brakes on the two small wheels of the tag axle does not satisfy paragraph S5.1 of FMVSS 105, which states that a vehicle must have service brakes at all wheels.

ABI argued that the noncompliance is inconsequential to motor vehicle safety because these vehicles exceed the current FMVSS No.105 braking performance requirements. To support this claim ABI submitted, along with its petition for inconsequential non-compliance, a test report compiled in August 1999. The test facility that produced the report, Radlinski & Associates, tested a MSV to the procedures specified in FMVSS No. 105 and a complete Certification Test Report was generated. The FMVSS No. 105 Certification Test Report indicates that the MSV exceeded all FMVSS No.105 performance requirements.

The agency believes that the true measure of inconsequentiality in this case is the effect of the noncompliance on the vehicle's ability to meet the stopping distance and vehicle stability performance requirements of FMVSS No. 105. The report of the testing conducted by Radlinski & Associates in August 1999 indicates that the brake system of the MSV complies with the fully functional and partially failed brake system requirements of FMVSS No. 105.

On February 8, 2000, the National Highway Traffic Safety Administration (NHTSA) granted ABI a temporary exemption from the requirement in FMVSS No. 105, paragraph S5.1, for service brakes at all wheels. The temporary exemption expired on January 1, 2002. Based on information supplied to the agency by ABI, including the report of brake testing according to FMVSS No. 105 procedures

by Radlinski & Associates, NHTSA Temporary Exemption No. 2000–1 was granted in order to allow the sale of mass transit vehicles that serve the public interest. It is our understanding that ABI no longer produces the MSV with the tag axles.

In consideration of the foregoing, NHTSA has decided that the burden of persuasion has been met and that the noncompliance is inconsequential to motor vehicle safety. Accordingly, the application from ABI is granted and the applicant is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(Authority: 49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 5, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–5799 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–11443; Notice 01]

RIN 2127–AI73

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2000, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2000. The theft data preliminarily indicate that the vehicle theft rate for CY/MY 2000 vehicles (2.89 thefts per thousand vehicles) did not change from the theft rate for CY/MY 1999 vehicles (2.89 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before May 13, 2002.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with two copies to: U.S. Department of Transportation, Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the section 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2000, the most recent calendar year for which data are available.

In calculating the 2000 theft rates, NHTSA followed the same procedures it used in calculating the MY 1999 theft rates. (For 1999 theft data calculations, *see* 66 FR 39554, July 31, 2001). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 2000 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2000 vehicles of that line stolen during calendar year 2000, by the total number of vehicles in that line manufactured for MY 2000, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 2000 theft data show no change in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1999. The preliminary theft rate for MY 2000 passenger vehicles stolen in calendar year 2000 of 2.89 thefts per thousand vehicles produced, did not change from the rate of 2.89 thefts per thousand vehicles experienced by MY 1999 vehicles in CY 1999. For MY 2000 vehicles, out of a total of 206 vehicle lines, 51 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 51 vehicle lines with a theft rate higher than 3.5826, 45 are passenger car lines, six are multipurpose passenger vehicle lines, and none are light-duty truck lines.

In Table I, NHTSA has tentatively ranked each of the MY 2000 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon

receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR 2000 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000

No.	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
1	DAIMLERCHRYSLER	PLYMOUTH BREEZE	173	15,723	11.0030
2	MITSUBISHI	MONTERO SPORT/NATIVA [1]	509	46,272	11.0002
3	MITSUBISHI	MONTERO	22	2,147	10.2469
4	BMW	X5	12	1,312	9.1463
5	DAIMLERCHRYSLER	CHRYSLER INTREPID [2]	4	449	8.9087
6	DAIMLERCHRYSLER	DODGE STRATUS	1,040	118,845	8.7509
7	DAIMLERCHRYSLER	DODGE INTREPID	1,400	162,279	8.6271
8	MITSUBISHI	MIRAGE	502	61,957	8.1024
9	DAIMLERCHRYSLER	PLYMOUTH NEON	626	89,142	7.0225
10	DAIMLERCHRYSLER	DODGE NEON	1,191	170,098	7.0018
11	GENERAL MOTORS	CHEVROLET METRO	210	30,521	6.8805
12	DAIMLERCHRYSLER	JEEP CHEROKEE	1,040	153,816	6.7613
13	HONDA	ACURA NSX	2	305	6.5574
14	DAIMLERCHRYSLER	CHRYSLER LHS	139	22,944	6.0582
15	ASTON MARTIN	VANTAGE COUPE	1	175	5.7143
16	DAIMLERCHRYSLER	CHRYSLER CIRRUS	267	46,849	5.6992
17	FORD MOTOR CO	FORD CONTOUR	350	61,603	5.6815
18	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	287	50,940	5.6341
19	GENERAL MOTORS	OLDSMOBILE BRAVADA	186	33,179	5.6060
20	MITSUBISHI	GALANT	520	94,773	5.4868
21	HONDA	CIVIC	1,807	339,223	5.3269
22	GENERAL MOTORS	PONTIAC GRAND AM	1,194	225,321	5.2991
23	GENERAL MOTORS	OLDSMOBILE ALERO	586	118,421	4.9484
24	DAEWOO	LEGANZA	128	25,960	4.9307
25	HONDA	ACURA INTEGRA	136	28,095	4.8407
26	DAEWOO	LANOS	116	24,049	4.8235
27	KIA MOTORS	SEPHIA/SPECTRA	487	101,027	4.8205
28	GENERAL MOTORS	OLDSMOBILE INTRIGUE	352	73,399	4.7957
29	FORD MOTOR CO	MERCURY MYSTIQUE	98	20,839	4.7027
30	DAIMLERCHRYSLER	CHRYSLER CONCORDE	268	59,453	4.5078
31	TOYOTA	COROLLA	839	187,996	4.4629
32	SUZUKI	VITARA/GRAND VITARA	197	46,188	4.2652
33	AUDI	S4	23	5,396	4.2624
34	GENERAL MOTORS	CADILLAC DEVILLE/LIMOUSINE	380	92,619	4.1028
35	FORD MOTOR CO	FORD MUSTANG	832	202,972	4.0991
36	KIA MOTORS	SPORTAGE	271	66,519	4.0740
37	HYUNDAI	ACCENT	232	57,111	4.0623
38	MITSUBISHI	ECLIPSE	185	45,850	4.0349
39	GENERAL MOTORS	CHEVROLET CAMARO	177	43,990	4.0236
40	GENERAL MOTORS	PONTIAC SUNFIRE	366	91,198	4.0132
41	SUZUKI	ESTEEM	78	19,520	3.9959
42	ISUZU	TROOPER	75	19,100	3.9267
43	GENERAL MOTORS	CHEVROLET CAVALIER	975	256,972	3.7942
44	GENERAL MOTORS	CHEVROLET MALIBU	817	215,601	3.7894
45	TOYOTA	LEXUS GS	102	26,952	3.7845
46	GENERAL MOTORS	CHEVROLET LUMINA/MONTE CARLO	368	98,556	3.7339
47	GENERAL MOTORS	PONTIAC FIREBIRD/TRANS AM/FORMULA.	115	31,093	3.6986
48	HYUNDAI	SONATA	182	49,340	3.6887
49	FORD MOTOR CO	FORD FOCUS	1,112	304,049	3.6573
50	AUDI	A6	94	26,000	3.6154
51	GENERAL MOTORS	BUICK REGAL	224	62,502	3.5839
52	JAGUAR	S–TYPE	117	32,818	3.5651
53	NISSAN	MAXIMA	604	175,111	3.4492
54	FORD MOTOR CO	LINCOLN TOWN CAR	296	89,164	3.3197
55	NISSAN	ALTIMA	484	147,978	3.2708
56	VOLVO	C70	17	5,293	3.2118
57	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	800	249,486	3.2066
58	SUZUKI	SWIFT	9	2,860	3.1469
59	DAIMLERCHRYSLER	CHRYSLER NEON[2]	4	1,303	3.0698
60	NISSAN	PATHFINDER	88	28,983	3.0363
61	GENERAL MOTORS	CHEVROLET PRIZM	116	38,920	2.9805
62	AUDI	TT	21	7,215	2.9106
63	MERCEDES BENZ	220 (S–CLASS)	118	40,612	2.9055
64	HYUNDAI	ELANTRA	354	122,625	2.8869
65	ISUZU	RODEO	155	54,169	2.8614

PRELIMINARY REPORT OF THEFT RATES FOR 2000 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000—Continued

No.	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
66	GENERAL MOTORS	GMC JIMMY S–15	251	87,839	2.8575
67	HONDA	PRELUDE	29	10,165	2.8529
68	GENERAL MOTORS	CADILLAC SEVILLE	89	31,414	2.8331
69	MAZDA	MILLENIA	49	17,334	2.8268
70	DAEWOO	NUBIRA	67	23,985	2.7934
71	GENERAL MOTORS	PONTIAC GRAND PRIX	431	156,496	2.7541
72	FORD MOTOR CO	FORD TAURUS	945	350,145	2.6989
73	FORD MOTOR CO	MERCURY MOUNTAINEER	134	50,023	2.6788
74	DAIMLERCHRYSLER	DODGE AVENGER	17	6,376	2.6662
75	MERCEDES BENZ	208 (CLK–CLASS)	47	17,796	2.6410
76	FORD MOTOR CO	FORD EXPLORER	1,001	383,386	2.6109
77	GENERAL MOTORS	CHEVROLET IMPALA	519	199,319	2.6039
78	GENERAL MOTORS	CHEVROLET CORVETTE	81	31,189	2.5971
79	DAIMLERCHRYSLER	CHRYSLER 300 M	138	53,353	2.5865
80	FORD MOTOR CO	MERCURY SABLE	239	93,301	2.5616
81	TOYOTA	CELICA	154	60,368	2.5510
82	MAZDA	626	192	76,444	2.5116
83	ISUZU	VEHICROSS	2	808	2.4752
84	NISSAN	INFINITI Q45	10	4,045	2.4722
85	DAIMLERCHRYSLER	JEEP GRAND CHEROKEE	741	299,988	2.4701
86	BMW	Z3	24	9,857	2.4348
87	TOYOTA	CAMRY/CAMRY SOLARA	1,097	451,343	2.4305
88	FORD MOTOR CO	LINCOLN LS	164	68,527	2.3932
89	JAGUAR	XK8/XK8 CONVERTIBLE	11	4,698	2.3414
90	TOYOTA	RAV4	103	44,645	2.3071
91	TOYOTA	4-RUNNER	302	132,248	2.2836
92	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND	727	333,712	2.1785
93	FORD MOTOR CO	FORD RANGER PICKUP TRUCK	747	346,291	2.1571
94	FORD MOTOR CO	FORD F–150 PICKUP TRUCK	318	151,791	2.0950
95	GENERAL MOTORS	CHEVROLET S–10 PICKUP TRUCK	514	246,662	2.0838
96	DAIMLERCHRYSLER	PLYMOUTH VOYAGER/GRAND	258	123,906	2.0822
97	FORD MOTOR CO	FORD ESCORT	200	96,287	2.0771
98	MAZDA	PROTÈGÈ	166	80,346	2.0661
99	GENERAL MOTORS	SATURN SC	33	16,009	2.0613
100	BMW	7	35	17,141	2.0419
101	TOYOTA	ECHO	114	56,699	2.0106
102	HYUNDAI	TIBURON	32	15,958	2.0053
103	MITSUBISHI	DIAMANTE	17	8,629	1.9701
104	GENERAL MOTORS	SATURN SL	255	130,551	1.9533
105	FORD MOTOR CO	MERCURY COUGAR	87	44,911	1.9372
106	DAIMLERCHRYSLER	CHRYSLER SEBRING COUPE	21	10,910	1.9248
107	DAIMLERCHRYSLER	JEEP WRANGLER	178	92,672	1.9208
108	GENERAL MOTORS	BUICK CENTURY	272	144,495	1.8824
109	NISSAN	XTERRA	200	108,434	1.8444
110	GENERAL MOTORS	GMC SAFARI VAN	54	30,093	1.7944
111	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP TRUCK	322	181,011	1.7789
112	VOLVO	S40/V40	63	35,817	1.7589
113	NISSAN	SENTRA	120	68,587	1.7496
114	BMW	5	80	45,769	1.7479
115	BMW	3	155	89,026	1.7411
116	FORD MOTOR CO	LINCOLN CONTINENTAL	42	24,210	1.7348
117	GENERAL MOTORS	CHEVROLET ASTRO VAN	155	89,660	1.7288
118	GENERAL MOTORS	CHEVROLET TRACKER	77	45,063	1.7087
119	HONDA	PASSPORT	35	20,493	1.7079
120	VOLVO	S70/V70	69	40,581	1.7003
121	NISSAN	INFINITI G20	23	13,635	1.6868
122	MAZDA	B SERIES PICKUP TRUCK	53	31,627	1.6758
123	MERCEDES BENZ	203 (C–CLASS)	44	26,439	1.6642
124	VOLVO	XC	24	14,489	1.6564
125	TOYOTA	TACOMA PICKUP TRUCK	236	142,518	1.6559
126	VOLKSWAGEN	JETTA	224	137,940	1.6239
127	GENERAL MOTORS	CADILLAC ELDORADO	22	13,845	1.5890
128	GENERAL MOTORS	PONTIAC BONNEVILLE	94	59,334	1.5843
129	ISUZU	HOMBRE PICKUP TRUCK	7	4,449	1.5734
130	JAGUAR	XJR	2	1,290	1.5504
131	NISSAN	FRONTIER PICKUP TRUCK	217	143,358	1.5137
132	MERCEDES BENZ	215 (CL-CLASS)	2	1,338	1.4948
133	FORD MOTOR CO	MERCURY GRAND MARQUIS	200	135,282	1.4784
134	HONDA	ACCORD	627	430,595	1.4561

PRELIMINARY REPORT OF THEFT RATES FOR 2000 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000—Continued

No.	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
135	PORSCHE	911	11	7,578	1.4516
136	GENERAL MOTORS	GMC SONOMA PICKUP TRUCK	86	60,124	1.4304
137	JAGUAR	XJ8	10	7,086	1.4112
138	VOLKSWAGEN	GOLF/GTI	37	26,862	1.3774
139	AUDI	A8	3	2,189	1.3705
140	MERCEDES BENZ	210 (E-CLASS)	64	46,709	1.3702
141	TOYOTA	LEXUS LS	15	11,179	1.3418
142	DAIMLERCHRYSLER	DODGE VIPER	2	1,559	1.2829
143	GENERAL MOTORS	SATURN LS	105	82,956	1.2657
144	TOYOTA	LEXUS RX	113	89,410	1.2638
145	GENERAL MOTORS	BUICK LESABRE	240	190,269	1.2614
146	FORD MOTOR CO	FORD WINDSTAR VAN	291	232,403	1.2521
147	AUDI	A4	24	19,304	1.2433
148	VOLVO	S80	44	35,864	1.2269
149	SUBARU	IMPREZA	21	17,353	1.2102
150	GENERAL MOTORS	PONTIAC MONTANA VAN	75	62,640	1.1973
151	MERCEDES BENZ	170 (SLK-CLASS)	7	5,891	1.1883
152	TOYOTA	LEXUS ES	54	45,885	1.1769
153	DAIMLERCHRYSLER	PLYMOUTH PROWLER	3	2,576	1.1646
154	GENERAL MOTORS	BUICK PARK AVENUE	59	51,365	1.1486
155	VOLKSWAGEN	CABRIO	10	8,836	1.1317
156	NISSAN	INFINITI I30	45	39,815	1.1302
157	JAGUAR	VANDEN PLAS	4	3,596	1.1123
158	NISSAN	QUEST	52	46,834	1.1103
159	HONDA	ACURA TL	74	67,287	1.0998
160	GENERAL MOTORS	CADILLAC CATERA	17	15,629	1.0877
161	GENERAL MOTORS	CHEVROLET VENTURE VAN	107	100,041	1.0696
162	HONDA	CR–V	121	114,387	1.0578
163	TOYOTA	TUNDRA PICKUP TRUCK	11	10,527	1.0449
164	HONDA	ACURA RL	17	16,470	1.0322
165	MERCEDES BENZ	129 (SL-CLASS)	5	4,845	1.0320
166	SUBARU	FORESTER	29	28,950	1.0017
167	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY	93	96,298	0.9658
168	ISUZU	AMIGO	3	3,199	0.9378
169	MAZDA	MPV	47	50,565	0.9295
170	FORD MOTOR CO	MERCURY VILLAGER MPV	29	31,495	0.9208
171	GENERAL MOTORS	CADILLAC FUNERAL COACH	1	1,100	0.9091
172	TOYOTA	AVALON	98	108,025	0.9072
173	VOLKSWAGEN	NEW BEETLE	81	89,819	0.9018
174	NISSAN	INFINITI QX4	25	28,258	0.8847
175	VOLKSWAGEN	PASSAT	59	67,216	0.8778
176	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	34	41,705	0.8152
177	SAAB	9–3	14	17,929	0.7809
178	GENERAL MOTORS	SATURN LW	11	14,418	0.7629
179	SAAB	9–5	13	17,162	0.7575
180	TOYOTA	SIENNA VAN	96	131,405	0.7306
181	TOYOTA	MR2	4	5,597	0.7147
182	SUBARU	LEGACY	65	97,215	0.6686
183	JAGUAR	XKR	1	1,508	0.6631
184	GENERAL MOTORS	SATURN SW	6	9,113	0.6584
185	PORSCHE	BOXSTER/BOXSTER S	8	13,563	0.5898
186	HONDA	S2000	5	9,206	0.5431
187	MAZDA	MX–5 MIATA	8	16,107	0.4967
188	FORD MOTOR CO	FORD CROWN VICTORIA	50	103,784	0.4818
189	HONDA	INSIGHT	2	5,603	0.3570
190	HONDA	ODYSSEY	33	122,131	0.2702
191	ASTON MARTIN	VANTAGE VOLANTE	0	573	0.0000
192	BMW	Z8	0	2,936	0.0000
193	DAIMLERCHRYSLER	CHRYSLER STRATUS [2]	0	131	0.0000
194	FIAT	FERRARI 360	0	452	0.0000
195	FIAT	FERRARI 456	0	82	0.0000
196	FIAT	FERRARI 550	0	256	0.0000
197	LOTUS	ESPRIT	0	200	0.0000
198	ROLLS-ROYCE	BENTLEY ARNAGE	0	422	0.0000
199	ROLLS-ROYCE	BENTLEY AZURE	0	93	0.0000
200	ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	23	0.0000
201	ROLLS-ROYCE	BENTLEY CONTINENTAL SC	0	3	0.0000
202	ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	2	0.0000
203	ROLLS-ROYCE	BENTLEY CORNICHE	0	97	0.0000

PRELIMINARY REPORT OF THEFT RATES FOR 2000 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000—Continued

No.	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
204	ROLLS-ROYCE	SILVER SERAPH	0	154	0.0000
205	TOYOTA	LEXUS SC	0	823	0.0000
206	VOLKSWAGEN	EUROVAN	0	2,791	0.0000

[1] Nativa is the name applied to Montero Sport vehicles that are manufactured for sale only in Puerto Rico.
[2] These vehicles were manufactured for sale in the U.S. territories under the Chrysler nameplate.

Issued on: March 4, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–5807 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of International Financial Analysis within the Department of the Treasury is soliciting comments concerning Treasury International Capital Forms CQ–1 and CQ–2, Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

DATES: Written comments should be received on or before May 13, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5457 MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Because of slower mail, please also e-mail or FAX or phone directly to Dwight Wolkow at the contact points listed in the next paragraph.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5457 MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Phone: (202) 622–1276. Fax: (202) 622–7448. E-mail: *dwight.wolkow@do.treas.gov*.

SUPPLEMENTARY INFORMATION: *OMB Number*: 1505–0024.

Abstract: Forms CQ–1 and CQ–2 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 USC 286f; 22 USC 3103; EO 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements: Forms CQ–1 and CQ–2 are quarterly reports filed by nonbanking enterprises in the U.S. to report their international portfolio transactions with unaffiliated foreigners. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: No changes to reporting requirements for the forms are proposed at this time.

Type of Review: Extension.

Affected Public: Business or other for-profit organizations.

Forms: CQ–1 and CQ–2 (1505–0024).

Estimated Number of Respondents: 500.

Estimated Average Time per Respondent: 4 hours per respondent per filing.

Estimated Total Annual Burden Hours: 8,000 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether Forms CQ–1 and CQ–2 are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 02–5818 Filed 3–11–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 4, 2002.

The Department of the 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 11, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1672.

Regulation Project Numbers: REG–142299–01 and REG–209135–88 NPRM and Temporary.

Type of Review: Extension.

Title: Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

Description: The regulation applies with respect to the net built-in gain of C corporation property that becomes property of a Regulated Investment Company (RIC) or Real Estate Investment Trust (REIT) by the qualification of a C corporation as a RIC or REIT or by the transfer of property of a C corporation to a RIC or REIT in certain tax-free transactions. Depending

on the date of the transfer of property or qualification as a RIC or REIT, the regulation provides that either (1) the C corporation will recognize gain as if it had sold the property at fair market value, unless the RIC or REIT elects section 1374 treatment or (2) the RIC or REIT will be subject to section 1374 treatment with respect to the net recognized built-in gain, unless the C corporation elects deemed sale treatment. The regulation provides that a section 1374 election is made by filing a statement, signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return for the taxable year in which the property of the C corporation becomes the property of the RIC or REIT. The regulation provides that a deemed sale election is made by filing a statement, signed by an official authorized to sign the income tax return of the C corporation and attached to the C corporation's Federal income tax return for the taxable year in which the deemed sale occurs.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 140.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 70 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. 02–5842 Filed 3–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Fair Housing Home Loan Data System Regulation—12 CFR 27.''

DATES: You should submit written comments by May 13, 2002.

ADDRESSES: You should direct comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0159, 250 E Street, SW., Washington, DC 20219. Due to recent, temporary disruptions in the OCC's mail service, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Fair Housing Home Loan Data System Regulation—12 CFR 27.

OMB Number: 1557–0159.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection. The OCC requests only that OMB extend its approval of the information collection.

The Fair Housing Act (42 U.S.C. 3605) prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, or national origin. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act. The information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

The information collection requirements in 12 CFR part 27 are as follows:

Section 27.3 requires a national bank that is required to collect data on home loans under 12 CFR part 203 to present the data on Federal Reserve Form FR HMDA–LAR, or in automated format in accordance with the HMDA–LAR instructions, and to include one additional item (the reason for denial) on the HMDA–LAR. Section 27.3 also lists exceptions to the HMDA–LAR recordkeeping requirements. Section 27.3 further lists the information banks should obtain from an applicant as part of a home loan application, and states information that a bank must disclose to an applicant.

Section 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log if there is reason to believe that the bank is engaging in discriminatory practices or if analysis of the data compiled by the bank under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) and 12 CFR part 203 indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin.

Section 27.5 requires a national bank to maintain the information for 25 months after the bank notifies the applicant of action taken on an application, or after withdrawal of an application.

Section 27.7 requires a national bank to submit the information to the OCC upon its request, prior to a scheduled examination.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2,400.

Estimated Total Annual Responses: 2,400.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 4,369 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB

approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 5, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 02–5682 Filed 3–11–02; 8:45 am]

BILLING CODE 4810–33–P

Notices

Federal Register
Vol. 67, No. 48
Tuesday, March 12, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Distribution Program: Substitution of Donated Poultry With Commercial Poultry

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Food and Nutrition Service's (FNS) intent to continue a demonstration project to test program changes designed to improve the State processing of donated poultry by allowing the substitution of donated poultry supplied by the Department of Agriculture (the Department) with commercial poultry. The Department is currently operating a demonstration project that allows selected poultry processors to substitute commercial poultry for donated poultry in the State processing of donated poultry. Only bulk pack poultry and poultry parts are eligible for substitution under the current demonstration project. Notice of the project, which commenced operation on February 1, 1996, was published in the **Federal Register** at 61 FR 5373 on February 12, 1996. The project was expanded and extended through June 30, 2000 (64 FR 35582, July 1, 1999). The project was further extended through June 30, 2002 (65 FR 25296, May 1, 2000). Under the demonstration project, FNS invoked its authority under 7 CFR 250.30(t) to waive the current prohibition at 7 CFR 250.30 (f)(1)(i) against the substitution of poultry items and to establish the criteria under which substitution will be permitted.

The Department will continue to operate the demonstration project from July 1, 2002 through June 30, 2003. The Department has determined that this demonstration project is successful and is in the process of publishing a proposed rule to codify limited poultry substitution. The extension of the demonstration will allow the Department to maintain continuity for all concerned parties while the proposed rule proceeds through the final rulemaking process.

DATES: The proposals described in this Notice may be submitted to FNS through June 30, 2002. Note that the demonstration project will continue until June 30, 2003 or until the final rule codifying limited poultry substitution is published in the **Federal Register**.

ADDRESSES: Proposals should be sent to Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: David Brothers, Schools and Institutions Branch, at (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22675, May 31, 1984).

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and is thus exempt from the provisions of that Act.

Background

Section 250.30 of the current Food Distribution Program regulations (7 CFR Part 250) sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts. Section 250.30(t) authorizes FNS to waive any of the requirements contained in 7 CFR Part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Current Program Requirements

The State processing regulations at Section 250.30(f)(1)(i) currently allow for the substitution of certain specified donated food items with commercial foods, with the exception of meat and poultry. Under the current regulations at Section 250.30(g), when donated meat or poultry products are processed or when any commercial meat or poultry products are incorporated into an end product containing one or more donated foods, all of the processing is required to be performed in plants under continuous Federal meat or poultry inspection or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to Food Safety Inspection Service (FSIS) inspection, all donated meat and poultry processing must be performed under Agricultural Marketing Service (AMS) acceptance service grading.

Traditionally only a few companies have processed donated poultry. Those processors have stated that the policy prohibiting the substitution of donated poultry reduces the quantity of donated poultry they are able to accept and process during a given period. Poultry purchased by USDA for further processing is bulk chill packed. Processors must schedule production around deliveries of the donated poultry since it is a highly perishable product. Some of the processors must schedule production around deliveries of donated poultry for up to 30 individual States. Vendors do not always deliver donated poultry to the processors as scheduled, causing delays in production of end products. These delays may be alleviated if the processors can substitute their commercial poultry for donated poultry.

Demonstration Project

From July 1, 2002 to June 30, 2003, the Department will continue to operate a demonstration project under which it will permit approved processors to substitute commercial poultry for donated poultry in the State processing of donated poultry. FNS is invoking its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) against the substitution of

poultry for purposes of this demonstration project.

The demonstration project will be limited to bulk pack chicken, chicken parts, and bulk pack turkey because the processing of such items can be readily evaluated. The definition of substitution in 7 CFR 250.3 requires the replacement of commercial product for donated food to be of the same generic identity and equal or better quality. With bulk pack chicken, chicken parts, and bulk pack turkey these requirements can be met easily and quickly. Bulk pack turkey was added to the original demonstration project that allowed for the substitution of bulk pack chicken and bulk pack chicken parts because USDA graders can easily determine if commercial turkey meets or exceeds the specifications for donated turkey.

FNS is inviting interested poultry processors to submit written proposals to participate in the demonstration project. The following basic requirements will apply to the demonstration project:

- As with the processing of donated poultry into end products, AMS graders must monitor the processing of any substituted commercial poultry to ensure program integrity is maintained.
- Only bulk pack chicken, chicken parts, and bulk pack turkey delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically cut-up frozen poultry parts delivered to schools which may be turned over to processors for further processing at a later time.)
- Substitution of commercial poultry may occur in advance of the actual receipt of the donated poultry by the processor. However, no substitution may occur before the product is purchased by USDA and the contract is awarded. Lead time between the purchase and delivery of donated poultry may be up to five weeks. Any variation between the amount of commercial poultry substituted and the amount of donated poultry received by the processor will be adjusted according to guidelines furnished by USDA.
- Any donated poultry not used in end products because of substitution must only be used by the processor at one of its facilities in other commercial processed products and cannot be sold as an intact unit. However, in lieu of processing the donated poultry, the processor may use the product to fulfill other contracts with USDA provided all terms of the other contract are met.
- The only regulatory provision or State processing contract term affected by the demonstration project is the prohibition on substitution of poultry (section 250.30(f)(1)(i) of the regulations). All other regulatory and contract requirements remain unchanged and must still be met by processors participating in the demonstration project.

The continuation of the demonstration project will allow FNS to complete the rulemaking process while the demonstration program continues to operate. This provides continuity of operations for both recipients and processors who are currently participating in the demonstration project.

Interested processors should submit a written proposal to FNS outlining how they plan to carry out the substitution while complying with the above conditions. Processors who are currently participating in the demonstration should apply to continue in the demonstration. The proposal must contain (1) a step-by-step description of how production will be monitored and (2) a complete description of the records that will be maintained for (a) the commercial poultry substituted for the donated poultry (b) the disposition of the donated poultry delivered. All proposals will be reviewed by representatives of the Food Distribution Division of FNS and by representatives of AMS Poultry Division's Grading Branch. Companies approved for participation in the demonstration project will be required to enter into an agreement with FNS and AMS which authorizes the processor to substitute commercial bulk pack chicken, chicken parts, and bulk pack turkey in fulfilling any current or future State processing contracts during the demonstration project period. Participation in the demonstration project will not ensure the processor will receive any State processing contracts.

Dated: March 6, 2002.

George Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 02–5845 Filed 3–11–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

P–Pine Project, Coeur d'Alene River Ranger District, Idaho Panhandle National Forests, Kootenai and Shoshone Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Coeur d'Alene River Ranger District of the Panhandle National Forest is proposing vegetation rehabilitation in the Deerfoot Ridge and Two Mile watersheds, identified as the Ponderosa Pine Restoration Area. The Deerfoot Ridge watershed area is located east of Hayden Lake, Idaho in Kootenai County, and Two-Mile watershed area is located north of Silverton, Idaho in Shoshone County. Only dry-site ecosystems within the watersheds are proposed for rehabilitation at this time. The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of implementing vegetative restoration activities under the project area.

DATES: Written comments and suggestions should be received on or before April 26, 2002.

ADDRESSES: Submit written comments and suggestions on the proposal, or requests to be placed on the project mailing list, to Sarah Jerome, Project Team Leader, Coeur d'Alene River Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Sarah Jerome, Project Team Leader, Coeur d'Alene River Ranger District, (208) 664–2318.

SUPPLEMENTARY INFORMATION: The purpose and need for this project is derived from the National Fire Plan, the Upper Columbia River Basin Ecosystem Management Project, and the Coeur d'Alene River Basin Geographic Assessment. Each of these provide documentation of the currently dense, fire-prone state of dry-site ecosystems across the Idaho Panhandle National Forests and in the Coeur d'Alene Basin, and the marked change these ecosystems have undergone over the past century. Site-specific information indicates that these same conditions are occurring on the stand level in the Deerfoot Ridge and Two Mile Watersheds. Objectives are to: (1) Restore historical conditions in ponderosa pine stands based on the fire ecology of these forest types; (2) trend vegetative species composition toward seral species more resistant to insects and disease; reduce the incidence of noxious weeds; (3) reduce the risk of wildfire in the urban interface, coordinate with state and local entities for urban/interface fuels management; maintain visual quality over the long-term; (4) reduce the overall risk of high-intensity, stand-replacing fires; and (5) reduce fragmentation and improve wildlife habitat.

The Forest Service will consider a range of alternatives. One of these will

be the ''no action'' alternative, under which there would be no change from current management of the area. Additional alternatives will represent a range of strategies to manage natural resources in the area. The Idaho Panhandle National Forests Land and Resource Management Plan provides guidance for management objectives within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Inland Native Fish Strategy guidelines (USDA Forest Service, 1995) supersede Forest Plan guidelines established for riparian areas.

The public was first notified of this proposal and the intention to prepare an environmental impact statement in February 2002. Comments provided by the public and other agencies will be used to develop strategies for management of natural resources in the project area. The public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service is also seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in October 2002. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

I am the responsible official for this environmental impact statement. My address is Coeur d'Alene River Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

Dated: March 4, 2002.

Joseph P. Stringer,

District Ranger.

[FR Doc. 02–5840 Filed 3–11–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC); Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on April 4–5, 2002 in John Day, Oregon; May 30–31 in Baker City, Oregon; and June 14 in Pendleton, Oregon. The purpose of the meetings is to meet as a Committee to review and recommend the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meetings will be held as follows: April 4, 2002, 9 a.m. to 4:30 p.m., John Day, Oregon; April 5, 2002, 8:30 a.m. to 4:45 p.m., John Day, Oregon; May 30, 2002, 9 a.m. to 4:30 p.m., Baker City, Oregon; May 31, 2002, 8 a.m. to 4:45 p.m., Baker City, Oregon; See **SUPPLEMENTARY INFORMATION** section for one additional meeting date.

ADDRESSES: The April 4–5, 2002 meetings will be held in Juniper Hall, at the Malheur National Forest Headquarters Office located at 431 Patterson Bridge Road, John Day, Oregon. The May 30–31, 2002 meetings will be held in the conference room at the Baker Ranger District office located at 3165 10th Street, Baker City, Oregon. See Supplementary Information section for the location of one additional meeting.

FOR FURTHER INFORMATION CONTACT: Bonnie Wood, Designated Federal Official, USDA, Malheur National Forest, PO Box 909, John Day, Oregon 97845. Phone: (541) 575–3100.

SUPPLEMENTARY INFORMATION: At the April 4–5, 2002 meeting the committee will determine the overhead rate for projects and then will review and recommend Fiscal Year 2002 project proposals for funding under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000. A public input opportunity will be provided at 11:15 a.m. on April 4, and individuals will have the opportunity to address the committee at that time. At the May 30–31, 2002 meeting the committee will determine if they wish to change their review process and will then review and recommend Fiscal Year 2003 project

proposals for funding under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000. A public input opportunity will be provided at 11:15 a.m. on May 30, and individuals will be able to address the committee at that time. One additional meeting will be held on June 14, 2002 in Pendleton, Oregon to finish reviewing project proposals for Fiscal Year 2003 funding. This meeting will be held at the Oregon Trail room, Red Lion Inn, in Pendleton, Oregon. The meeting will begin at 8 a.m. and end at 4 p.m. A public input opportunity will be provided at 11:15 a.m., and individuals will be able to address the committee at that time.

Dated: March 5, 2002.

Bonnie J. Wood,

Forest Supervisor.

[FR Doc. 02–5839 Filed 3–11–02; 8:45 am]

BILLING CODE 3410–DK–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Proposed Information Collection; Comment Request; Miscellaneous Activities

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Renewal of an existing collection.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 13, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, (202) 482–0637, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

On September 30, 1993, the Secretary of Commerce submitted to the Congress a report of the Trade Promotion Coordinating Committee, entitled Toward a National Export Strategy. The report included the goal to ''Undertake a comprehensive review of the Export Administration Regulations to simplify, clarify, and make the regulations more user-friendly''. To carry out this recommendation, BXA has rewritten the entire EAR. To the extent activities have been added or changed but not deleted, this collection represents the authority to collect, on rare occasions, certain information from the public. This assembly of information collection activities is comprised of two activities. ''Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export'', and ''Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic materials; Public Hearings'' are statutory in nature and-though they never have been applied-must remain a part of BXA's information collection budget authorization. The third—The Commerce Control List—became necessary as the rewrite of the Export Administration Regulations sought to harmonize the U.S. ECCN system with the European system for consistency and future simplicity. However, this activity is no longer needed since the transformation from the old system to the new system is complete.

For the purpose of clarity, this abstract will refer to the two activities as follows: USAG will refer to Registration Of U.S. Agricultural Commodities For Exemption From Short Supply Limitations On Export activities; and, PETITIONS will refer to Petitions For The Imposition Of Monitoring Or Controls On Recyclable Metallic materials; Public Hearings activities.

II. Method of Collection

For USAG, the method is a written application for the exemption from Short Supply Limitations on Export Activities.

For PETITIONS, the method is a written petition requesting the monitoring of exports or the imposition of export controls, or both, with respect to certain materials.

The same mailing address is used for both submissions: P.O. Box 273, Washington, DC 20230.

III. Data

OMB Number: 0694–0102.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response: USAG: 5 hours per response; PETITION: 5 hours per response.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 1, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–5372 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1212]

Grant of Authority for Subzone Status; Nissan North America, Inc. (Motor Vehicles); Canton, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the

privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Vicksburg-Jackson Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 158, has made application for authority to establish special-purpose subzone status at the motor vehicle manufacturing plant of Nissan North America, Inc., located in Canton, Mississippi (FTZ Docket 27–2001, filed 6–26–2001);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 35223, 7–3–2001); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the motor vehicle manufacturing plant of Nissan North America, Inc., located in Canton, Mississippi (Subzone 158D), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 4th day of March, 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–5888 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 16–2002]

Foreign-Trade Zone 204, Tri-Cities Area, TN/VA; Expansion of Manufacturing Authority—Subzone 204A; Siemens Energy & Automation, Inc. (Industrial Automation Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Tri-Cities Airport Commission, grantee of FTZ 204, requesting on behalf of Siemens Energy & Automation, Inc. (Siemens), to expand the scope of manufacturing authority under zone procedures within Subzone 204A, at the Siemens plant in Carter County, Tennessee. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 4, 2002.

Subzone 204A was approved by the Board in 1995 at a 104-acre site on Bill Garland Road in Carter County, Tennessee. Authority was granted for the manufacture of robotics, programmable logic controllers, and other industrial automation products (Board Order 756, 60 FR 36105, 7/13/95).

Siemens is now proposing to expand the scope of manufacturing activity conducted under zone procedures at Subzone 204A to include additional finished products (*e.g.,* automotive, media, and traffic technologies) and components. The finished products would have duty rates ranging from duty-free to 8.5% *ad valorem.* Foreign-sourced materials under the proposed expanded scope may include the following items: copper wire; electric screwdrivers; ground clips/pins; threaded fasteners; transmitters; floating instruments parts; flow meters; ultraviolet lamps; electronic dispensers; automotive technology; media technology; and traffic technology for road, railroad, or airport. Duty rates on these components range from duty-free to 8.5% *ad valorem.*

Expanded subzone authority would exempt Siemens from Customs duty payments on the aforementioned foreign components when used in export production. On its domestic sales, Siemens would be able to choose the lower duty rate that applies to the finished products for the foreign components, when applicable.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is May 13, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 27, 2002. A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at Tri-City Regional Airport, Room 306, State Highway 75, Blountville, TN 37617.

Dated: March 4, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–5887 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Zev Primor at (202) 482–4114 or Tom Futtner at (202) 482–3814, Office of AD/CVD Enforcement 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary

determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On Ocotber1, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Thailand, covering the period July 1, 2000 through June 30, 2001 (66 FR 49924). The preliminary results are currently due no later than April 1, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. See Decision Memorandum from Holly Kuga to Bernard Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 5, 2002

Bernard T. Carreau,

Deputy Assistant Secretaryfor Import Administration, Group II.

[FR Doc. 02–5885 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall (CSN), Michael Ferrier or Dena Aliadinov (USIMINAS/COSIPA), or Abdelali Elouaradia, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398, (202) 482–1394, (202) 482–3362, and (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (2000).

Scope of Order

For purposes of this order, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this agreement.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this agreement, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.30–0.50%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.16% ..... Mo ..... 0.21% Max	0.70–0.90%	0.025% Max	0.006% Max ...	0.30–0.50%	0.30–0.50%	0.25% Max	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14% ..... V(wt.) ..... 0.10% Max	1.30–1.80% ..... Cb ..... 0.08% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max ..... Nb ..... 0.005% Min	1.40% Max ..... Ca ..... Treated	0.025% Max .... Al 0.01–0.70%	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max.

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this agreement is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this agreement, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this agreement is dispositive.

Antidumping Duty Order

On February 11, 2002, the Department published its final results of the administrative review and termination of the Suspension Agreement on hot-rolled steel from Brazil. See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil: Final Results of Antidumping Duty Administrative Review and Termination of the Suspension Agreement 67 FR 6226 (February 11, 2002). Therefore, the Department will direct Customs to suspend liquidation effective November 13, 2001. In accordance with sections 734(i)(1)(A) and (i)(1)(c) of the Act, the Department hereby issues an antidumping duty order effective November 13, 2001, which is 90 days before the date of publication of the notice of suspension of liquidation.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the U.S. price of the subject merchandise for all relevant entries of hot-rolled steel from Brazil. These antidumping duties will be assessed on all unliquidated entries of hot-rolled steel from Brazil entered, or withdrawn from warehouse, for consumption on or after November 13, 2001, the date which is 90 days before the date of publication of the notice of suspension of liquidation in accordance with section 734(i)(1)(A)(i).

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties on this

merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins:

Manufacturer/exporter	Cash deposit rate (percent)
Companhia Siderurgica Nacional (CSN)	41.27%
Usinas Siderurgicas De Minas Gerais (USIMINAS)	43.40%
Companhia Siderurgica Paulista (COSIPA)	43.40%
All Others	42.12%

The ''All Others'' rate applies to all exporters in Brazil of subject merchandise not specifically listed.

This notice constitutes the antidumping duty order with respect to hot-rolled steel from Brazil. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of the antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: March 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5886 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–803]

Industrial Nitrocellulose from the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Michele Mire, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5346 or (202) 482–4711, respectively.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days.

Background

On August 20, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom 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, 43572. The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. See Decision Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 5, 2002

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–5883 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta from Italy and Turkey: Extension of Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Lyman Armstrong at (202) 482–4793 or (202) 482–3601, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On August 10, 2001, the Department published a notice of initiation of the administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 2000 to June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 1, 2002.

Extension of Preliminary Results of Reviews

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limits. Therefore, we are extending the time limits for completion of the preliminary results until no later than July 30, 2002. See Decision Memorandum from Melissa Skinner to Bernard Carreau, dated March 1, 2002, which is on file in the Central Records Unit, B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of these reviews.

This extension is in accordance with section 751(a)(3)(A) of the Act.

March 4, 2002

Bernard Carreau,

Deputy Assistant SecretaryImport Administration.

[FR Doc. 02–5882 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod from Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: We are amending our final results of the administrative review of the antidumping duty order on stainless steel wire rod from the Republic of Korea, published on February 13, 2002 (Stainless Steel Wire Rod from Korea; Final Results of Antidumping Duty Administrative Review, 67 FR 6685 (February 13, 2002) (Final Results)), to reflect the correction of a ministerial error made in the final results. This correction is in accordance with section 751(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.224(e) of the Department of Commerce's (the Department's) regulations. The period covered by these amended final results of review is September 1, 1999 through August 31, 2000.

EFFECTIVE DATE : March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Karine Gziryan, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–5346 or 482–4081, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2000).

Background

On February 13, 2002, the Department published the final results of the administrative review of the antidumping duty order on stainless steel wire rod from the Republic of Korea. See Final Results.

On February 12, 2002, we received a timely allegation from Changwon Specialty Steel Co., Ltd. (Changwon) and Dongbang Special Steel Co., Ltd. (Dongbang) (collectively, respondents) that the Department made a ministerial error in the final results of review. The petitioner did not submit any comments in reply to this ministerial error allegation.

Scope of Review

For purposes of this review, SSWR comprises products that are hot–rolled or hot–rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot–rolling or hot–rolling annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross–section. The majority of SSWR sold in the United States is round in cross–sectional shape, annealed and pickled, and later cold–finished into stainless steel wire or small–diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire–drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the review. SF20T and K–M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T.			
Carbon	0.05 max	Chromium	19.00/21.00
Manganese	2.00 max	Molybdenum	1.50/2.50
Phosphorous	0.05 max	Lead–added	(0.10/0.30)
Sulfur	0.15 max	Tellurium–added	(0.03 min)
Silicon	1.00 max		
K–M35FL.			
Carbon	0.015 max	Nickel	0.30 max
Silicon	0.70/1.00	Chromium	12.50/14.00
Manganese	0.40 max	Lead	0.10/0.30
Phosphorous	0.04 max	Aluminum	0.20/0.35
Sulfur	0.03 max		

The products subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Amendment of Final Results

The respondents contend that in the Final Results, and accompanying Decision Memo at Comment 8, the Department agreed with the respondents' argument that the

Department should replace the variable costs of manufacturing (VCOMs) and total costs of manufacturing (TCOMs) based on semiannual costs that are reported on the sales databases with the VCOMs and TCOMs based on annual costs that are reported on the cost database. The respondents allege that the Department correctly implemented this change for the VCOMs and TCOMs reported on the U.S. sales database, but erred by failing to make the same adjustment to the VCOMs reported on the home market sales database.

After reviewing our calculations, we found that we inadvertently failed to make this adjustment to the VCOMs reported on the home market sales database, and have determined that this error constitutes a ministerial error as defined by 19 CFR 351.224(f). We have corrected this error in accordance with 19 CFR 351.224(e) by adopting the respondents' suggested programming language. For further details, see Calculation Memorandum dated March 4, 2002.

Amended Final Results

As a result of our review and the correction of the ministerial error described above, we have determined that the margin for the collapsed entity Pohang Iron and Steel Co., Ltd. (POSCO)/Changwon/Dongbang is 5.61 percent.

Assessment

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates in the manner described in the Final Results, 67 FR at 6687.

Cash Deposit Requirements

Upon publication of this notice of amended final results of this administrative review, for all shipments of stainless steel wire rod from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the amended final results of this administrative review, as provided by section 751(a)(1) of the Act, the cash deposit rate for POSCO/ Changwon/ Dongbang will be the rate established in these amended final results of this administrative review.

We are issuing and publishing this amendment to the final results in accordance with section 751(h) of the Act.

March 4, 2002

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

[FR Doc. 02–5884 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Applications for the Malcolm Baldrige National Quality Award

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before May 13, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to JoAnne M. Surette, Baldrige National Quality Program, Administration Building, Room 623, 100 Bureau Drive, Stop 1020, National Institute of Standards and Technology, Gaithersburg, MD 20899–1020, telephone (301) 975–5267, fax, (301)948–3716, e-mail *joanne.surette@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce is responsible for the Baldrige National Quality Program and the Malcolm Baldrige National Quality Award. NIST, an agency of the Department's Technology Administration, manages the Baldrige Program. Applicants for the Malcolm Baldrige National Quality Award are required to perform two steps: (1) The applicant organization certifies that it meets eligibility requirements; and (2) the applicant organization prepares and completes an application form and the application process. The Malcolm Baldrige National Quality Award Program Office will assist with or offer advice on any questions or issues that the applicant may have concerning the eligibility process or in completing the self-certification forms. NIST will use the application package to assess and provide feedback on the applicant's quality and performance practices.

II. Method of Collection

Applicants must comply in writing according to the *Baldrige Award Application Forms* booklet.

III. Data

OMB Number: 0693–0006.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 100 hours.

Estimated Total Annual Burden Hours: 10,000 hours.

Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 7, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–5898 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Prospective Grant of Exclusive Patent License.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent Application No. 09/122,583, titled, ''Designed Protein Pores As Components For Biosensors,'' filed July 24, 1998; NIST Docket No. 98–016, to the University of Massachusetts, 365 Plantation Street, Suite, 130, Worcester, MA 01605. The grant of the license would be for the field of Biological Applications.

FOR FURTHER INFORMATION CONTACT: J. Terry Lynch, (301) 975–2691, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty sharing and will comply with the terms and conditions of 35 USC 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 USC 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the **Federal Register**, Vol. 65, No. 53 (March 17, 2000).

U.S. Patent Application No. 09/122,583 is jointly owned by the U.S. government, as represented by the Secretary of Commerce, Worcester Institute, and the University of Chicago. The present invention relates to a mutant staphylococcal alpha hemolysin polypeptide containing a heterologous analyte-binding amino acid which assembles into an analyte-responsive heteroheptameric pore assembly in the presence of a wild type staphylococcal alpha hemolysin polypeptide, digital biosensors, and methods of detecting, identifying and quantifying analytes.

Dated: March 5, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–5917 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030602H]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee, Monkfish Advisory Panel and Groundfish Oversight Committee in March, 2002 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between March 25 and 27, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Wakefield and Peabody, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465-0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, March 25, 2002 at 9:30 a.m. and Tuesday, March 26, 2002 at 8:30 a.m.–Research Steering Committee Meeting.

Location: Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

The committee will coordinate previously funded projects, potential future projects and other funding initiatives to ensure that the Council's research priorities are met. This effort will include prioritizing the current initiatives previously identified as high priority cooperative research programs industry-based surveys/study fleets, cod tagging and conservation engineering. They will also review and potentially revise the existing research priorities previously established by the Research Steering Committee and approved by the Council for use in future Requests for Proposals (RFPs). They will also develop a mechanism for project tracking, evaluation and incorporation of information into the management process. Also on the agenda is to review the ongoing initiatives to establish pilot programs for study fleets/industry-based surveys.

Tuesday, March 26, 2002 at 9:00 a.m.–Monkfish Advisory Panel Meeting.

Location: Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

The Panel will review Amendment 2 goals and objectives adopted by the Councils, as well as management strategies being developed by the Oversight Committee. The Panel will advise the Committee on issues and alternatives pertaining to Amendment 2, including, but not limited to: how different fishery sectors have been affected by the current management plan; options for modifying how days-at-sea (DAS) are counted, particularly first or partial days of a trip; identifying times and areas of monkfish spawning that could be utilized as part of a management program; incidental catch limits for vessels not fishing on a monkfish DAS; and other specific matters identified by the Committee. The Panel will also develop its own recommendations to the Committee for management strategies to be considered in Amendment 2.

Wednesday, March 27, 2002 at 9:30 a.m.–Groundfish Oversight Committee Meeting.

Location: Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

The Groundfish Committee will continue development of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). At a meeting on February 27, 2002, the New England Council decided to develop groundfish management measures for five broad areas and one user group: inshore Gulf of Maine, offshore Gulf of Maine, eastern Georges Bank, western Georges Bank, Southern New England/Mid Atlantic, and recreational/charter/party. They will define the boundaries of the areas and develop specific objectives for each group (including specific objectives for the recreational/party/charter group). In addition, the committee will identify metrics that can be used to guarantee that objectives are met in each area/user group and will

identify any other issues that must be considered as measures are developed for an area. They will also discuss revised targets for biomass and fishing mortality for groundfish stocks based on a report that will be presented to the Council on March 19, 2002. Finally, the Committee may consider the report of the Capacity Committee, which will also be delivered to the Council on March 19, 2002. A schedule will also be developed for future committee work.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 7, 2002.

Richard W. Surdi,

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

[FR Doc. 02–5915 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021102E]

Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Steel Drilling Caisson Through the Bering Strait and Chukchi Sea and Exploratory Drilling and Associated Activities at the McCovey Exploration Prospect in Beaufort Sea, AK

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

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from Alberta Energy Company Ltd. Oil and Gas, USA, Inc. (AEC) for an authorization to take small numbers of marine mammals by harassment incidental to movement of a Steel Drilling Caisson (SDC) from Port Clarence, AK through the Bering Strait and Chukchi Sea to the Beaufort Sea to planned exploratory drilling and associated activities at the McCovey Exploration Prospect in the western Beaufort Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize AEC to incidentally take, by harassment, small numbers of bowhead whales, beluga whales, gray whales, killer whales, harbor porpoise, ringed seals, bearded seals, and spotted seals in the above mentioned areas during May 2002–August 2002 for SDC preparation, movement, refueling, and re-supplying and from mid-October 2002 through mid-March 2003 for the winter drilling season. The incidental take of polar bears and walrus from AEC's planned activities are not covered by this proposed incidental harassment authorization, as these species are under jurisdiction of the U.S. Fish and Wildlife Service.

DATES: Comments and information must be received no later than April 11, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713–2322, ext 106 or Brad Smith, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim final rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to 50 CFR 216.107.

Summary of Request

On December 18, 2001, NMFS received an application from AEC requesting an authorization for the harassment of small numbers of eight species of marine mammals incidental to movement of a SDC from Port Clarence, AK through the Bering Strait to the Beaufort Sea from May 2002 through August 2002 and planned exploratory drilling and associated activities at the McCovey Exploration Prospect in the Beaufort Sea from mid-October 2002 through mid-March 2003. A detailed description of these activities proposed for 2002-2003 is contained in the application (Lynx Enterprises, Inc., 2001), which is available upon request (see **ADDRESSES**).

Description of Marine Mammals Affected by the Activity

The region encompassing Port Clarence, AK, the Bering Strait, the Chukchi Sea and western Beaufort Sea supports a diverse assemblage of marine mammals under NMFS jurisdiction, including bowhead whales (Balaena mysticetus), beluga whales(*Delphinapterus leucas*), gray whales (*Eschrichtius robustus*), killer whales (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Descriptions of the biology, distribution, and current status of these species can be found in NMFS Stock Assessment Reports (2000, 1999, and 1997). Please refer to those documents for more information on these species.

Potential Effects of SDC Mobilization, Exploratory Drilling, and Associated Activities on Marine Mammals

Potential harassment of marine mammals will result from the noise generated by the operation of towing vessels during SDC mobilization between Port Clarence and the McCovey Prospect, the noise generated during re-fueling and re-supplying the SDC at the

McCovey Prospect, and the noise generated from the SDC during winter drilling operations. The physical presence of vessels and aircraft could also lead to disturbance of marine mammals by visual or other cues. The potential for collisions between tug vessels and whales will be eliminated by the slow tow speed (2 knots) and visual monitoring by on-board marine mammal observers.

Marine mammal species with the highest likelihood of being harassed during the SDC mobilization phase (May-July) are: beluga whales, gray whales, ringed seals, and bearded seals. Other marine mammal species less likely to be harassed during the SDC mobilization phase are: spotted seals, killer whales, and harbor porpoise. Bowhead whales are not expected to be encountered during the mobilization phase. The SDC mobilization route will pass through summering grounds for beluga whales in Kotzebue Sound and Kasegaluk Lagoon and the Chukchi Sea feeding grounds for gray whales. The potential for harassment in these areas is greater since the animals may be aggregated when the SDC will be transiting through; however the AEC will be required to monitor for marine mammals throughout the transit and alter their route to avoid harassment of beluga or gray whales.

The marine mammal species with the highest likelihood of being harassed during re-fueling and re-supply of the SDC at McCovey Prospect (July-August) is the ringed seal. This likelihood is based on AEC's past experiences at offshore drilling locations in the mid-Beaufort Sea (e.g., Warthog, Kuvlum). There is the possibility that bearded and spotted seals will also be harassed during re-fueling and re-supply.

It is not likely that bowhead whales will be impacted by re-fueling and re-supply operations since the AEC must finish these operations and shutdown (i.e., cold stack ''quiet'' mode) the SDC by late August or early September, when bowhead whales begin their westward fall migration in the Beaufort Sea. According to 23 years of survey data collected by the Minerals Management Service (MMS), North Slope Borough, the Alaska Eskimo Whaling Commission (AEWC), and many more years of traditional knowledge from Cross Island-based whale hunters, the annual fall migration of the bowhead whales is normally many kilometers north of the McCovey Prospect. However, because the fall migration path of the bowhead whales is dependent on environmental conditions (i.e., extent of ice coverage) that vary from year-to-year, the extreme southern edge of the fall migration corridor may pass closer to McCovey Prospect, increasing the likelihood that bowhead whales may be harassed by activities. Beluga whale migrations during the open-water refueling and re-supply period are through ice leads well beyond the junction of the land-fast ice with the arctic ice pack and therefore it would be extremely unlikely that beluga whales would be impacted by activities at McCovey Prospect.

Exploratory drilling and well testing operations at McCovey Prospect will only occur after the MMS has determined that the sea ice is fully formed around the SDC (approximately mid-November 2002). No drilling or other operations at McCovey will occur during periods of broken ice or open water conditions. During this drilling period, ringed seals (and possibly spotted and bearded seals) will likely be in the area; however, there is no evidence that these species abandon their winter habitat in the presence of active drilling operations. Drilling and well testing operations will cease in March, when the SDC will be shutdown (i.e., cold stacked) until fast-ice conditions return in November or the SDC will be towed to a different location.

Potential Effects of SDC Mobilization, Exploratory Drilling, and Associated Activities on Habitat

The SDC has an ocean bottom footprint measuring 161.8 meters (m) (531 feet, ft) by 109.7 m (360 ft). When exploratory drilling and testing operations are completed at McCovey and there is no discovery for production, the wells will be plugged and abandoned, and a final site clearance will be performed in accordance with MMS and Alaska Oil and Gas Conservation Commission regulations. This abandonment activity will leave the McCovey Prospect area in an essentially undisturbed condition since there will be no wellhead or appurtenances remaining above the ocean floor. If there is a discovery for production outcome, wells would be plugged and abandoned in a suspended status in accordance with the MMS and movement of the SDC will be in accordance with the AEWC and the MMS.

Numbers of Marine Mammals Expected to Be Taken

NMFS estimates, based on current population estimates, past activities in the same geographic area and information provided by the AEC, that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	*Population Size*	*Estimated Harassment Takes 2002/2003*
Bowhead whale	8,200	12
Gray whale	26,000	20
Beluga whale	39,258	50
Harbor Porpoise	10,946	10
Killer Whale	346	5
Ringed seal	1–1.5 million	100
Spotted seal	>200,000	10
Bearded seal	>300,000	20

Effects of SDC Mobilization, Exploratory Drilling, and Associated Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from vessels and drilling activities are the principle concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, but also ringed and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters.

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take two to four whales each season (Western

Geophysical, 2000). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principle field camp location for Nuiqsut whalers, is located 8.53 kilometers (km) (5.3 mi) southeast of the McCovey Prospect. Thus, the possibility and timing of potential re-fueling, re-supply and drilling operations in the Cross Island area requires AEC to provide NMFS with either a Plan of Cooperation with North Slope Borough residents or information identifying measures that have been or will be taken to avoid any unmitigable adverse impact on subsistence needs (see 50 CFR 216.104). AEC's application has identified those measures that will be taken to minimize any adverse effect on subsistence. In addition, the timing of re-fueling, re-supply, and drilling operations will be addressed in a Plan of Cooperation and a Conflict Avoidance Agreement (CAA) with the Nuiqsut whalers and the AEWC (Lynx Enterprises, 2001).

Whalers from the village of Kaktovik search for whales east, north, and west of the village. Kaktovik is located 177 km (110 mi) east of the easternmost end of the McCovey Prospect. The westernmost reported harvest location was about 21 km (13 mi) west of Kaktovik, near 70°10′N, 144° W (Kaleak, 1996).

Many Nuiqsut whale hunters also hunt seals intermittently year round. However, during recent years, most seal hunting has been during the early summer in open water. In summer, boat crews hunt ringed, spotted, and bearded seals. The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island. In this area, during summer, sealing occurs by boat when hunters apparently concentrate on bearded seals. However, these subsistence hunters have not perceived any interference between recent oil and gas activities in the Alaskan Beaufort Sea.

As part of early consultations with the AEWC, North Slope Borough, and village whaling captain associations, AEC has agreed that the SDC will be shutdown (i.e., cold stacked, ''quiet mode'') during the annual bowhead subsistence hunt (late August-November). This shutdown would eliminate the potential for unmitigable adverse impacts on the availability of marine mammal species for subsistence purposes as a result of the AEC's activities. It is unlikely that AEC's activities will have more than a negligible impact on Nuiqsut seal hunting based on the distance of the McCovey Prospect from the Colville Delta sealing area and AEC's proposed marine mammal monitoring and mitigation measures.

Mitigation

During mobilization of the SDC from Port Clarence to the Beaufort Sea, the AEC will have on-board monitors throughout the transit to ensure they remain as far as operationally practicable from beluga whale concentrations in Kotzebue Sound and Kasegaluk Lagoon and feeding gray whales in the Chuckchi Sea.

AEC proposes to mitigate the potential negative impacts from AEC's re-feuling, re-supply, and exploratory activities at the McCovey Prospect by planning the timing of operations in such a way as to reduce the production of noise during the fall bowhead whale migration. This includes putting the SDC into quiet mode (i.e., cold stack) during the entire bowhead migration period (approximately mid-August through mid-October). In addition to these mitigation measures, the AEC is currently working with the AEWC, North Slope Borough, and other whaling communities on a number of other issues including mitigation plans in the event that the SDC cannot reach the McCovey site prior to the start of the bowhead hunt and transit of supply vessels coming from and returning to Canada.

Monitoring

As part of its application, AEC proposed a visual monitoring program for assessing impacts to marine mammals during the SDC's transit from Port Clarence to the Beaufort Sea and while on-site during the entire re-supply period. In addition, marine mammal observers would be onboard all re-supply vessels transiting from within U.S. waters. NMFS also expects that the AEC will develop an on-ice seal monitoring plan for the exploratory drilling phase. The exact nature of such an on-ice plan should be based on discussions with technical experts and marine mammal biologists prior to and during an on-ice monitoring workshop scheduled for the fall of 2002.

AEC proposes to initiate a comprehensive training program for all potential marine mammal observers that includes learning the identification and behavior of all local species known to use the areas where AEC will be operating. This training would be conducted by professional marine biologists and experienced Native observers participating in the monitoring program. The observer protocol would be to scan the area around vessels and the SDC with binoculars of sufficient power during daylight hours and using night vision equipment during low light conditions. Laser range finding binoculars would be supplied to observers in order to better estimate distances. Observers would collect data on the presence, distribution, and behavior of marine mammals relative to AEC activities as well as climatic conditions at the time of marine mammal sightings. Observations would be made on a nearly 24-hour basis from the time the SDC leaves Port Clarence until the SDC shuts down for the fall (on or before September 1, 2002). If re-supply efforts are necessary between the end of the fall bowhead whale harvest and ice-over, observers would be re-deployed on the SDC and supply vessels. All personnel stationed aboard the SDC during the open water season of 2002 or during exploratory drilling would also receive training on marine mammal monitoring and utilize marine mammal reporting forms to document any incidental takes of marine mammals.

As required by the MMPA, this proposed monitoring plan, as well as the need for on-ice monitoring during exploratory drilling, will be subject to a peer-review panel of technical experts prior to formal acceptance by NMFS.

Reporting

All monitoring data collected would be reported to NMFS and the MMS on a daily or weekly basis. AEC must provide an initial report on 2002–2003 activities to NMFS within 90 days of the completion of the monitoring program. This report will provide dates and locations of the SDC movements, re-supply activities, and other operational activities, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A draft technical report will be provided to NMFS as soon as possible, but no later than 90 days, following the cessation of 2003 exploratory activities at McCovey. The draft technical report will contain a description of the methods, results, and an analysis of all marine mammal monitoring results as they relate to SDC mobilization, re-fueling and re-supply activities, and exploratory activities on McCovey Prospect.

Endangered Species Act Consultation

If an authorization to incidentally harass listed marine mammals is issued under the MMPA for this activity, NMFS will issue an Incidental Take Statement under section 7 of the ESA.

National Environmental Policy Act

In accordance with section 6.01 of NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action, as laid out in AEC's application, and has preliminarily determined that the issuance of an IHA to AEC will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27 and is therefore categorically excluded from further NEPA analysis. In addition to the required NEPA analysis for categorical exclusion, NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996) stated that for issuance of an IHA, NMFS must first determine that the taking (by harassment) would not result in any serious injury or death to a marine mammal, would have no more than a negligible impact on marine mammals and their habitat, and would not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Therefore, NMFS' decision-making process for IHA issuance or denial independently and separately analyzes factors similar to those suggested under section 6.01 of NOAA Administrative Order 216–6 for determining the significance of agency actions for the purposes of NEPA.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of SDC mobilization from Port Clarence, AK through the Bering Strait and Chukchi Sea to the Beaufort Sea and exploratory drilling and associated activities at the McCovey Prospect in the Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of whales, porpoise, and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise or visual cues, this behavioral change is expected to have a negligible impact on the survival and recruitment of stocks.

While the number of potential incidental harassment takes will depend on the year-to-year distribution and abundance of marine mammals in the area of operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and there is no potential for temporary or permanent hearing impairment as a result of the activities. During SDC mobilization, operations will pass through beluga whale summering grounds in the Kotzebue Sound and Kasegaluk Lagoon and gray whale feeding grounds in the Chukchi Sea. The potential for harassment throughout the Chukchi region will be greatly reduced through constant visual monitoring in these areas. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the McCovey Prospect during re-supply, re-fueling and exploratory drilling operations.

Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between AEC and subsistence users and may include additional mitigation measures.

Proposed Authorization

NMFS proposes to issue an IHA for the harassment of marine mammals incidental to movement of a SDC from Port Clarence, AK to the Beaufort Sea and planned exploratory drilling and associated activities at the McCovey Exploration Prospect in the western Beaufort Sea. This IHA proposal is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bowhead whales, beluga whales, gray whales, killer whales, harbor porpoise, ringed seals, bearded seals and spotted seals; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses once the Plan of Cooperation and CAA is finalized.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225.

Dated: March 6, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–5916 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410097–2041–05]

RIN 0660–ZA–11

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Availability of Funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. The deadline for receipt of applications for the Public Telecommunications Facilities Program (PTFP), which is also funded from this account, was February 5, 2002. The PTFP deadline was published in the **Federal Register** on November 20, 2001 (66 FR 58302).

DATES: Applications for the PEACESAT Program grant must be received on or before 5:00 p.m. on April 11, 2002. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. NTIA will not accept mail delivery of applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

ADDRESSES: To submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Applicants submitting applications by

hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. The security office is located in Room 1874, located at Entrance No. 10 on the 15th St. NW side of the building.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156.

SUPPLEMENTARY INFORMATION:

I. Application Forms and Requirements

Funding for the PEACESAT Program is provided pursuant to Public Law 107–77, the ''Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2002'' and Public Law 106–113, ''The Consolidated Appropriations Act, Fiscal Year 2000.'' Public Law 106–113 provides ''That, hereafter, notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds.'' The PEACESAT Program was authorized under Pub. L. 100–584 (102 Stat. 2970) and also Pub. L. 101–555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Public Law 107–77 appropriated $43.5 million for this account to be awarded for Public Telecommunications Facilities Program (PTFP) grants and for PEACESAT Program grants. The solicitation notice for the PTFP Program was published in the **Federal Register** on November 20, 2001 (66 FR 58302). Applications submitted in response to this solicitation for PEACESAT applications are not subject to the requirements of the November 20, 2001 Notice and are exempt from the PTFP regulations at 15 CFR part 2301. NTIA anticipates making a single award for approximately $475,000 for the PEACESAT Program in FY2002.

NTIA requests that each applicant for a PEACESAT Program grant supply one (1) original signed application and five (5) copies, unless doing so would present a financial hardship, in which case the applicant may submit one(1) original and two (2) copies of the application. The application form consists of the Standard Form 424, *Application for Federal Assistance;* Standard Form 424A, *Budget Information-Non-Construction Programs;* Standard Form 424 B, *Assurances;* Standard Form CD–511, *Certification;* and Standard Form LLL, *Disclosure of Lobbying Activities* (if applicable). These requirements are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget control number.

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

The costs allowable under this Notice are not subject to the limitation on costs contained in the November 20, 2001 Notice regarding the PTFP Program.

II. Administrative Requirements; Scope of Project and Eligible Costs; Evaluation and Selection Process.

Public Law Number 107–77 was enacted November 28, 2001. Public Law 107–77 appropriated funds to the Public Broadcasting, Facilities, Planning and Construction Funds account. Pursuant to Public Law 106–113 the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program can compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. Funds appropriated to the Public Broadcasting, Facilities, Planning and Construction Funds account do not carry fiscal year limitations. A notice published on March 16, 1999 set forth the scope of the project and eligible costs, and a description of the evaluation and selection process for applications for the PEACESAT Program. Since funds for the Public Broadcasting, Facilities, Planning and Construction Funds account are available without fiscal year limitations, the administrative requirements; scope of project and eligible costs criteria; and evaluation and selection process criteria set forth in the March 16, 1999 notice apply to the 1999 PEACESAT program and to all subsequent years. A copy of the March 16,1999 Notice is available to potential applicants from NTIA at the address listed in the Address section and is also available on the Internet at *www.ntia.doc.gov/otiahome/peacesat.html.* If, in the future, NTIA changes the administrative requirements; the scope of project and eligible costs criteria; or the evaluation and selection process criteria, a new notice will be published containing the new criteria and requirements. Unsuccessful applications will be destroyed.

Applicants for grants for the PEACESAT Program must file their applications on or before April 11, 2002. NTIA anticipates making the grant award by September 30, 2002. NTIA shall not be liable for any proposal preparation costs.

III. Project Period

Any project awarded pursuant to this notice will be for a one-year period.

IV. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation, unless stated otherwise in this notice. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbaugh,* 172 F. Supp.2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

V. Executive Order 12866

It has been determined that this notice is ''not significant'' for the purpose of Executive Order 12866.

VI. Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

VII. Regulatory Flexibility Analysis

Because notice and comment are not required under 5 USC 553, or any other law, for this notice related to public property, loans, grants, benefits or contracts, 5 USC 553(a), a Regulatory Flexibility Analysis is not required and

has not been prepared for this notice. 5 USC 601 *et seq.*

Authority: Pub. L. 107–77 the ''Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2002'' and Pub. L. 106–113, ''The Consolidated Appropriations Act, Fiscal Year 2000.''

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 02–5857 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

March 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A package of apparel benefits has been granted to the Government of Pakistan, and is laid out in the Annex to a February 21, 2002 letter from Commerce Department International Trade Administration Under Secretary Grant Aldonas to the Pakistani Secretary of Commerce, Mr. Mirza Qamar Beg, in response to Secretary Beg's letter of February 4, 2002. In the attached directive, 2002 limits for imports of certain apparel categories from Pakistan are being raised reflecting the increases to base limits provided in the Annex to Under Secretary Aldonas' letter.

The base limits for certain categories are being raised by 15%; also, some of these limits reflect reductions previously made for carryforward that was applied to the 2001 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2000). Also see 66 FR 63683, published on December 10, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 6, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on March 12, 2002, you are directed to raise the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Specific limits	
331pt./631pt. [2]	905,976 dozen pairs.
334/634	389,495 dozen.
335/635	630,644 dozen.
341/641	1,244,490 dozen.
351/651	527,543 dozen.
638/639	700,857 dozen.
647/648	1,328,797 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–5879 Filed 3–11–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 13, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the USACE, Directorate of Civil Works, Institute for Water Resources, 7701 Telegraph Road/Casey Building, Alexandria, Virginia 22315–3868, ATTN: Virginia Pankow. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title, Associated Form, and OMB Number: Terminal and Transfer Facilities Descriptions, ENG FORMS, 1,2,3,4,5,6,7,8,9; OMB Control No. 0710–0007.

Needs and Uses: Data gathered, and published as one of the 56 Port Series Report, relate to terminals, transfer facilities, storage facilities, and intermodal transportation. This

information is used in navigation, planning, safety, National Security, emergency operations, and general interest studies and activities. Respondents are the terminal and transfer facility operators.

Affected Public: Business or other for profit.

Annual Burden Hours: 372.

Number of Respondents: 1,489.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION: The data is used by the Corps of Engineers, in conjunction with other navigation information of waterway freight and passenger traffic, to evaluate the impact of redefining ''the justified level of service'' of the channel maintenance program. These data are also essential to the Waterborne Commerce Statistics Center in exercising their enforcement and quality control responsibilities in the collection of data from vessel reporting companies.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5906 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 13, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the USACE, Directorate of Civil Works, Institute for Water Resources, 7701 Telegraph Road/Casey Building, Alexandria, Virginia 22315–3868, ATTN: Virginia Pankow. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title, Associated Form, and OMB Number: Lock Performance Monitoring System (LPMS) Waterway Traffic Report; ENG Forms 3102C, 3102D; OMB Control No. 0710–0008.

Needs and Uses: The U.S. Army Corps of Engineers utilizes the data collected to monitor and analyze the use and operation of federally owned and operated locks. Owners, agents and, masters of vessels provide general data about vessels and estimated tonnage and commodities carried. The information is used for sizing and scheduling replacement or maintenance of locks and canals.

Affected Public: Business or other for profit.

Annual Burden Hours: 28,507.

Number of Respondents: 3,000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The data is used primarily by the Corps of Engineers in conducting a systems wide approach to planning and management of the waterway. The Headquarters, Division and District Offices use the information specifically to assist in making determinations on: Adequate staffing for operations and maintenance of the navigation locks and dams; to justify the hours of locks operation; to provide a basis to justify the continued funding as set out in the President's Operation and Maintenance, General Budget; to schedule route maintenance and repairs; to serve as a basis for studies and plans for improvement; for lock operating procedures; to provide data to be used in analyses for major modifications or replacements to lock and dam structures; and to forecast the impact the lock delays, downtime, and proposed changes have on the diversion of waterborne commerce to other transportation modes.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5907 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 13, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the U.S. Army Corps of Engineers, Directorate of Civil Works, 441 G Street, NW., Washington, DC 20314–1000, ATTN: CECW–OR (Celestine S. Robertson). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 692–1451.

Title, Associated Form, and OMB Number: Customer Service Survey—Regulatory Program U.S. Army Corps of Engineers; ENG Form 5065; OMB Control No. 0710–0012.

Needs and Uses: Survey of applicants who are required to obtain permits from the U.S. Army Corps of Engineers to

build on or conduct dredge and fill operations in United States waters. Opinions on the quality of service are used to make program improvements.

Affected Public: Business or Other for Profit.

Annual Burden Hours: 15,000.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Corps will conduct surveys of customers at our districts, division and headquarters offices, currently a total of 49 offices. Most customer responses will be solicited by the 38 districts. These elements will tabulate their survey results and send copies to headquarters for a Corps wide tabulation. The survey form will be provided to the public when they receive a regulatory product, primarily a permit decision or wetland determination.

Luz Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5908 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning High-Throughput Assays for the Proteolytic Activities of Clostridial Neurotoxins

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/962,260 entitled ''High Throughput Assays for the Proteolytic Activities of Clostridial Neurotoxins'' filed September 25, 2001. Foreign rights are also available (PCT/US01/30188). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: In this application are described substrates for high-throughput assays of clostridial neurotoxin proteolytic activities. Two types of substrates are described for use in assays for the proteolytic activities of clostridial neurotoxins: (1) Modified peptides or proteins that can serve as FRET substrates and (2) modified peptides or proteins that can serve as immobilized substrates. In both types a fluorescent molecules is present in the substrate, eliminating the requirement for the addition of a fluorigenic reagent. The assays described can be readily adapted for use in automated or robotic systems.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5903 Filed 1–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Compositions and Methods for Reducing Blood and Fluid Loss From Open Wounds

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 60/300,384 entitled ''Compositions and Methods for Reducing Blood and Fluid Loss from Open Wounds'' filed June 22, 2001. The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention described herein relates to methods for reducing and/or stopping bleeding or fluid loss from open wound, denuded tissue or burned skin, comprising the step of applying to the open wound, denuded tissue or burned skin a gel-forming composition comprising at least one of the following compositions: a polyacrylic acid having the structural formula $[CH_2{=}CHCO_2H]n$, where n is between 10,000 and 70,000; a polyacrylic acid and a dessicated water soluble organic or inorganic base; polyacrylic acid and a dessicated poorly soluble basic salt, and a polyvinyl alcohol having the structural formula of $[CH_2{=}CHOH]n$, where n is between 15,000 and 150,000. When the gel-forming composition is applied to the open wound, denuded tissue, or burned skin, its ions react therein the presence of water from blood or body fluid therein to form an aqueous gel or mucilage having sufficient viscosity and adhesiveness to cover and adhere to the open wound, denuded tissue, or burned skin so that bleeding or fluid loss is thereby reduced and/or stopped.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5902 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method for Detecting Clostridium Botulinum Neurotoxin Serotypes A, B, E and F in a Sample

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/952,078 entitled ''Method for Detecting Clostridium Botulinum Neurotoxin Serotypes A, B, E and F in a Sample'' filed September 14, 2001. Foreign rights are also available (PCT/US01/28641). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Sensitive and specific enzyme-linked immunosorbent assays which detect Clostridium botulinum neurotoxins serotypes A, B, E, and F in a sample are described. The assay is based upon affinity-purified antibodies directed against the C-fragments of each toxin. These assays demonstrate sensitivity close to that on the mouse bioassay without the use of animals and in a much simpler format than other assays of similar sensitivity.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5899 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method for Detecting Clostridium Botulinum Neurotoxin Serotypes A, B, E and F in a Sample

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 60/232,929 entitled ''Method for Detecting Clostridium Botulinum Neurotoxin Serotypes A, B, E and F in a Sample'' filed September 15, 2000. Foreign rights are also available (PCT/US01/28641). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to a simple, sensitive colorimetric capture ELISA for BoNTs with detection limits at or below 1 mouse unit. The assay is reproducible and accurate with negligible cross-reactivity between serotypes. The strength of the assay relies on its novel format and the unique preparation of the antibodies used in the assay. The antibodies are affinity-purified to the heavy chain C-fragment of the toxin. Others have used antibodies, which are not affinity purified or which are purified to the whole toxin molecule. We reasoned that since the C-terminal region of the heavy chain is where the binding domain is located, this portion of the molecule should not be covered by associated proteins, if the binding domain is located, this portion of the molecule should not be covered by associated proteins; if the binding domain was blocked, then the molecule would be precluded from binding to the cell surface and would not be toxic. Thus, the binding region ''looks'' the same in both the purified and complex forms. Antibodies to this region should recognize preparation of the antibodies is that they do not cross-react between serotypes, they recognize neutralizing epitopes, and they recognize purified and complex toxins equally.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5905 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Diagnosis of Exposure to Toxic Agents by Measuring Distinct Patterns in the Levels of Specific Genes

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/876,249 entitled ''Diagnosis of Exposure to Toxic Agents by Measuring Distinct Patterns in the Levels of Specific Genes'' filed June 7, 2001. Foreign rights are also available (PCT/US00/02756). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to a novel method of diagnosing the exposure to toxic agents based on relative ratios or changes in levels of the genes/proteins in mammalian tissue or body fluids from normal levels. The present invention further relates to compositions and uses thereof for treating lethal shock induced by toxic agents.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5900 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Digital Radiographic Sensor View Capture

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/954,678 entitled ''Digital Radiographic Sensor View Capture'' filed Sept. 14, 2001. Foreign Rights are also available (PCT/US01/29662). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: An apparatus including but not limited to a charge-coupled device (CCD)-array sensor positioning mechanism, the positioning mechanism structured to position a CCD-array sensor to capture a first target area; and the CCD-array sensor to capture a second target area proximate to the first target area, the first and second target areas spatially related such that a first radiographic image recorded at the first target area may be combined with a second

radiographic image recorded at the second target area to form a composite radiographic image substantially analogous to a single radiographic image of an aggregate target area covered by the first and second target areas. A related method that includes but is not limited to recording a first radiographic image of a first target area using CCD-array sensor techniques; recording a second radiographic image of a second target area, the second target area proximate to the first target area, using CCD-array sensor techniques; and displaying a composite image constructed from the first and second image.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5901 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Human Liver Cell Line

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/962,364 entitled ''Human Liver Cell Line'' filed September 25, 2001. Foreign rights are also available (PCT/US01/29975). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: In this application is described the establishment and maintenance of a normal human hepatocyte cell line able to support complete development of malaria parasite development in vitro. Advantages and uses of the cell line are also described.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–5904 Filed 3–11–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 13, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 4, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Reinstatement.

Title: William D. Ford Federal Direct Loan Program Deferment Request Forms.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 715,152.

Burden Hours: 143,030.

Abstract: These forms serve as the means by which the U.S. Department of Education collects the information needed to determine whether a Direct Loan borrower qualifies for a loan deferment.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5796 Filed 3–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 7, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Program for International Student Assessment (PISA).
Frequency: One-time.
Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,440,
Burden Hours: 4,817.
Abstract: The Program for International Student Assessment (PISA) is a new system of international assessments that focus on 15-year-olds' capabilities in reading literacy, mathematics literacy, and science literacy. PISA 2000 was the first cycle of PISA, which will be conducted every three years, with a primary focus on one area for each cycle. PISA 2000 focuses on reading literacy; mathematics literacy will be the focus in 2003, and science literacy in 2006. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742 or via her internet *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–5847 Filed 3–11–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–90–000, CP02–91–000, CP02–92–000, and CP02–93–000]

AES Ocean Express LLC; Notice of Application for Certificates of Public Convenience and Necessity, and for Section 3 Authorization and a Presidential Permit

March 5, 2002.

Take notice that on February 21, 2002, AES Ocean Express LLC (Ocean Express), Two Alhambra Plaza, Suite 1104, Coral Gables, Florida, 33134, filed applications pursuant to Sections 3 and 7(c) of the Natural Gas Act (NGA). Ocean Express is a limited liability company organized under the laws of the State of Delaware. Ocean Express is an indirect, wholly-owned subsidiary of The AES Corporation.

In Docket No. CP02–90–000, Ocean Express seeks a certificate of public convenience and necessity authorizing Ocean Express to construct, own, and operate a new natural gas pipeline under Part 157, Subpart A of the Commission's Regulations. In Docket No. CP02–91–000, Ocean Express seeks a blanket certificate for certain blanket construction and operation authorization under Part 157, Subpart F of the Commission's Regulations. In Docket No. CP02–92–000, Ocean Express seeks a blanket certificate under Part 284, Subpart G of the Commission's Regulations for self-implementing transportation authority. In Docket No. CP02–93–000, Ocean Express seeks a Presidential Permit and Section 3 authorization pursuant to Part 153 of the Commission's Regulations.

The Applications are on file with the Commission and open to public inspection. The filings may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, selecting ''Docket #'' and following the instructions (please call (202) 208–2222 for assistance). Any questions regarding the application may be directed to Kimberly Hall, AES Ocean Express LLC, Two Alhambra Plaza, Suite 1104, Coral Gables, FL 33134, (305) 444–4002.

In Docket No. CP02–90–000, Ocean Express requests authorization to construct, own, and operate a new 24-inch diameter, approximately 52.4-mile interstate natural gas pipeline, consisting of a 46.1 mile offshore segment and a 6.3-mile onshore segment.

The offshore pipeline will extend from Exclusive Economic Zone (EEZ) boundary between the United States and The Bahamas in the Atlantic Ocean, off the southeast Florida coastline[1] to the Dania Beach Boulevard traffic circle in Broward County, Florida. After making landfall at the Dania Beach Boulevard traffic circle, the proposed pipeline will continue onshore, in a westward direction, to two delivery points: (i) an interconnection with the Florida Gas Transmission (FGT) system at the Florida Power & Light (FPL) Fort Lauderdale Power Plant, and (ii) an interconnection with the FPL gas line servicing the FPL Fort Lauderdale Power Plant. Ocean Express' proposed pipeline is designed to transport up to 824,000 Dth/day.

Ocean Express states that it will receive, at the EEZ boundary, natural gas transported by an approximately 40.4-mile nonjurisdictional pipeline beginning at a liquefied natural gas (LNG) receiving, storage and regasification facility in Ocean Cay, The

[1] The EEZ is defined in the 1995 Department of State Public Notice 2237—Exclusive Economic Zone and Maritime Boundaries; Notice of Limits U.S. Atlantic Coast and Gulf of Mexico. See 60 *Fed. Reg.* ¶ 43,825 (1995).

Bahamas. Ocean Express states that the nonjurisdictional, foreign pipeline and LNG facility will be constructed, owned and operated by its Bahamian affiliate, AES Ocean LNG, Ltd.

Ocean Express estimates that the total capital cost of constructing the United States part of the pipeline and appurtenant facilities in the United States will be about $93 million. Ocean Express also filed a *pro forma* FERC Gas Tariff showing the initial rate for firm transportation service of a $0.0456/Dth reservation charge. The rate for interruptible service is the 100% load factor equivalent of the firm service rate. The *pro forma* tariff also contains the terms and conditions of the transportation services proposed to be offered by Ocean Express.

Ocean Express says it conducted an open season from September 18, 2001 through October 18, 2001 to receive requests and obtain binding commitments for transportation capacity. As a result, Ocean Express received six requests for additional information on the project, and two bids for capacity. Ocean Express says that only AES LNG Marketing, L.L.C. submitted a conforming bid, resulting in an executed precedent agreement for 800,000 Dth/day.

Ocean Express says that it has consulted with numerous interested stakeholders through the course of developing its project in order to avoid or minimize negative impacts to surrounding communities. Ocean Express has identified a total of fifteen landowners and governmental agencies that could be directly affected by the proposed pipeline. Ocean Express states it will maintain contact with these landowners throughout the course of its project. Ocean Express also states that it will employ construction techniques that minimize environmental impacts. Ocean Express states that it intends to utilize horizontal directional drilling (HDD) technology to construct the approximately 7880 feet of offshore pipeline closest to shore, and explains that use of the HDD technology will avoid or minimize construction-related impact to reef structures near the shore. Ocean Express states it is also using HDD technology for various portions of its onshore route to minimize impacts.

Ocean Express also seeks NGA Section 3 authority and a Presidential Permit to construct, own, operate, and maintain a 24-inch pipeline at the U.S.-Bahamian boundary. Ocean Express states that it will connect with AES Ocean LNG, Ltd., its Bahamian affiliate, at the EEZ boundary between the U.S. and The Bahamas, and that any facilities considered to be ''border facilities'' will be a segment of 24-inch diameter at that location on the EEZ boundary.

Ocean Express requests that the Commission issue a preliminary determination on non-environmental issues by July 2002, and a final certificate authorization by March 2003. Ocean Express says that this will allow construction to be completed by a proposed in-service date of November 1, 2004. This proposed in-service date depends on the timing of financing commitments. If financing commitments cannot be secured on the basis of a preliminary determination issued by the Commission, then Ocean Express proposes an alternative in-service date of March 1, 2005 because of such commercial considerations.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before March 26, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to take, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5718 Filed 3–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PA02–2–000]

Fact-finding Investigation of Potential Manipulation of Electric and Natural Gas Prices; All Jurisdictional Sellers and All Non-jurisdictional Sellers in the West

March 5, 2002.

On February 13, 2002, the Commission issued an order directing Staff to conduct a fact-finding investigation into whether any entity, including Enron Corporation (through its affiliates or subsidiaries), manipulated short-term prices in electric energy or natural gas markets in the West or otherwise exercised undue influence over wholesale prices in the West, for the period January 1, 2000, forward. In Ordering Paragraph (B) of the February 13, 2002, order, the Commission empowered the General Counsel or her designee, with respect to any matters relevant to that investigation, to gather information and to require the production of any contracts, agreements or other records, among other things.

In the course of conducting this fact-finding investigation, Staff reviewed the wholesale sales information filed by jurisdictional sellers in their quarterly reports. Staff determined that the information contained in the reports is not useful for the fact-finding investigation. Moreover, the information is incomplete as to the markets in the West because non-jurisdictional sellers of wholesale energy do not file quarterly reports.

Accordingly, pursuant to the February 13, 2002, order, I hereby direct all jurisdictional sellers and all non-jurisdictional sellers with wholesales sales in the U.S. portion of the Western Systems Coordinating Council (WSCC) to respond to this information request, as described in more detail below. The failure to respond on the part of any seller to which this information request applies may result in appropriate enforcement action, including the issuance of a subpoena. Any jurisdictional seller that does not have any transactions to report is to report that fact to the e-mail address listed below.

All jurisdictional sellers and all non-jurisdictional sellers with wholesales sales in U.S. portion of the WSCC are required to report on a daily basis certain historical information (specified in an Excel spreadsheet template entitled ''Short-term Firm and Non-firm Wholesale Sales Transactions'') for all short-term energy transactions in the U.S. portion of the WSCC for calendar years 2000 and 2001. Short-term energy transactions are defined as those transactions for sales or resales with a term of one week or less. The spreadsheet template includes columns for quantity and price data, transactions with affiliated buyers, non-affiliated buyers, and by specific, identified delivery points.

All jurisdictional and non-jurisdictional sellers with wholesale sales in the U.S. portion of the WSCC are required to report certain historical information for calendar years 2000 and 2001 (specified in an Excel spreadsheet template entitled ''Monthly Firm and Non-Firm Wholesale Sales Transactions'') for transactions of capacity and energy in the U.S. portion of the WSCC on a monthly basis. Monthly transactions are defined as all wholesale capacity and wholesale energy sales or resales that were made on a monthly, seasonal, or quarterly basis. The spreadsheet template includes columns for quantity and price data, transactions with affiliated buyers, non-affiliated buyers, and by specific, identified delivery points.

All jurisdictional sellers and all non-jurisdictional sellers with wholesales sales in the U.S. portion in the WSCC are required to report certain historical and projected information (specified in an Excel spreadsheet template entitled ''Long Term Capacity and Energy Sales'') for all long-term transactions in the U.S. portion of the WSCC, the contracts for which were executed for delivery on or after January 1, 2000. Long-term transactions are defined as those transactions for a term of one year or more. For the date on which any long-term contract was executed, the spreadsheet template includes columns for quantity and price data, term dates, transactions with affiliated buyers, non-affiliated buyers, and by location. Respondents are also required to provide copies of the relevant contracts, together with all supplements and amendments, in electronic (scanned) format.

Responses must be provided no later than April 2, 2002. The three Excel spreadsheets needed to complete this information request are contained in two files posted on the Commission's web page for Docket No. PA02–2–000 (*http://www.ferc.gov/electric/bulkpower/pa02–2/pa02–2.htm*). These spreadsheets are to be completed by respondents and e-mailed to *william.booth@ferc.gov*. A response that exceeds the row limit for an Excel spreadsheet must be reported in CSV format. If any respondent seeks privileged treatment of the information pursuant to 18 CFR 388.112 (2001), two versions of each spreadsheet should be e-mailed. Include in the e-mail and in the title of the spreadsheet that the information is ''Confidential'' or ''Not Confidential.''

A copy of this information request will be published in the **Federal Register** and published on the Commission's web page for Docket No. PA02–2–000 (*http://www.ferc.gov/electric/bulkpower/pa02–2/pa02–2.htm*). In addition, it also will be mailed to all the jurisdictional public utilities listed in the appendix to the November 20, 2001, order in Docket No. EL01–118–000.

Respondents seeking assistance with this information request may contact Mr. William Booth at 202–208–0849 (technical) or Ms. Jo Tolley at 202–208–1260 (non-technical).

Donald J. Gelinas,

Associate Director, Office of Markets, Tariffs and Rates.

[FR Doc. 02–5721 Filed 3–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–93–005, et al.]

Mirant Americas Energy Marketing, L.P., et al.; Electric Rate and Corporate Regulation Filings

March 5, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Mirant Americas Energy Marketing, L.P.; Mirant New England, LLC; Mirant Kendall, LLC; and Mirant Canal, LLC v. ISO New England Inc.

[Docket No. EL01–93–005]

Take notice that on February 25, 2002, ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) its compliance filing in response to the Commission's October 26, 2001 Order in the above-referenced proceeding.

Copies of said filing have been served upon all parties to this proceeding, NEPOOL Participants, and all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment Date: March 27, 2002.

2. Arizona Public Service Company

[Docket No. ER02–1174–000]

Take notice that on February 28, 2002, Arizona Public Service Company (APS) tendered for filing a revised Contract Demand Exhibit for Southern California Edison (SCE) applicable under the APS-FERC Rate Schedule No. 120.

Copies of this filing have been served on SCE, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment Date: March 21, 2002.

3. San Diego Gas & Electric Company

[Docket No. ER02–1180–000]

Take notice that on February 28, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its Service Agreements numbers 13 and 14 to its FERC Electric Tariff, First Revised Volume No. 6, two interconnection agreements. Both agreements relate to the interconnection of new generation plants to be owned by Energia Azteca X, S. de R.L. de C.V. and Energia de Baja California, S. de R.L. de C.V. The plants, with a capacity of 685 megawatts, are being constructed on an expedited basis to meet electricity demand in the Western United States, Baja California, Mexico, and the San Diego Basin. They will be located near Mexicali, Mexico, and are expected to begin service on or about July 1, 2002.

Service Agreement No. 13 is an Expedited Interconnection Facilities Agreement dated February 1, 2002 between SDG&E and Baja California Power, Inc., under which SDG&E will construct, operate and maintain the proposed interconnection facilities. Service Agreement No. 14, the Interconnection Agreement between SDG&E and Baja California Power, Inc., dated February 1, 2002, establishes interconnection and operating responsibilities and associated communications procedures between the parties. SDG&E requests an effective date of May 15, 2002 for both agreements.

SDG&E states that copies of the filing have been served on Baja California Power, Inc., and on the California Public Utilities Commission.

Comment Date: March 21, 2002.

4. Nevada Power Company

[Docket Nos. ER01–2754–003, ER01–2755–003, ER01–2758–003, and ER01–2759–003]

Take notice that on February 27, 2002, Nevada Power Company (Nevada Power) filed, pursuant to Section 205 of the Federal Power Act and the Federal Energy Regulatory Commission's (Commission) Orders dated December 20, 2001 and February 21, 2002 in the above-referenced proceedings, transmission service agreements that have been revised in accordance with the Commission's December 20, 2001 Order.

Comment Date: March 20, 2002.

5. PJM Interconnection, L.L.C.

[Docket No. ER02–1171–000]

Take notice that on February 28, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing executed service agreements for firm point-to-point transmission service, non-firm point-to-point transmission service, and network integration transmission service for Rockland Electric Company.

PJM requested a waiver of the Commission's notice requirement to permit a March 1, 2002 effective date for the agreements.

Copies of this filing were served upon Rockland Electric Company and the state commissions within the PJM region.

Comment Date: March 21, 2002.

6. International Transmission Company

[Docket No. ER02–1172–000]

Take notice that on February 28, 2002, International Transmission Co., (International Transmission) pursuant to Section 205 of the Federal Power Act, submitted for filing with the Federal Energy Regulatory Commission (Commission) agreements for the provision of non-discriminatory transmission service under the joint open access transmission tariff (JOATT) between International Transmission and Michigan Electric Transmission Company (METC).

Comment Date: March 21, 2002.

7. Front Range Power Company, LLC

[Docket No. ER02–1173–000]

Take notice that on February 28, 2002, Front Range Power Company, LLC (FRPC), a Colorado limited liability company, applied to the Federal Energy Regulatory Commission (Commission) for acceptance of Front Range Power Company, LLC, Electric Tariff, Original Volume No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; the waiver of certain Commission regulations; and the waiver of certain notice requirements. The application also asks the Commission to accept for filing service agreements with Public Service Company of Colorado and Colorado Springs Utilities.

Comment Date: March 21, 2002.

8. Arizona Public Service Company

[Docket No. ER02–1174–000]

Take notice that on February 28, 2002, Arizona Public Service Company (APS) tendered for filing a revised Contract Demand Exhibit for Southern California Edison (SCE) applicable under the APS-FERC Rate Schedule No. 120.

Copies of this filing have been served on SCE, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment Date: March 21, 2002.

9. Aroostook Valley Electric Company

[Docket No. ER02–1175–000]

Take notice that on February 28, 2002, Aroostook Valley Electric Company, tendered for filing a notice of succession and amendments to an existing market-based rate tariff to reflect the name change from Aroostook Valley Electric Company, which owns a 31 MW wood-burning power plant in Fort Fairfield, Maine, to Boralex Fort Fairfield Inc. and to remove language from the tariff to comply with *Calhoun Power Company I, LLC*, 96 FERC ¶ 61,056 (2001).

Comment Date: March 21, 2002.

10. American Electric Power Service Corporation

[Docket No. ER02–1176–000]

Take notice that on February 28, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing Firm and Non-Firm Point-to-Point Transmission (PTP) Service Agreements for Dominion Energy Marketing, Inc, Progress Ventures, Inc., and Wisconsin Public Service Corporation, a revised Network Integration Service Agreement for Wabash Valley Power Association, Inc., and a Long-Term Firm PTP Service Agreement Specification for AEPSC's Power Marketing Organization. These agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective on and after February 1, 2002. A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: March 21, 2002.

11. Tampa Electric Company

[Docket No. ER02–1177–000]

Take notice that on February 28, 2002, Tampa Electric Company (TEC)

tendered for filing pursuant to section 205 of the Federal Power Act an executed Interconnection and Operating Agreement between TEC and Auburndale Peaker Energy Center, L.L.C. as a service agreement under TEC's open access transmission tariff.

Comment Date: March 21, 2002.

12. Ocean State Power II

[Docket No. ER02–1178–000]

Take notice that on February 28, 2002, Ocean State Power II (Ocean State II), tendered for filing revised pages to Rate Schedule FERC Nos. 5–8, which update Ocean State II's rate of return on equity (ROE) with respect to such rate schedules.

Ocean State II requests an effective date of April 29, 2002. Copies of the Supplements have been served upon, among others, Ocean State II's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment Date: March 21, 2002.

13. Ameren Services Company

[Docket No. ER02–1181–000]

Take notice that on February 28, 2002, Ameren Services Company (Ameren Services) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between Ameren Services and MidAmerican Energy Company. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to MidAmerican Energy Company pursuant to Ameren's Open Access Tariff.

Comment Date: March 21, 2002.

14. Niagara Mohawk Power Corporation

[Docket No. ER02–1182–000]

Take notice that on February 28, 2002, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing its Rate Schedule No. 314 with the City of Jamestown Board of Public Utilities (Jamestown).

Copies of the filing have been served on counsel for Jamestown, the Power Authority of the State of New York, the New York Independent System Operator, Inc. and the New York State Public Service Commission.

Comment Date: March 21, 2002.

15. Commonwealth Edison Company

[Docket No. ER02–1183–000]

Take notice that on February 28, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Service Agreement for Short-Term Firm Point-to-Point Transmission Service (Service Agreement) and the associated unexecuted Dynamic Scheduling Agreement (DSA) with Exelon Generation Company, LLC (Exelon) under ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of March 1, 2002, and accordingly, requests waiver of the Commission's notice requirements. A copy of this filing was served on Exelon and ORMET Corporation.

Comment Date: March 21, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5855 Filed 3–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, Comments, Recommendations, and Terms and Conditions

March 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12144–000.

c. *Date filed:* January 23, 2002.

d. *Applicant:* Pristine Springs, Inc.

e. *Name of Project:* Pristine Springs Hydro #3.

f. *Location:* On Warm Creek, in Jerome County, Idaho. The project would not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Nyal Hoffman, 2122E 3950N, Filer, Idaho 83328, (208) 326–5680.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see the following paragraphs about filing responsive documents.

k. *Deadline for filing motions to intervene, protests and comments:* (April 14, 2002).

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. Please include the Project Number (P–12144–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The project will be located at the outflow of an existing Aquaculture facility. The existing outflow exits an existing dam through a concrete structure and into the Snake River. The hydroelectric facility will consist of a new concrete structure connected to the existing one. The project will consist of a new powerhouse and a new 500 kW turbine generating unit. A channel will be built that allows the water to go through the turbine and exit by a 80-inch pipeline to the Snake River. The turbine will be operated as run-of-river. Approximately 4000 feet of power lines will be built to

connect with lines that exist on the property. The average annual generation would be 1,762,305 kWh.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests of Motions to Intervene*—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, 385.211, and 385.214. 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 on or before the specified deadline date for the particular application.

q. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

r. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

s. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the Service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5854 Filed 3–11–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7156–7]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Louisiana Oil Recycle & Reuse Site, Baton Rouge, Louisiana, with the parties referenced in the Supplementary Information portion of this notice.

The settlement requires the settling deminimis parties to pay a total of $73,176.87 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before April 11, 2002.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Janice Bivens, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6717. Comments should reference the Louisiana Oil Recycle & Reuse Site, Baton Rouge, Louisiana, and EPA Docket Number 6–04–02, and should be addressed to Janice Bivens at the address listed above.

FOR FURTHER INFORMATION CONTACT: Amy McGee, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–8063.

SUPPLEMENTARY INFORMATION:

Acadian Ambulance
American Manufacturing (American Cordage)
Ascension Parish (LA) Police Jury
Atlas Processing (Pennzoil Quaker State)
Atlas Wireline Service (Baker-Hughes)
Aviation Labs
B&B Auto
B.F. Goodrich Chemical
Bercen, Inc.
Bob Wall's Automotive
BP Oil Company, and Sohio
Brandt Company
C & L Supply
Cabot Corporation (Haynes International)
Caleb Brett Industries
Carboline, Inc.
Catalyst Recovery
CCL Custom Manuf. (Peterson Puritan, Inc.)
CENLA Ambulance (Rapides Regional Med. Ctr.)
Cherry Picker Parts & Service
Coastal Fluid (Coastal Chemical Co., L.L.C.)
Conoco, Inc.
Daniel Oil Tool (Emerson Process Mgmt.)
Don's Auto Shop
Dravo Lime
Dresser Industries/Dresser Pump
DSI Transport
Durametallic (FlowServe Corp.)
Enron Trading (EOTT)
Ferriday Farm Equipment
Francis Drilling Fluid
Futrell Chevrolet
General Electric
George Lato
G. N. Gonzales
Greenwell Springs Hospital (E. LA Mental Health System)
Groendyke Transport, Inc.
Halliburton Logging
Hammond (LA) State School
Highland Hardware
Howell Industries
I.E.W. Systems, Inc. (Universal Compression Inc.)
Iberville (LA) Policy Jury
Ingersoll-Rand
Inspectorate American/Charles Martin
Intercontinental Terminals
International Paint (AKZO-Nobel)
Ken Coleman Equipment
Koch Pipeline Company, L.P.
KRC Southern (Voith Paper)
L & B Transportation Co., Inc.
Lincoln Big Three Inc.
Liquid Air Engineering Corp. (Air Liquide)
Liquid Carbonic (Praxair)
Lewis Grocer
Louisiana Community & Technical College
Louisiana Industries (TXI)
Luv-n-Care
M & L Industries
MacKenzie Chemical (Murdoch Corp.)
Melamine Chemical
N L McCullough Industries, Inc. (Baker-Atlas)
U.S. Navy
Occidental Chemical Corporation
Oddis Machine (Otis-Halliburton)
OHM Corporation
Our Lady of the Lake Hospital (Baton Rouge, LA)
P & H Tube
Pierce Properties
Purina Mills, Inc.
Quality Diesel
Raymond Pylant
Richard Oil Company
Rubicon, Inc.
Schuylkill Metals (Exide Technology)
SEPCO Industries (DPX Enterprises, Inc.)
Sewell Plastics (Crown Cork & Seal)
Shell Western E & P
Simmons Tractor
Solar Turbines
Southern Flo, Inc.
Southern Natural Gas (El Paso Corp.)
Southern Scrap Materials, Ltd.
Speciality Oil (Pennzoil-Quaker State)
Stupp Corporation
T.M.I.
Union Texas Petroleum (Williams Companies)
United States Postal Service (USPS)
University of Southeast Louisiana
University of Southwest Louisiana (Lafayette)
Valley Electric Corporation
Verret Shipyard
West Jefferson Levee District (LA)
Westinghouse (Siemens)
Woodward-Clyde Consultants
WY Tractor Company

Dated: January 31, 2002.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 02–5866 Filed 3–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7156–6]

Notice of Availability of Draft NPDES General Permits for Reverse Osmosis Reject Water Discharges in the State of Massachusetts

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of the draft NPDES General Permit MAG450000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-New England (EPA–NE), is today providing notice of the availability of the Draft National Pollutant Discharge Elimination System (NPDES) general permit for reverse osmosis reject water discharges to certain waters in the State of Massachusetts as authorized by section 301(a) of the Clean Water Act. See also 40 CFR 122.28. The draft NPDES general permit establishes Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for reverse osmosis reject water discharges. Reverse osmosis reject water is defined as pumped or drained wastewater discharges from reverse osmosis units.

Owners and/or operators of sites that discharge reverse osmosis reject water, will be required to submit an NOI to EPA–NE to be covered by the appropriate general permit and will receive a written notification from EPA–NE of permit coverage and authorization to discharge under the general permit. The general permit does not cover new sources as defined under 40 CFR 122.2.

DATES: For comment period: Interested persons may submit comments on the draft general permit as part of the administrative record to the EPA–NE, at the address given below, no later than April 11, 2002.

ADDRESSES: The draft permit is based on an administrative record available for public review at EPA–NE, Office of Ecosystem Protection (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. Written comments may be hand delivered or mailed to this address. Electronic comments may be e-mailed to *davis.betsy@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday excluding holidays from: Betsy Davis, EPA–NE, Office of Ecosystem Protection, NPDES Permit Unit; One Congress Street, Boston, MA 02114–2023; telephone: 617–918–1576; e-mail: *davis.betsy@epa.gov.*

SUPPLEMENTARY INFORMATION: The draft NPDES general permit may be viewed over the Internet via the EPA–NE web site *www.epa.gov/region01/topics/water/permits.html.* To obtain a hard copy of the document, please call, e-mail or write to Ms. Davis at the addresses listed above. The draft general permit includes FACT SHEET AND **SUPPLEMENTARY INFORMATION** sections that set forth principal facts and the significant factual, legal and policy questions considered in the

development of the draft permit. A reasonable fee may be charged for copying requests.

When the general permit is issued, it will be published in its entirety in the **Federal Register**. The general permit will be effective on the date specified in the **Federal Register** and it will expire five years from the date that the final permit is published in the **Federal Register**.

Dated: February 19, 2002.

Robert W. Varney,

Regional Administrator, Region I.

[FR Doc. 02–5867 Filed 3–11–02; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

March 7, 2002.

Deletion of Agenda Item From March 14th Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at Open Meeting and previously listed in the Commission's Notice of March 7, 2002.

Item No., Bureau, and Subject

6—Wireless Telecommunications and Office of Engineering and Technology—*Title:* Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range (ET Docket No. 98–206; RM–9147 and RM–9245); Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band. *Summary:* The Commission will consider further action regarding the new Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6030 Filed 3–08–02; 2:17 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

March 7, 2002.

Open Commission Meeting; Thursday, March 14, 2002

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday March 14, 2002, which is scheduled to commence at 9:30 a.m. in Room TW–C305, 445 12th Street, SW., Washington, DC.

Item No., Bureau, and Subject

1—Cable Services—*Title:* Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities (GN Docket No. 00–185); Internet Over Cable Declaratory Order Proceeding; and Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities. *Summary:* The Commission will consider a Declaratory Ruling and Notice of Proposed Rulemaking addressing the legal classification and the appropriate regulatory framework under the Communications Act of 1934, as amended, for broadband access to the Internet over cable system facilities.

2—Common Carrier—*Title:* Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations (CC Docket No. 01–150). *Summary:* The Commission will consider a Report and Order concerning streamlined procedures for transfer of control applications by domestic telecommunications carriers pursuant to section 214 of the Communications Act of 1934, as amended.

3—Common Carrier—*Title:* Presubscribed Interexchange Carrier Charges (CCB/CPD File No. 01–12, RM No. 10131). *Summary:* The Commission will consider an Order and Notice of Proposed Rulemaking concerning charges for changing end users' presubscribed interexchange carriers.

4—International—*Title:* Mitigation of Orbital Debris. *Summary:* The Commission will consider a Notice of Proposed Rule Making concerning mitigation of orbital debris by satellite systems.

5—Wireless Telecommunications—*Title:* Improving Public Safety Communications in the 800 MHz Band Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, Notice of Proposed Rulemaking (NPRM). *Summary:* The Commission will consider a Notice of Proposed Rulemaking inviting comments on how best to remedy interference to 800 MHz band public safety systems.

6—Wireless Telecommunications and Office of Engineering and Technology—*Title:* Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range (ET Docket No. 98–206; RM–9147 and RM–9245); Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band. *Summary:* The Commission will consider further action regarding the new Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@apl.com*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 834–1470 Ext. 10. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at *http://www.fcc.gov/realaudio/*. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6031 Filed 3–8–02; 2:17 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2536]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 7, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition

must be filed by March 27, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

Number of Petitions Filed: 1.

William F. Caton,

Acting Secretary.

[FR Doc. 02–5846 Filed 3–11–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1404–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1404–DR), dated March 1, 2002, and related determinations.

EFFECTIVE DATE: March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 1, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from a severe winter storm on December 24–29, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter J. Martinasco of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of New York to have been affected adversely by this declared major disaster:

Erie County for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–5831 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Pre-Disaster Mitigation Program

AGENCY: Federal Insurance and Mitigation Administration, Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of Pre-Disaster Mitigation grants.

SUMMARY: FEMA gives notice of the availability of grants for fiscal year (FY) 2002 under the Pre-Disaster Mitigation (PDM) Program as authorized by section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 USC 5133, as amended by section 102 of the Disaster Mitigation Act of 2000 (DMA), Public Law 106–390, 114 Stat. 1552. No State shall receive less than one percent of the $25M appropriated in FY 2002, as specified in section 203(f) of the Stafford Act for eligible State, local, and tribal activities. FEMA will contribute up to 75 percent of the cost of activities approved for funding. At least 25 percent of the total eligible costs must be provided from a nonfederal source. Grants awarded to small and impoverished communities may receive a Federal cost share of up to 90 percent of the total cost to implement eligible PDM activities. A Small and Impoverished Community must meet all of the following criteria:

- It must be a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city;
- It must be economically disadvantaged, with residents having an average per capita annual income not exceeding 80 percent of national per capita income, based on best available data;
- It must have a local unemployment rate that exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and
- It must meet any other factors identified in the State Plan in which the community is located.

DATES: States are requested to submit a letter of intent to the appropriate FEMA Regional Director by March 30, 2002, including a list of communities they are targeting (*i.e.,* identify potential sub-grantees). States must submit a grant application and their assessment of the extent to which communities meet the criteria outlined in section 203(g) of the Stafford Act to the appropriate FEMA Regional Office by June 30, 2002.

ADDRESSES: FEMA Regional Offices:

Serving the State of Maine, State of New Hampshire, State of Vermont, State of Rhode Island, State of Connecticut, and the Commonwealth of Massachusetts:

FEMA Region I

442 J.W. McCormack POCH, Boston, MA 02109–4595.

Serving the State of New York, State of New Jersey, the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands:

FEMA Region II

26 Federal Plaza, Rm. 1337, New York, NY 10278–0002.

Serving the District of Columbia, Delaware, Maryland, Pennsylvania, Commonwealth of Virginia, and West Virginia:

FEMA Region III

1 Independence Mall, 6th Floor, 615 Chestnut Street, Philadelphia, PA 19106–4404.

Serving the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:

FEMA Region IV

3003 Chamblee Tucker Road, Atlanta, GA 30341.

Serving the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin:

FEMA Region V

536 S. Clark Street, 6th Floor, Chicago, IL 60605.

Serving the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas:

FEMA Region VI

FRC 800 North Loop 288, Denton, TX 76201–3698.

Serving Iowa, Kansas, Missouri, and Nebraska:

FEMA Region VII

2323 Grand Avenue, Suite 900, Kansas City, MO 64108.

Serving Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

FEMA Region VIII

Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

Serving the States of Arizona, California, Hawaii and Nevada; and the Territory of American Samoa, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau:

FEMA Region IX

Building 105, Presidio of San Francisco, San Francisco, CA 94129–1250.

Serving the States of Alaska, Idaho, Oregon and Washington:

FEMA Region X

Federal Regional Center, 130 228th Street, SW, Bothell, WA 98021–979.

FOR FURTHER INFORMATION CONTACT: Margaret Lawless, Program Planning and Delivery Division, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Room 401, Washington, DC 20472, (202) 646–3027 or e-mail: *Margaret.Lawless@fema.gov.*

SUPPLEMENTARY INFORMATION:

Appropriations

Under Public Law 107–73, 115 Stat. 651, Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, we are issuing a Request for Application (RFA) to implement the PDM Program.

Background

The PDM program provides funding for cost-effective hazard mitigation activities that complement comprehensive mitigation programs, reduce injuries, loss of life, and damage and destruction of property.

Section 203 of the Stafford Act provided a deadline of October 1, 2001 for States' submittal of recommendations for eligible communities to receive assistance. Since the president's budget request for FY 2002 did not include funding for the program, FEMA did not feel that it was appropriate to request the States to recommend communities for assistance. FEMA has notified Congress that the deadline was not applied because enactment of FEMA's appropriations came after the deadline.

It is anticipated that proposed program regulations will be available in 2002 and should be effective for next year's (FY 2003) PDM grants. Pending publication of our program regulations, we encourage States to focus their applications, including applications from local governments and tribes (sub-grantees), on the development of local mitigation plans or on cost-effective ''brick and mortar'' projects in communities where plans have already been developed. For FY 2002 funds, awards will be governed by section 203 of the Stafford Act, this notice, and program guidance, which will be made available to the public on the FEMA Internet site: *www.fema.gov.*

Applicant Eligibility

A State or Indian tribal government is eligible to apply for assistance as a grantee.

A local government or Indian tribal government is eligible to apply to the grantee for assistance as a sub-grantee. In order for flood prone communities to receive funds, applicants must be NFIP-participating communities (if they have been mapped through the NFIP) and must be in good standing (not on probation or suspension).

Grant Application Process

Local governments should consult the official designated point of contact in their State for more information on the process the State requires to be followed in applying for assistance.

To apply for this grant, States are requested to submit a letter to the Regional Director expressing their intent to participate in the PDM Program for FY 2002. The letter must also include a list of which communities they are targeting (i.e., identify potential sub-grantees) based on a State prioritization that takes into consideration relevant criteria under section 203(g) of the Stafford Act.

States must complete and submit to the appropriate FEMA Regional Office a grant application, which can be obtained from the FEMA Regional Office. The grant application should include:

- Application for Federal Assistance, Standard Form 424;
- Budget Information—Non-Construction Program, FEMA Form 20–20;
- Summary Sheet for Assurances and Certification, FEMA Form 20–16;
- Assurances—Non-Construction Program, FEMA Form 20–16A;
- Certification Regarding Lobbying; Debarment, Suspension and Other Responsible
- Matters; and Drug-Free Workplace Requirements, FEMA Form 20–16C;
- Disclosure of Lobbying Activities, Standard Form LLL; and,
- Program Narrative identifying the activities for which funding is requested.

The State should prioritize activities included in their Program Narrative taking into consideration relevant criteria under section 203(g) of the Stafford Act. Mitigation projects should be ranked beginning with those that are most cost effective, consistent with OMB Circular A–94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs. However, consideration should be made to complete mitigation projects within a geographic area when possible. In this case, supporting documentation should be submitted with the application. The Program Narrative should include the following:

- Individual activity location and name of sub-grantee;
- Activity title and number;
- Individual activity costs, including Federal and nonfederal shares;
- Activity specific scopes of work, including a list of properties, if applicable;
- Recommendations and documentation regarding the environmental review required by 44 Code of Federal Regulations (CFR) part 10, Environmental Considerations, and other applicable laws and executive orders; and
- Certification that the State has evaluated the included projects, they meet all PDM Program eligibility criteria, and the projects will be implemented in accordance with 44 CFR part 13, Uniform Administrative

Requirements for Grants and Cooperative Agreements to State and Local Governments.

• State's assessment of the extent to which communities meet the relevant criteria under section 203(g) of the Stafford Act.

Eligible Activities

44 CFR part 201, Hazard Mitigation Planning, establishes new criteria for State and local hazard mitigation planning, pursuant to section 322 of the Stafford Act, which will require local governments and Indian tribal governments applying for PDM funds through the States to have an approved local mitigation plan prior to the approval of mitigation project grants after November 1, 2003. Therefore, we encourage States to focus their FY 2002 PDM funding on the development of State and local multi-hazard mitigation plans in order to meet this future requirement. This may include developing countywide or multi-jurisdictional plans (must be adopted by all jurisdictions included), since many issues are better resolved by evaluating hazards in a more comprehensive fashion. Eligible activities under this grant are:

• *Management costs.* Grantees may use up to $50,000 of their PDM funds to assist in soliciting and reviewing PDM applications and for providing technical assistance to sub-applicants.

• *Information dissemination.* Up to 10 percent of the funds awarded to States may be used to disseminate information regarding cost-effective mitigation technologies, such as marketing, outreach, training and education.

• *Planning.* PDM funds may be used to develop State, tribal, and local multi-hazard (to include man-made) mitigation plans which meet the planning criteria outlined in 44 CFR part 201.

• *Technical assistance.* Sub-grantee activities to support the development of comprehensive project applications are eligible.

• *Mitigation projects.* A mitigation project is any action that results in elimination or long-term reduction of damages to public or private property from natural hazards, and may include property acquisition or relocation, consistent with 44 CFR 206.434(e) and related guidance; structural and non-structural retrofitting; minor structural hazard control or protection projects; and, localized flood control projects. Mitigation projects must also meet the following general criteria:

(1) Be in conformance with an existing FEMA-approved State hazard mitigation plan;

(2) Be in conformance with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, consistent with 44 CFR part 206, subpart N, Hazard Mitigation Grant Program, section 434(b)(3);

(3) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed, consistent with 44 CFR 206.434(c)(4);

(4) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster, consistent with 44 CFR 206.434(c)(5) and related guidance;

(5) Not duplicate the assistance that another Federal agency or program has the primary authority to provide, consistent with 44 CFR 206.434(g);

(6) Be located physically in a participating NFIP community that is not on probation or suspended (if the community has been mapped through the NFIP); and,

(7) Meet the requirements of applicable Federal, State, and local laws.

Reporting Requirements

The States are required to submit quarterly financial and performance reports 30 days after the end of each quarter, per 44 CFR 13.40 and 41. Reporting dates are: January 30, April 30, July 30, and October 30. The performance reports will provide a comparison of actual accomplishments to the objectives approved for the period. Where the output of the project can be quantified, that information shall be provided. The States must also report the progress of each sub-grantee award in their quarterly reports. In addition, final financial and performance reports are required 90 after the close of the grant, per 44 CFR 13.50.

Dated: March 5, 2002.

Robert F. Shea,

Deputy Administrator for Mitigation, Federal Insurance and Mitigation Administration.

[FR Doc. 02–5832 Filed 3–11–02; 8:45 am]

BILLING CODE 6718–04–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12:00 p.m., Monday, March 18, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6015 Filed 3–8–02; 12:52 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Certification of Maintenance of Effort Form Title III of the Older Americans Act, Grants for State and Community Programs on Aging

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to certification of maintenance of effort form Title III of the Older Americans Act, Grants for State and Community Programs on Aging.

DATES: Submit written or electronic comments on the collection of information by May 30, 2002.

ADDRESSES: Submit electronic comments on the collection of information to: *www.mtolson@aoa.gov.* Submit written comments on the collection of information to Administration on Aging, 330 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Margaret A. Tolson at (202) 401–0838.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Certification of Maintenance of Effort form will be used by the Administration on Aging to verify the amount of State expenditures for Title III of the Older Americans Act, and make comparisons with such expenditures for the three previous years to assure that the State Agency on Aging is in compliance with 45 CFR 1321.49.

This information will be used for federal oversight of the Title III program. AoA estimates the burden of this collection of information as follows: ½ hour per State Agency on Aging annually, for a total of 28 hours.

Dated: March 7, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–5856 Filed 3–11–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the charters of the committees listed below for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed below. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the date indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Antiviral Drugs Advisory Committee.	Feb. 15, 2003.
National Mammography Quality Assurance Advisory Committee,	July 6, 2003.
Nonprescription Drugs Advisory Committee.	Oct. 27, 2003.
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants.	Dec. 2, 2003.
Food Advisory Committee	Dec. 18, 2003.
Vaccines and Related Biological Products Advisory. Committee	Dec. 31, 2003.
Advisory Committee for Pharmaceutical Science.	Jan. 22, 2004.
Pharmacy Compounding Advisory Committee.	Feb. 3, 2004.

FOR FURTHER INFORMATION CONTACT: Linda A. Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

Dated: March 5, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–5791 Filed 3–11–02; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take

evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on October 1, 2001, through December 28, 2001.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation, Office of Special Programs, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Robin Reynolds on behalf of Tyler, Holcomb, Vienna, Virginia, Court of Federal Claims Number 01–0560V
2. Holly Vanderconck on behalf of Grant Vanderconck, Vienna, Virginia, Court of Federal Claims Number 01–0561V
3. Jill and Robert Simpson on behalf of Alexander Simpson, Vienna, Virginia, Court of Federal Claims Number 01–0562V
4. Lorna and Kenneth Kemper on behalf of Jared Stephen Kemper, Vienna, Virginia, Court of Federal Claims Number 01–0563V
5. Kelly McCord on behalf of Neave Ittman, Houston, Texas, Court of Federal Claims Number 01–0564V
6. Tiffany Bast on behalf of Makena Shaye Bast, Vienna, Virginia, Court of Federal Claims Number 01–0565V
7. Courtnay and Joseph Fuller on behalf of Emma Marie Fuller, Vienna, Virginia, Court of Federal Claims Number 01–0566V
8. Barbara Allore and Mathew Dame on behalf of Lawren K. Dame, Canton, Michigan, Court of Federal Claims Number 01–0567V
9. Wendy Small on behalf of Taylor Mackenzie Markum, Deceased, Jacksonville, Florida, Court of Federal Claims Number 01–0569V
10. Richelle Cain on behalf of Natascha Skerczak, Agoura Hills, California, Court of Federal Claims Number 01–0573V
11. Renee and Daniel Brovold on behalf of Ashley Dee Brovold, Fargo, North Dakota, Court of Federal Claims Number 01–0577V
12. Beulah Nix, Kotzebue, Alaska, Court of Federal Claims Number 01–0579V
13. Virginia Mitchell on behalf of Connor Mitchell, Boston, Massachusetts, Court of Federal Claims Number 01–0584V
14. Dawn Marquis on behalf of Justin Marquis, Boston, Massachusetts, Court of Federal Claims Number 01–0585V
15. Edward J. Anthony, Rocky Island, Illinois, Court of Federal Claims Number 01–0594V
16. Gayla and Brian Powers on behalf of Madeleine Powers, Decatur, Texas, Court of Federal Claims Number 01–0598V
17. Melissa and Jeffrey Reiland on behalf of Zachary Reiland, St. Clare, Minnesota, Court of Federal Claims Number 01–0599V
18. Melinda and Pete Sarullo on behalf of Sophia Isabella Sarullo, Clinton, Mississippi, Court of Federal Claims Number 01–0604V
19. Joy and Earl Dixon on behalf of Noah Matthew Dixon, Puyallup, Washington, Court of Federal Claims Number 01–0605V
20. Larry Monaco on behalf of Lawrence Monaco, Vienna, Virginia, Court of Federal Claims Number 01–0611V
21. Michelle Robinson on behalf of Jessica Mapes, Vienna, Virginia, Court of Federal Claims Number 01–0612V
22. Jackie Deliberis on behalf of Joshua Deliberis, Vienna, Virginia, Court of Federal Claims Number 01–0613V
23. Adriana Niazi, Vienna, Virginia, Court of Federal Claims Number 01–0617V
24. Bobbie Keylin on behalf of Ryan Keylin, Vienna, Virginia, Court of Federal Claims Number 01–0618V
25. Julie Conatzer on behalf of Billy Austin Conatzer, Vienna, Virginia, Court of Federal Claims Number 01–0619V
26. Mary Beth and David Niebler on behalf of Andrew David Niebler, Vienna, Virginia, Court of Federal Claims Number 01–0620V
27. DeCarla D. and Jeffrey Netterville on behalf of Addie Grace Netterville, Vienna, Virginia, Court of Federal Claims Number 01–0621V
28. Sharon A. Burke on behalf of Ryan C. Burke, Boston, Massachusetts, Court of Federal Claims Number 01–0624V
29. Betty Jean Morgan, Vienna, Virginia, Court of Federal Claims Number 01–0628V
30. Jolene Beville on behalf of Lara J. Beville, Bowling Green, Kentucky, Court of Federal Claims Number 01–0633V
31. Billie M. McDonald, Boise, Idaho, Court of Federal Claims Number 01–0635V
32. Karen Walcott on behalf of Dean Walcott, Boston, Massachusetts, Court of Federal Claims Number 01–0638V
33. Stephanie and Robert Sawyer on behalf of Sydney Noel Sawyer, Mobile, Alabama, Court of Federal Claims Number 01–0643V
34. Cheryl Ann and Keith William Hall on behalf of Alexander William Hall,

Vienna, Virginia, Court of Federal Claims Number 01–0644V
35. Camilla and Patrick Thomas on behalf of Kenidi Dayna Thomas, Montgomery, Alabama, Court of Federal Claims Number 01–0645V
36. Brian Wayda on behalf of Jacob Patrick Wayda, Springfield, Virginia, Court of Federal Claims Number 01–0646V
37. Regina and Shannon Lemire on behalf of Destiny Lemire, Portland, Maine, Court of Federal Claims Number 01–0647V
38. Timothy Smith on behalf of Lydia Smith, Tanglewood, Mississippi, Court of Federal Claims Number 01–0651V
39. Mary Kathleen Carter on behalf of Kirby Carter, Hood River, Oregon, Court of Federal Claims Number 01–0652V
40. Albert G. Gurries, II, Sparks, Nevada, Court of Federal Claims Number 01–0656V
41. Mary Goings on behalf of James Goings, Jr., McMinnville, Oregon, Court of Federal Claims Number 01–0657V
42. Noreen McGuire on behalf of Brooke McGuire, Boston, Massachusetts, Court of Federal Claims Number 01–0658V
43. Xiujuan Wang and George Chou on behalf of Yuening Chou, Cambridge, Massachusetts, Court of Federal Claims Number 01–0659V
44. Deborah Delp on behalf of Rodney E. Delp, Jr., Boston, Massachusetts, Court of Federal Claims Number 01–0661V
45. Amy Brockelmeyer on behalf of Ashley Brockelmeyer, Boston, Massachusetts, Court of Federal Claims Number 01–0662V
46. James Don Easterling, Little Rock, Arkansas, Court of Federal Claims Number 01–0667V
47. Jason Saucier and Cleile Joy Scott on behalf of Avery Saucier, Metairie, Louisiana, Court of Federal Claims Number 01–0673V
48. Melissa Johnson on behalf of Evan Johnson, Vienna, Virginia, Court of Federal Claims Number 01–0675V
49. Andrea and Robert Kantor on behalf of Madelyn Kantor, Katonah, New York, Court of Federal Claims Number 01–0679V
50. Deborah Mikelson on behalf of Kali Mikelson, Fort Dodge, Iowa, Court of Federal Claims Number 01–0681V
51. Robert Welch, Des Moines, Iowa, Court of Federal Claims Number 01–0682V
52. Jeanne Pellegrino on behalf of Michael Pellegrino, Boston, Massachusetts, Court of Federal Claims Number 01–0684V
53. Jeff Leed on behalf of Tyler Scott Leed, Vienna, Virginia, Court of Federal Claims Number 01–0686V
54. Lavilla Aileen Campbell, Allen, Kentucky, Court of Federal Claims Number 01–0688V
55. Debra and Scott Hippensteel on behalf of Ryan Scott Hippensteel, Allentown, Pennsylvania, Court of Federal Claims Number 01–0690V
56. Laura and Stanley Foss on behalf of Jacob Kenneth Foss, Gorham, Maine, Court of Federal Claims Number 01–0691V
57. Alma Guadalupe Rojas, Los Angeles, California, Court of Federal Claims Number 01–0692V
58. Henry Stein on behalf of Michael Stein, Boston, Massachusetts, Court of Federal Claims Number 01–0693V
59. Brooke Anna Childers, Ely, Nevada, Court of Federal Claims Number 01–0694V
60. Bridget and Jerome Wanecski on behalf of Emily Brooke Wanecski, Sarasota, Florida, Court of Federal Claims Number 01–0695V
61. Sonia Suarez, Vienna, Virginia, Court of Federal Claims Number 01–0700V
62. Malissa Evans on behalf of Jeremiah William Evans, Vienna, Virginia, Court of Federal Claims Number 01–0701V
63. Claire Serowinski on behalf of Ryan Serowinski, Vienna, Virginia, Court of Federal Claims Number 01–0702V
64. Otilia Sullivan on behalf of Justin Sullivan, Vienna, Virginia, Court of Federal Claims Number 01–0703V
65. Lawrence Hobbs on behalf of Samuel Hobbs, Vienna, Virginia, Court of Federal Claims Number 01–0704V
66. Maryann and Michael Zezulak on behalf of Michael Scott Zezulak, Jr., Vienna, Virginia, Court of Federal Claims Number 01–0705V
67. Jean Steele on behalf of Paul W. Steele, Vienna, Virginia, Court of Federal Claims Number 01–0706V
68. Michael Stephen Shaw, San Francisco, California, Court of Federal Claims Number 01–0707V
69. Shirley Allen, Tylertown, Mississippi, Court of Federal Claims Number 01–0716V
70. Sharon Bubb, Boston, Massachusetts, Court of Federal Claims Number 01–0721V
71. Francesca Walkiewicz on behalf of Samuel Walkiewicz, Boston, Massachusetts, Court of Federal Claims Number 01–0722V

Dated: March 5, 2002.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 02–5841 Filed 3–11–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Proposed Cooperative Research & Development Agreement (CRADA) Negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Mala Geoscience, Inc. to investigate the applications of advanced surface and borehole electromagnetic and impulse radar systems to hydrologic problems and other near-surface imaging problems.

Inquiries: If any other parties are interested in similar activities with the USGS, please contact John W. Lane, Jr., U.S. Geological Survey, 11 Sherman Place, U–5010 Storrs Mansfield, CT 06269; phone (860) 487–7402, x.13/fax (860) 487–8802.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS policy requirements stipulated in Survey Manual Chapter 500.20.

Dated: February 28, 2002.

Robert M. Hirsch,

Associate Director for Water.

[FR Doc. 02–5844 Filed 3–11–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Advisory Committee on Water Information

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting of the ACWI is to discuss broad policy-related topics relating to national water resource issues, and to hear reports from ACWI subgroups. The proposed agenda will include a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum M–92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-

information users and professionals to advise the Federal Government of activities and plans that may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations have been invited by the Secretary of the Interior to name representatives to the ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 8:30 a.m. on April 2, 2002, and will adjourn on April 3, 2002, by 5 p.m.

ADDRESSES: Days Hotel and Conference Center, 2200 Centreville Road, Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Toni M. Johnson (Executive Secretary, ACWI), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648–5644; e-mail: tjohnson@usgs.gov.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Johnson at the above address no later than noon, March 25, 2002. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Johnson for distribution at the ACWI Meeting.

Dated: February 26, 2002.

Katherine Lins,

Senior Staff Scientist.

[FR Doc. 02–5843 Filed 3–11–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 01–01237 GK]

Public Comments and Response on Proposed Final Judgment in United States v. 3D Systems Corp., *et al.*

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the five comments received on the proposed Final Judgment in United States v. 3D Systems Corporation, et al., Civil Action No. 01–01237 GK, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, Telephone: (202) 514–2481, and at the office of the Clerk of the United States District Court for the District of Columbia, E. Barrett Prettyman United States Courthouse, Room 1225, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

United States District Court for the District of Columbia

[Civil No.: 1:01CV01237 (GK)]

United States of America, Plaintiff, v. 3D Systems Corporation and DTM Corporation, Defendants; Plaintiff's Response to Public Comments

The United States, pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), hereby responds to the five public comments received regarding the proposed Final Judgment in this case.

I. Background

On June 6, 2001, the United States filed a Complaint alleging that the proposed acquisition of DTM Corporation (''DTM'') by 3D Systems Corporation (''3D'') would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that 3D and DTM are two of only three firms that produce industrial rapid prototyping (''RP'') systems in the United States. Stereolithography (''SL'') technology, utilized by 3D, forms a three-dimensional object through radiation from a liquid, photocurable material. DTM's RP systems use laser sintering (''LS'') technology to heat and form a sinterable powder into a three-dimensional form. Both 3D and DTM hold extensive patent portfolios related to RP systems production. These patents have prevented firms that sell RP systems abroad from competing in the United States. The Complaint alleges that the transaction will substantially lessen competition in the development, production and sale of industrial RP systems in the United States, thereby harming consumers. Accordingly, the Complaint asks the Court to issue (1) a judgment that the proposed acquisition of DTM by 3D would violate section 7 of the Clayton Act, 15 U.S.C. 18; and (2) a permanent injunction that would prevent defendants from carrying out the acquisition or otherwise combining their operations.

After this suit was filed, the United States and defendants reached a proposed settlement that allowed 3D to complete its acquisition of DTM, while preserving competition in the market for industrial RP systems by requiring defendants to license their RP-related patent portfolios. A Stipulation and proposed Final Judgment embodying the settlement were filed with the Court on August 17, 2001.

The proposed Final Judgment, also referred to as the ''consent decree,'' orders 3D and DTM to grant a license to develop, manufacture and sell, and to supply any support or maintenance services for, products under the defendants' RP patent portfolios within a limited field of use matching either 3D's or DTM's technology. The licensee, referred to as the Acquirer, must be approved by the United States, and must be a firm that currently manufactures industrial RP systems, utilizing either the LS or SL technology. The defendants must complete the divestiture five (5) days after notice of entry of the Final Judgment by the Court. The United States may extend the time period for divestiture for up to sixty (60) days. If the defendants do not complete the divestiture within the prescribed period, the proposed Final Judgment provides that the Court will appoint a trustee to accomplish the divestiture.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provision of the proposed Final Judgment and to punish violations thereof. In compliance with the APPA, the United States filed a Competitive Impact Statement (''CIS'') on September 4, 2001. The proposed Final Judgment and the CIS were published in the **Federal Register** on September 26, 2001, and the *Washington Post* during the period September 17–23, 2001. In light of the recent disruptions to mail delivery, the United States published a supplemental notice in the **Federal Register** on December 21, 2001 and in the *Washington Post* from December 20–26, 2001, extending the comment period by fifteen days. The comment period has now expired, with the United States having received public comments from Aaroflex, Inc., Accelerated Technologies, Inc., Advanced Manufacturing & Engineering Services, Advanced Prototyping, Inc. and EOS GmbH Optical Systems, which are annexed hereto as Exhibits 1 through 5.

II. Response to the Public Comments

A. Legal Standard Governing the Court's Public Interest Determination

The Tunney Act directs the Court to determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e). In making that determination, the ''court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *United States* v. *Western Elec. Co.,* 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied,* 510 U.S. 984 (1993)(''Western Electric'').

The Court's role under the APPA is limited to reviewing the remedy in relationship to

the violations that the United States alleges in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' U.S. v. Microsoft Corp., 56 F.3d 1448, 1459 (D.C. Cir. 1995). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the Court ''is only authorized to review the consent decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other mattes that the United States might have but did not pursue. Id.

The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that ''other remedies were preferable,'' Microsoft, 56 F.3d at 1460, nor does it give the Court authority to impose different terms on the parties. See. e.g., United States v. American Tel. & Tel. Co., 552 F.Supp. 131, 153 n. 95 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (mem.); accord H.R. Rep. No. 93–1463, at 8 (1974).

B. Discussion of Comments

The most extensive of the five comments plaintiff received is from EOS GmbH Electro Optical Systems (''EOS''), ''a competitor of 3D and DTM in countries other than the United States.'' EOS comment, p. 1. The EOS comment incorporates most, if not all, of the points made in the four other comments. Plaintiff will therefore address the arguments advanced by EOS in order, with references to the other four comments where appropriate.

(i) Interim Period of Monopoly

EOS first contends that the proposed Final Judgment permits a significant period of monopoly for the merged entity by allowing the merger to close prior to the divestiture. However, plaintiff's investigation into industrial RP equipment customers' buying practices disclosed that such customers typically consider a purchase over a protracted period of time, often waiting a year or more while obtaining quotes and making comparisons. Given these buying habits, a potential purchaser of industrial RP equipment would be able to use the imminent new entry of the Acquirer pursuant to the proposed Final Judgment to bargain for a better price from 3D on its industrial RP equipment. In fact, it appears that this kind of bargaining is occurring. Contrary to EOS' assertion that 3D is currently exercising monopoly power, EOS' Attachment E demonstrates that, during the pendency of the proposed Final Judgment, 3D has found it necessary to offer significant discounts to its customers. This discounting practice is discussed at page 9 of the EOS comment and also at page 2 of the comment submitted by Advanced Manufacturing, and is inconsistent with EOS' assertion at page 2 of its comment that 3D currently enjoys ''unfettered monopoly power.''

In accepting the consent decree, plaintiff balanced the likelihood of harm to consumers against the interests of the defendants in closing their transaction, and concluded that the time period specified in the decree for negotiating a divestiture and evaluating a proposed Acquirer was reasonable, given the characteristics of the market for industrial RP equipment as discussed above. Further, there was no need to require that the Divestiture Assets be held separate to ensure their viability, because the principal asset to be divested here is a license of intellectual property.

(ii) Market Saturation

EOS next argues that the competition lost by reason of the merger can only be replaced by licensing the LS technology offered by EOS, because U.S. demand for SL systems ''has reached a point of saturation.'' EOS comment, p.9. Advanced Manufacturing offers the same observation in its comment at page 2. Were that proposition to be accepted, EOS would be the only firm that could qualify as an Acquirer within the meaning of Paragraph IV.C. of the proposed Final Judgment, because it is the only company in the world, other than 3D, that manufactures LS systems. There are two other companies that manufacture and sell RP industrial equipment outside the United States, but they both offer SL technology.

However, none of the comments disputes the facts that SL systems offer a competitive restraint on prices of LS systems and that customers might switch to SL systems in the face of a price increase in LS systems. In fact, EOS specifically notes at page 4 of its comment that since 1997 ''3D and EOS have been significant competitors for RP systems in Europe and Asia.''

Moreover, plaintiff's investigation has revealed that the SL system is the prevailing type of industrial RP equipment sold in the United States. EOS itself estimates that three out of every four industrial RP systems in the United States use SL technology (EOS comment, p. 9), and sales of SL systems have been increasing. 3D's most recent 10–K filing with the Securities & Exchange Commission recites that: ''The increase in product sales over the prior year is due primarily to increased sales of SLA (SL) and related equipment * * *. The increase in machine sales results from increased sales of the higher-end SLA industrial systems, especially the SLA 7000. In 2000, we sold a total of 57 SLA 7000 systems compared to 29 in 1999. We expect sales of large frame machines to increase in 2001.'' 3D 10–K report dated March 16, 2001, p. 26. In fact, less than two months after the quoted 10–K was filed, 3D entered into the largest volume-purchase agreement in the company's history with a California customer, pursuant to which it contracted to deliver as many as 39 SLA 7000 systems over a two-year period. See 3D press release dated May 9, 2001, annexed as exhibit 6. This information runs counter to the assertion that demand for SL systems has reached a saturation point.

As the Complaint alleges, 3D's SL technology and DTM's LS technology compete directly against each other. Since they are substitute technologies in the market for industrial RP systems, the competitive concerns set forth in the Complaint may be addressed by licensing either one.

(iii) LS Materials Monopoly

EOS is joined by Accelerated Technologies, Advanced Manufacturing and Advanced Prototyping in asserting that, if the selected Acquirer uses SL technology, then 3D will retain its monopoly over the sale of LS materials in the United States. LS materials are the sinterable powders used by LS machines. Prior to the merger of DTM and 3D, DTM was the only U.S. supplier of LS materials. 3D succeeded to that sole supplier position through its acquisition of DTM. The Complaint in this case sought no relief with respect to LS materials, because the merger did not lessen competition with respect to LS materials; rather, it left the status quo unchanged. As the comments point out, if EOS is selected as the Acquirer, then there will be a second supplier of LS materials in the United States, and competition will have been created where none existed before. However, since 3D and DTM did not compete in the provision of LS materials, those materials cannot properly be addressed in the context of a remedy designed to resolve the competitive harm arising out of the merger of competing RP systems firms.

(iv) Aaroflex Patent Claims

Relying upon Aaroflex's comment, EOS next asserts that its LS technology should be favored over SL technology because the latter may face patent entry barriers. The ''barriers'' EOS cites are claims by Aaroflex that certain 3D patents on SL technology are invalid. In February 1997, 3D sued Aaroflex for patent infringement. Apparently as a result of this lawsuit, Aaroflex has never commercialized its technology. It has, however, asserted in that proceeding that certain 3D patents are invalid. The Aaroflex claims have not been treated as ''barriers'' by 3D, since it continues to commercialize its technology, and the brief discussion of the Aaroflex litigation in 3D's 10–K report does not even mention Aaroflex's invalidity claims. 3D 10–K report dated March 16, 2001, p. 12. Moreover, 3D is prepared to warrant to the Court and the Acquirer that it can ''convey all intellectual property included in the Divestiture Assets free and clear of any encumbrances * * *.'' Proposed Final Judgment, Paragraph IV.D.

(v) Teijin Seiki/CMET Letter

The EOS comment includes as an attachment a copy of a letter EOS received from Teijin Seiki/CMET, a Japanese company that is a potential Acquirer. EOS construes the letter as an invitation to collude, either regarding the bidding process for the Divestiture Assets or regarding competition generally, and argues that this improper conduct should disqualify Teijin Seiki/CMET as a potential Acquirer. This is not a comment on whether entry of the proposed Final Judgment is in the public interest. Rather, it is a comment on whether plaintiff should approve Teijin Seiki/CMET as an appropriate buyer. Plaintiff agrees that, in the event Teijin Seiki/CMET is presented to it as the proposed Acquirer, plaintiff should weigh the letter and its meaning in exercising its discretionary authority to approve the Acquirer under Paragraph IV.N. of the proposed Final Judgment.

(vi) Pending Litigation Between EOS and 3D

In December 2000, EOS filed suit against DTM, seeking damages for infringement of certain 3D patents which 3D had licensed to EOS in 1997. The license agreement between

EOS and 3D contains what EOS characterizes as a ''Non-Suit Provision,'' which bars EOS from asserting infringement claims against 3D based upon the patents 3D licensed to EOS ''at any time, for any reason, during the term of the License Agreement.'' See Attachment A to EOS comment. Following consummation of the merger between 3D and DTM, 3D filed a motion invoking the Non-Suit Provision to prevent EOS from collecting damages for infringement after the date of the merger, because the allegedly infringing products are now being sold by 3D instead of DTM.

Citing United States v. Microsoft Corporation, 56 F.3d 1448 (D.C. Cir. 1995), EOS contends that the Court should take 3D's motion into account in making its public interest determination under 15 U.S.C. 16(e)(2) because ''[a]mong the factors that the Court is to consider in conducting its public interest inquiry is whether entry of the proposed Final Judgment 'will result in any positive injury to third parties.' '' EOS comment at p. 11, quoting Microsoft Corporation, 56 F.3d at 1461, n.9. However, whatever ''positive injury'' EOS may suffer results not from the proposed Final Judgment but from the broad language of the Non-Suit Provision. The meaning and effect of the contractual relationships between 3D and EOS are properly left to the court before which those issues are now pending.

(vii) Austin Plant and Service Personnel

EOS mistakenly asserts, at page 13 of its comment, that the Divestiture Assets include ''an option for the Acquirer to purchase DTM's plant located in Austin, Texas,'' drawing from this an inference that the Department misunderstands fundamental concepts of the RP industry. In fact, the proposed Final Judgment merely recites that the plant can be included among the assets to be conveyed, meaning that the Acquirer may, at its option, assume whatever interest DTM had in the plant: owned property may be conveyed by purchase, and leased property may be conveyed by a lease assumption. EOS misconstrues the CIS reference to an ''option to purchase the [DTM] plant'' to mean the full assumption of ownership, when in reality it means the Acquirer has the option to ''purchase'' 3D's interest in the plant, whatever form that interest might take.

EOS also suggests that the consent decree should have done more to facilitate the hiring of service personnel from 3D by the Acquirer. The provisions contained in Paragraph IV.I. of the proposed Final Judgment adequately protect the Acquirer's ability to recruit 3D service personnel. That paragraph requires defendants to waive any non-compete clauses in agreements with present or former employees, and prohibits defendants from interfering with any negotiations by the Acquirer to employ any of defendants' present or former employees for a period of two years. Further, each firm that manufactures RP systems outside of the United States currently employs its own service personnel, and has developed its own programs and methods for training them on its own machines. It is not, therefore, a foregone conclusion that the Acquirer would rely upon recruitment of 3D personnel, trained on 3D machines, to build up its U.S. service network.

(viii) Second Comment Period

EOS suggests that there be a second comment period in this case, following the proffer of a proposed Acquirer by 3D but preceding plaintiff's approval of an Acquirer. EOS comment, p. 15. Plaintiff objects to the proposed second round of comments for three principal reasons.

First, such a procedure would be inconsistent with procedures that courts have routinely applied in reviewing proposed Final Judgments. Since the Tunney Act was enacted in 1974, the United States has negotiated hundreds of consent decrees in merger cases. In each instance, the public had an opportunity to comment upon the terms of the proposed Final Judgment. Often the court has proceeded to review and then enter the proposed Final Judgment before the acquirer of the divestiture assets has been selected, relying upon the United States to monitor the divestiture process. Plaintiff has been unable to identify a single instance in which a court deferred entry of a proposed Final Judgment that was otherwise in the public interest in order to receive a second round of comments regarding the divestiture selection process. EOS has provided the Court with no reason to deviate from the procedures that are routinely followed in other cases subject to the Tunney Act.

Second, such a procedure is unnecessary given the incentives and ability plaintiff has to assure that divestitures are accomplished in a manner that protects competition. After concluding that the proposed transaction between 3D and DTM would be anticompetitive, plaintiff agreed to the proposed Final Judgment as a way to preserve the competition that existed prior to 3D's acquisition of DTM. Accordingly, the proposed Final Judgment is designed to ensure that the Acquirer of the license will compete effectively against 3D and others in the industry, and that plaintiff conducts a thorough investigation before approving any particular Acquirer.

The proposed Final Judgment contains provisions that (1) give the United States sole approval of the Acquirer of the license, Paragraph IV. A., (2) set forth the standards that the United States applies in evaluating proposed purchasers, paragraph IV. N., and (3) require defendants to provide information to plaintiff about the process undertaken to select an Acquirer, as well as requiring information from defendants and the prospective purchaser for evaluation of the purchaser in Section VI. After obtaining notice that defendants have entered into a proposed transaction with a prospective purchaser, plaintiff will investigate the transaction and prospective purchaser, reviewing the selection process and analyzing the managerial and financial ability of the purchaser. The proposed Final Judgment gives plaintiff considerable access to details, often highly confidential, about prospective purchasers. Without such access, comments on specific proposed purchasers will lack the information necessary to aid an informed decision. In sum, the proposed Final Judgment's provisions empower the United States to review and approve the proposed Acquirer of the license, and with these provisions, the United States is able to ensure that the Acquirer is capable of competing effectively in the relevant market.

Third, a second round of comments would itself create problems that might make divestitures in antitrust cases more difficult to accomplish promptly. It would potentially delay the achievement of effective remedies to anticompetitive mergers by delaying entry of the proposed Final judgment, and extending the divestiture deadlines contained therein. Any needless delay in the consummation of divestitures would deny the public the benefits of the competition contemplated by the proposed Final Judgment. A second round of public comments would also risk involving the Court in an inquiry that is not envisioned by the Tunney Act. Courts have repeatedly held that it is not within the ''public interest'' standard of the Tunney Act to determine the ''best'' remedy. See Western Electric, 993 F.2d at 1576.

Finally, in this case, a second comment period is plainly unnecessary. There are only three firms in the world that qualify as potential Acquirers, and the comments plaintiff has received demonstrate that industry participants are familiar with the firms and their technologies. Any issues pertaining to a particular potential Acquirer could and should have been addressed in the comment period provided by law, as EOS itself did in its discussion of the Teijin Seiki/CMET letter.

For all of the foregoing reasons, the Court should reject EOS' proposal for a second round of public comments.

C. Recommendations Made in the Comments

Significantly, none of the five comments recommends rejection of the proposed Final Judgment. In their respective comments, Aaroflex, Accelerated Technologies, Advanced Manufacturing and Advanced Prototyping all recommend that the LS technology be licensed instead of the SL technology, and offer observations about perceived advantages of the LS technology and perceived disadvantages of the SL technology. Plaintiff will consider and weigh all such observations when exercising its discretionary authority to approve the Acquirer of the Divestiture Assets.

Advanced Prototyping also recommends that the consent decree be ''amended in some fashion'' to address the possibility that the Acquirer may not compete aggressively or maybe unsuccessful. Advanced Prototyping comment, p.3. However, the decree already directly addresses these concerns by providing that the Acquirer must be a ''firm that currently manufacturers RP industrial equipment'' which, in plaintiff's sole discretion, ''has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively * * *.'' Proposed Final Judgment, Paragraphs IV. C&N. Moreover, in the unlikely event that the entrant fails, the license is transferable.

EOS ''recommends that DOJ or the Court modify the proposed Final Judgment so that a new competitor will be permitted to sell laser sintering (LS) RP systems and material

in the United States, without regard to whether 3D licenses its stereolithography [SL] technology.'' EOS comment, p. 16. The principal difficulty with the EOS recommendation is that it is inconsistent with the theory of liability pleaded in the Complaint and the evidence that supports that liability. The Complaint alleges that ''[t]here are only three companies that develop, manufacture, and sell industrial RP systems in the United States'' (¶20), and that 3D, with its SL technology, and DTM, with its LS technology, ''compete directly against each other in the development, manufacture and sale of industrial RP systems and materials.'' (¶21). Because the merger reduces the number of U.S. competitors from three to two, the consent decree addresses that competitive concern by listing patent entry barriers so that another competitor using either the SL or LS technology can enter the U.S. market, thereby restoring the number of competitors to three.

To the extent EOS assets that a divestiture of LS technology is needed to preserve competition for industrial RP systems, it overlooks the weight of the evidence that SL and LS compete directly against each other. Consistent with the Complaint, and indeed with the history of competition between 3D (an SL firm) and DTM (an LS firm), the license of either SL *or* LS technology will preserve competition in the industrial RP systems market. Accordingly, plaintiff submits the EOS' recommendation to modify the proposed Final Judgment to require the licensing of LS technology must be rejected because the Complaint in this case offers no basis for its implementation.

III. Conclusion

None of the comments received by plaintiff in this case takes the position that the proposed Final Judgment is not in the public interest within the meaning of 15 U.S.C. 16(e), and that it should accordingly be rejected by the Court. Instead, the comments offer suggestions for modification of the proposed Final Judgment or observations about which company might make the most suitable Acquirer in order to remedy the harm alleged in the Complaint.

After careful consideration of the comments, the United States has affirmed its conclusion that entry of the consent decree will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is in the public interest. The proposed modifications that seek a different remedy are inconsistent with the theory of the Complaint in this case, and must therefore be rejected. The observations regarding factors that should be considered in determining whether a proposed Acquirer has the intent and capability of competing effectively in the business of selling and servicing RP Industrial Equipment can and will be taken into account when the United States fulfills its responsibilities to approve a buyer under Paragraph IV.N. of the proposed Final Judgment.

Accordingly, the United States will move the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register** as 15 U.S.C. 16(d) requires.

Dated: February 15, 2002, Washington, DC

Dando B. Cellini,

Stephen A. Harris,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0829.

Certificate of Service

I hereby certify that I caused a copy of the foregoing Response to Public Comments to be served by mail and facsimile transmission, this 15 day of February, 2002, upon the following counsel of record for defendant 3D Systems Corporation:

Charles E. Biggio, Esq., Akin, Gump, Strauss, Hauer & Feld LLP, 590 Madison Avenue, New York, NY 10022, (212) 872–1010, *Fax:* (212) 407–3210.

David Donohoe, Esq. (#3426), Akin, Gump, Strauss, Hauer & Feld LLP, 1333 New Hampshire Avenue, NW, Washington, DC 20036, (202) 887–4000, *Fax:* (202) 887–4288.

John A. Herfort, Esq., Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, (212) 351–3832, *Fax:* (212) 351–3832.

Stephen A. Harris,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (202) 514–4901.

November 19, 2001.

Via Overnight Mail and Facsimile

J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re: Comment on Settlement Agreement Reached in United States v. 3D Systems Corporation and DTM Corporation

Dear Mr. Kramer:

As the Chairman and Chief Executive Officer of Aaroflex, Inc., I submit the following comments on the settlement terms agreed to by the Department of Justice (''DoJ'') to settle its case against the merger of 3D Systems, Inc. and DTM Corporation.

In 1995, DuPont granted North American rights under its stereolithography patents to Aaroflex. Aaroflex continued to develop the technology and began to offer an advanced sterolithography system for sale in the United States. In February of 1997, 3D Systems sued Aaroflex alleging that Aaroflex's very advanced stereolithography system infringed six of 3D Systems' patents. Specifically, 3D Systems asserted that Aaroflex's stereolithography products produced under the DuPont patents infringe the following patents: U.S. Patent Numbers 4,929,402; 5.174,931; 5,059,359; 5,137,662; 5,184,307; and 5,571,471. 3D Systems subsequently added two other patents, U.S. Patent Numbers 4,999,143 and 5,902,537. 3D Systems also removed one of the patents, U.S. Patent Number 5,571,471. Aaroflex has vigorously defended itself, and maintains that its products do not infringe any patents of 3D Systems. In fact, Aaroflex maintains that the patents being asserted by 3D Systems are invalid. Aaroflex's invalidity claims are presently pending in the action *3D Systems, Inc.* v. *Aarotech Laboratories, Inc. et al.,* United States District Court, Central District of California, Case No. 97–0231 AJW.

In reviewing the settlement agreement among the DoJ, 3D Systems, and DTM, I noticed that 3D Systems and DTM have warranted ''that they have the authority to convey all intellectual property included in the Divestiture Assets *free and clear of any encumbrances*. . . .'' Section IV(D) of the Settlement Agreement (emphasis added). Notably, each one of the patents subject to Aaroflex's invalidity claims is ''included in the Divestiture Assets'' as defined in the settlement agreement and identified in Appendix 1 to that agreement. Those patents are clouded by Aaroflex's invalidity claims. As a result, 3D Systems/DTM cannot convey them ''free and clear of any encumbrances.'' On the contrary, should 3D Systems/DTM license its stereolithography patents to, for example, Teijin Seiki, then Aaroflex would assert its rights under the DuPont patents against Teijin Seiki (or any other licensee of 3D Systems' Stereolithography patents) if the licensee attempts to sell stereolithography equipment in the United States.

For your background, Teijin Seiki acquired the Asian rights to DuPont's stereolithography patents about two years before Aaroflex acquired its North American rights under the DuPont patents. 3D Systems filed a patent infringement action against Teijin Seiki in Osaka, Japan in 1997—the same year in which 3D Systems brought its patent infringement action against Aaroflex. Given that they were both licensees under DuPont's stereolithography patents, Aaroflex and Teijin Seiki cooperated in asserting their defenses against the patent infringement actions of 3D Systems. Teijin Seiki successfully asserted an invalidation claim against one of 3D System's patents. 3D Systems appealed that decision. Teijin Seiki has since acquired a company called NTT–Data CMET Inc. I believe that 3D Systems and CMET had entered into a cross-licensing agreement previously to settle patent litigation. Thus, as a result of its acquisition of CMET, Teijin Seiki effectively became a party to that cross licensing agreement with 3D. Based upon that cross-licensing agreement, I believe that 3D Systems has since settled its Japanese litigation with Teijin Seiki. Since its acquisition of CMET, Teijin Seiki will no longer cooperate with Aaroflex in defending the action brought by 3D Systems.

In order to comply with the DoJ settlement terms, I expect 3D Systems to license its U.S. Stereolithography patents to Teijin Seiki/CMET. Such a licensing agreement will be a direct byproduct of the cross-licensing agreement between 3D Systems and Teijin Seiki/CMET and I believe it would be entered into with the intention to hinder Aaroflex's ability to succeed in its litigation with 3D Systems.

The United States District Court for the District of Columbia should modify the proposed Final Judgement to require that 3D Systems license (for use) DTM's sintering patents. The entry of the settlement terms as they currently exist would: (1) effectively encourage infringement of Aaroflex's patent rights under DuPont's patents; and (2) ensure

that any licensee of 3D Systems's stereolithography patents that attempts to sell products in the United States will have to defend itself against the assertion of Aaroflex's patent rights.

If you would like to discuss these comments, please contact me.

Yours truly,

Albert Young,
Chairman & Chief Executive Officer, Aaroflex, Inc., 8511 Rixlew Lane, Manassas, VA 20109, (703) 573–0690.

J. Robert Kramer II, Chief Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Dear Mr. Kramer,

I am writing to you in regards to the United States V. 3D Systems Corporation proposed final judgment and competitive impact statement. (civil action no. 1:01CV01237)

I am the General Manager of a leading rapid prototyping service bureau, Accelerated Technologies, Inc., and have been in this type of business since 1989. We utilize both the SLS and SLA technologies that 3D Systems now offers. Of most interest to ATI is the availability of materials for both processes. Currently, there are several vendors besides 3D Systems that sell resin for the SLA process but the only materials available for SLS are those sold by 3D Systems. These SLS materials are sold at a substantially higher price that what they could be purchased for from foreign competition. 3D Systems has made it clear that they would seek legal action against any customer of theirs that buys material from anyone other than themselves. We are being forced to pay 40% more for materials than our foreign competitors and are therefore unable to compete in most foreign markets.

It is also our belief that the SLS technology has the most potential for growth, especially in the area of Rapid Manufacturing. The availability of materials with advanced mechanical properties, such as Nylon and metal, make SLS the logical choice for this type of application. There is currently SLS equipment available that will produce direct metal parts for manufacturing that ATI is unable to acquire because of 3D's monopoly.

It is our understanding that 3D Systems is required to license either the SLS or SLA process to a competitor to satisfy the aforementioned final judgement. If that license were to be for the SLA process, we would see little change in current conditions. There would still be multiple vendors selling SLA resins at competitive prices and 3D would maintain their monopoly of SLS materials. It would also be very difficult for any SLA vendor to penetrate the strong market share that 3D holds.

We believe that a license granted for the SLS process would encourage more competition and would be of greater benefit to the entire industry.

Please feel free to call me with any questions.

Dated: November 12, 2001.

Regards,

Mike Durham,
General Manager.

November 21, 2001.

J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

Re: Public Comment on the Settlement of United States v. 3D Systems Corporation and DTM Corporation

Dear Mr. Kramer,

I am the president of Advanced Manufacturing & Engineering Services, hereinafter referred to as Advanced. Advanced is a corporation located in Nevada, Iowa providing design engineering, rapid prototyping and plastic injection molding services to its customers. I wish to make the following comments on the proposed Final Judgement in the Department of Justice's case against the merger of 3D Systems and DTM Corporation.

In order to promote competition in the United States rapid prototyping industry, the proposed Final Judgement must be amended to require that 3D license its newly acquired selective laser sintering technology. As I understand it, the proposed Final Judgement permits 3D to choose which technology (stereolithography or selective laser sintering) it will license. This a mistake. Based upon the present conditions in the United States RP industry, it is a certainty that 3D will license its stereolithography technology, and by doing so 3D will be able to maximize its market power.

First, the rapid prototyping market in the United States for stereolithography technology has reached a point of saturation. I would estimate that three out of every four industrial rapid prototyping system in operation in the United States utilizes stereolithography technology. As a result, for the foreseeable future, the growth potential for stereolithography systems in the United States is very low. As evidence of this state of market saturation, one only need to look at the present rebate program offered by 3D. 3D is offering a rebate of up to $200,000.00 on its largest stereolithography system, a 29% reduction. It is readily apparent that 3D is experiencing a significant decrease in sales of its stereolithography systems. A newly licensed stereolithography firm would have to contend with this state of market saturation as well as with 3D's installed based of customers. Given that, its prospects for any measurable success would be slim. More likely, the newly licensed stereolithography would have little to no pro-competitive effect on the market for industrial rapid prototyping systems in the United States.

On the other hand, there is a substantial opportunity for growth in the United States market for industrial rapid prototyping systems employing selective laser sintering (SLS) technology. SLS prototypes are more durable and have a larger range of applications due to the variety of materials available. SLS is also moving in the direction of rapid manufacturing, meaning companies will not only produce prototypes, but finished products using this technology. Second, 3D is now the only supplier of sintering powder material in the United States. By licensing its technology to a stereolithography firm, 3D will maintain this monopoly position and continue to harm U.S. competition in the rapid prototyping industry. 3D currently charges extremely high prices for the powder material used in the SLS process. If allowed the powders could be purchased direct from the powder manufacturer for as little as $10.00/lb, 3D charges $65.00/lb. If competition were realized the cost of this material would level out to a more reasonable level. There is evidence of this in the European market where 3D competes with EOS. The same material there sells at $35.00/lb. This price differential in powder material does not allow U.S. companies the opportunities to compete on a global scale.

In conclusion, licensing a stereolithography firm will not promote competition in the United States rapid prototyping industry. Instead, it would only fortify 3D's present monopoly position. The proposed Final Judgement should be modified to require that 3D license its laser sintering patents to another company currently manufacturing and selling commercial SLS equipment. Presently EOS is the only other laser sintering firm in the world. Licensing EOS is the only way to replace the competition that has been lost by the merger of 3D and DTM.

I am willing to discuss these comments with you if you have any questions about the information that I have provided.

Sincerely,

Daryl Michael,
President, Advanced Manufacturing & Engineering Services.

Advanced Prototyping, Inc.

November 21, 2001.

J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re: Comment on Proposed Final Judgement in United States v. 3D Systems Corporation and DTM Corporation

Dear Mr. Kramer:

I write in response to the invitation for the submission of comments on the terms of the proposed final judgement in United States v. 3D Systems Corporation and DTM Corporation. I am the president of Advanced Prototyping, Inc. (''API''). API operates both stereolithography (''SL'') and laser sintering (''LS'') machines, which the Department of Justice refers to as rapid prototyping (''RP'') industrial equipment. API is an RP service bureau. As the DOJ is aware, RP ''service bureaus'' produce prototypes of molds, models, prototypes, as well as other three-dimensional objects at their customer's request. API utilizes powders (''LS material'') and resins (''SL material'') in conjunction with its LS and SL RP equipment to produce those objects for its customers. API provides RP services to commercial customers in the United States and Canada. API has been in business for 5 years and has over 400 customers. Service bureaus, like API, account for a significant amount of 3D's and DTM's sales of RP equipment as well as the sales of LS material and SL material in the United States.

Since the announcement of the proposed merger of 3D Systems, Inc. (''3D'') and DTM Corporation (''DTM''), API has been concerned about the adverse effects that the combination would have on the RP industry in the United States because of the elimination of competition between the SL and LS RP technologies. API was concerned that, as a result of the transaction, the merged company would have the ability to significantly raise the prices of its RP equipment as well as the LS material and the SL material (collectively ''RP materials'') used in the RP industrial equipment market to produce the three-dimensional objects. Additionally, API believed that the combination of 3D and DTM would hinder innovation in the RP industry. API was pleased to learn that the DOJ was similarly troubled by the proposed combination and filed a lawsuit to prevent it from occurring. However, after reviewing the proposed settlement terms agreed to by the DOJ, API remains concerned.

From its review of the proposed Final Judgement, API understands that the DOJ agreed to settle its lawsuit based upon a commitment from 3D to license (for use) either its LS-related patents or its SL-related patents to a company that is currently in the business of manufacturing and selling such RP equipment—leaving it to 3D to select which technology will be licensed. All such companies are located outside of the United States. Yet, the proposed Final Judgement does not seem to include any terms designed to ensure that the licensee successfully enters the United States RP market. Additionally, the DOJ apparently permitted the proposed transaction to close prior to the required licensing being finalized. The merger was completed in August of this year, and as a result the merged entity is presently enjoying the monopoly in the United States market for RP equipment and RP materials that the DOJ sought to eliminate.

Unfortunately, the proposed Final Judgement does not adequately address the adverse competitive effect of the combination of 3D and DTM. API's most significant concerns with the terms of the proposed Final Judgement are the following: (1) There remains a possibility of the permanent loss of a competing supplier of LS RP equipment and LS material in the United States; (2) it does not ensure that the licensee will successfully enter the United States; and (3) the monopoly position of 3D in the United States LS material market may remain undisturbed.

A Competing Supplier of LS RP Equipment and LS Material May Be Lost

As a result of the combination of 3D and DTM, the consumers in the United States RP industry have lost a competitive independent source of LS RP equipment and LS material. Nevertheless, the proposed Final Judgement does not require that 3D license its LS technology, but instead it permits 3D the option of licensing its SL technology. If 3D licenses its SL technology, then the competition in United States that existed prior to the merger will have been permanently lost. Moreover, after granting a license under its SL patents, 3D (an SL company) will undoubtedly aggressively promote its SL technology even more in an attempt to maintain its strong position in the United States markets for SL RP equipment and SL material. Meanwhile, 3D can be expected to give little attention to its newly-acquired LS business. Such lack of attention would necessarily harm U.S. consumers of LS RP equipment and LS material.

LS technology is generally regarded in the RP industry as having greater growth potential than SL technology. The LS technology produces a more durable and functional object, while objects produced through SL technology are more malleable. Also, the accuracy of the LS technology has been greatly improving over the last several years. The LS technology and the LS material are closer to achieving what is expected to be the future of the United States RP industry: Rapid manufacturing. Without an independent entity pushing for innovative developments in LS technology, 3D will be allowed to dictate the pace of that innovation. Given that 3D would be competing with its SL licensee and otherwise occupied with maintaining its SL market position, it will have no incentive to take any action (such as efforts to develop its LS technology) that may further erode its strength in the United States SL market. Consequently, API expects that innovative activity in United States in the field of LS technology can be expected to slow to a crawl or stop completely unless 3D is required to license its LS technology to an independent entity. If 3D is not required to do so, then United States customers in the RP industry will undoubtedly be harmed by the lack of competition from an independent entity that has the ability and incentive to conduct research and development in the field of LS technology.

Uncertainty of the Proposed Licensing Solution

The proposed Final Judgement makes no provision for the possibility that the licensee may not aggressively undertake to exercise its rights under the license, or the possibility that the licensee's attempt to enter the United States RP industry is unsuccessful. In the event that either one of these possibilities becomes a reality, the settlement terms will be effectively meaningless and 3D will continue to have the monopoly they presently have. The proposed Final Judgement should be amended in some fashion to account for the occurrence of either contingency. There should be some oversight of the selected licensee's operations in the United States, and a requirement that 3D license their relevant technology to another company if the initial licensee does not successfully enter the United States within a certain time period. We suggest that if the licensee does not make at least $20 million of sales in the United States over its first complete year of operations, then the DOJ should revisit the situation and decide if 3D should license its technology to another company, in order to promote competition.

Moreover, if 3D were to license its SL patents instead of its LS patents then the likelihood of the licensee failing to successfully enter the United States market would increase. Any SL licensee will be faced with the formidable task of penetrating 3D's well-established base of SL customers in the United States. The SL licensee would have to expend considerable time and resources before even having a hope of experiencing any success in the United States.

3D Is Free to Keep Its Monopoly on LS Material

The sale of RP materials represents a substantial portion of the costs for customers in the RP industry. For example, since we started our business API has spent 10% of our gross income on material. Following the merger of 3D and DTM, 3D is now one of two SL material suppliers in the United States. Should 3D choose to license its SL patents and not its LS patents, then 3D's monopoly of the United States market for LS material will continue. API believes that 3D will take aggressive action to exploit its position in the United States market for RP materials.

The District Court and the DOJ should be aware of the actions that 3D has taken since the settlement with the DOJ was reached and the merger was closed. Since that time, 3D has acquired RPC Ltd. (previously an independent Swiss SL material manufacturer and developer). Also, 3D's distribution and development agreement with Vantico Inc. (a manufacturer and developer of RP SL material) has terminated. 3D is currently involved in a dispute with Vantico about whether Vantico can sell its SL materials in the United States independent of 3D. Through those two actions, 3D has reduced the number of sellers of SL material in the United States from three to two. API expects to be paying more in the near future for the SL material that it must purchase in order to run its SL machines. When coupled with 3D's monopoly in the LS material market, United States consumers of RP material are harmed even further. In order to lessen the harm to competition in the United States RP materials market, the proposed Final Judgement should be modified to require that 3D license its patents that cover LS material regardless of whether it grants any license under its SL patent pursuant to its settlement with the DOJ.

Conclusion

The DOJ or the United States District Court for the District of Columbia should modify the proposed Final Judgement to require the licensing of 3D's LS technology in order to encourage innovation in SL technology, and to maintain a competing source of SL RP equipment and material. The proposed Final Judgement should also be modified so as to include terms that do more to ensure the successful entry of the licensee of 3D's RP technology into the United States RP market.

Please contact me if you have any questions about the information that API has provided in these Comments.

Sincerely yours,

Ernie Guinn,

President, Advanced Prototyping, Inc., 2269 Star Court, Rochester Hill, MI 48309, (248) 853–8256.

November 21, 2001.

Via Courier and Facsimile

J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re: Proposed Final Judgment in United States v. 3 D Systems Corporation and DTM Corporation

Dear Mr. Kramer:

EOS GmbH Electro Optical Systems (''EOS'') submits the following comments to the U.S. Department of Justice, Antitrust Division (''DOJ'' or the ''Antitrust Division''), regarding the settlement agreement reached between the Antitrust Division and 3D Systems Corporation (''3D'') and DTM Corporation (''DTM'') to settle DOJ's antitrust lawsuit against the merger of 3D and DTM. United States v. 3D Systems and DTM Corp., Civil Action No. 1:01CV01237 (D.D.C. filed June 6, 2001). EOS is a competitor of 3D and DTM in countries other than the United States, and EOS is a knowledgeable industry participant.

Introduction

The proposed Final Judgment has already permitted the merger of 3D and DTM (the ''Merger'') to occur, subject to provisions of the proposed Final Judgment, which DOJ asserts will adequately cure the harm to competition in the United States that the Merger has caused. However, EOS has serious concerns that the proposed Final Judgment does not adequately address the competitive problems that DOJ identified in its Complaint.

First, the proposed Final Judgment permits a significant period of monopoly for the combined 3D and DTM. By allowing the merger to be consummated prior to any divestiture being made, DOJ has permitted the creation, for at least a significant interim period, of the very monopoly that DOJ had challenged in its Complaint. 3D's unfettered monopoly power since the merger is raising additional barriers for potential new competitors to enter into in the market for industrial rapid prototyping (''RP'') systems and materials in the United States. Any potential Acquirer of the Divestiture Assets will face a thoroughly entrenched monopolist by the time it possibly could begin U.S. sales.[1]

Second, as a result of the Merger, the United States industrial RP systems and materials markets have lost the competition supplied by an independent laser sintering firm. The Antitrust Division's proposed Final Judgment, however, does not require that the specific type of competition that was lost be replaced. Rather, the proposed Final Judgment allows the merged parties to determine which of two differing technologies may be divested. Moreover, DOJ seems to have overlooked the fact that any Acquirer of the Divestiture Assets related to stereolithography, one of the two relevant technologies, may still encounter significant patent barriers controlled by third parties.

Third, DOJ did not properly consider the harm that the proposed Final Judgment is causing to third parties. EOS' ability to litigate certain intellectual property rights that it owns is being harmed as a result of the Merger, which the proposed Final Judgment has permitted.

Finally, the proposed Final Judgment contains several provisions that indicate that the Antitrust Division does not correctly understand what is required to begin competing in the industrial RP systems and materials market in the United States.

As a result of these infirmities in the proposed Final Judgment, EOS requests that DOJ or the Court modify the proposed Final Judgment. Specifically, EOS requests that the proposed Final Judgment be modified in order to require that 3D license its laser sintering patents regardless of whether 3D licenses its stereolithography patents. Also, EOS requests that the proposed Final Judgment be modified in order to prevent its entry from inflicting further injury on EOS.

In order to ensure that the issues presented by the terms of the proposed Final Judgment are adequately considered, EOS requests that the Court hold a hearing to evaluate whether the Antitrust Division has sufficiently protected the public interest in reaching the settlement agreement reflected in the proposed Final Judgment.

I. The RP Industry

A. RP Industry Background and Description of EOS

In its Complaint, DOJ accurately describes the fundamental aspects of the RP industry so that the public and the Court are able to understand the competitive effects of the Merger. To restate briefly these fundamental aspects, RP systems utilize ''computers and computer automated equipment to rapidly produce'' prototypes, molds, models, and other three-dimensional objects. See Complaint ¶ 10. The combined 3D/DTM manufactures and sells industrial RP systems that utilize the two most sophisticated technologies in the RP industry: Stereolithography and laser sintering. Stereolithography technology utilizes a liquid, photocurable plastic resin to create three-dimensional objects through radiation. Laser sintering technology creates three-dimensional objects by employing a plastic powder that is solidified through the heat and energy supplies by a laser. Consistent with the Antitrust Division's allegation in its Complaint, EOS estimates that 3D and DTM have a combined eighty percent share, by revenue, of the industrial RP systems and materials market in the United States.

EOS is a German corporation, headquartered near Munich. EOS manufactures and sells industrial RP systems and materials. The RP systems manufactured by EOS utilize laser sintering technology. EOS sells its laser sintering RP systems and materials primarily in Europe and Asia. EOS is the only company in the world other than DTM (now part of 3D since the Merger) that has developed and manufactured laser sintering RP systems and materials. The Antitrust Division has recognized that ''3D and DTM face rigorous competition from . . . Electro Optical Systems, based in Germany.'' See Competitive Impact Statement at 66 FR 49209.

However, EOS makes no sales of its laser sintering RP systems in the United States. This is primarily because of assertions by DTM, and now by 3D following the Merger, of certain U.S. patent barriers. This intellectual property barrier to sales in the United States by foreign companies is one reason that DOJ concluded that the United States constitutes a distinct geographic market for RP systems and materials. See Complaint ¶¶ 16–19. The DOJ also recognized that the patent rights controlled by 3D and DTM were a primary reason for the anticompetitive effects caused by the Merger. See Complaint ¶ 28. Similarly, 3D and DTM recognized the large patent barrier their combined portfolios represent. According to the Complaint, the investment banking firm retained by 3D to advise on the Merger reported that 3D's management believed that ''following the merger, [3D] will have a significantly strong patent portfolio to prevent others from competing in the United States.'' *Id.*

B. EOS's Relationship and Competition With 3D

EOS and 3D have a unusual relationship that DOJ and the Court must understand in order to appreciate the harm that the proposed Final Judgment, as explained in more detail below (see Section IV.), has had on EOS specifically and on possible new competition in the United States generally. The unusual relationship between 3D and EOS is that, while EOS is a competitor of 3D, EOS is also a licensee under all of 3D's patents. EOS utilizes the patents that it licenses from 3D, as well as other technology EOS owns, to produce laser sintering RP systems that compete with 3D's RP Industrial Equipment.

Prior to the Merger, 3D owned an extensive patent portfolio that both 3D and EOS believe cover significant portions of both the stereolithography and the laser sintering technologies used in the RP industry. In a series of transactions between 3D and EOS in 1997, EOS licensed from 3D the exclusive right to produce and sell laser sintering RP systems under the 3D patents. See August 27, 1997 License Agreement between 3D Systems Corporation and EOS GmbH (''1997 3D/EOS Licensing Agreement'') (Attachment A). Following the execution of the 1997 3D/EOS Licensing Agreement, and until the Merger, 3D manufactured and sold only stereolithography RP systems. EOS manufactures and sells only laser sintering RP systems. As a result of the 1997 3D/EOS Licensing Agreement, both companies in part use technology protected by the same patents. Since the 1997 3D/EOS Licensing Agreement became effective, 3D and EOS have been significant competitors for RP systems in Europe and Asia, but not in the United States, where DTM's assertions of intellectual property barriers have inhibited EOS from entering the market.

C. EOS Competition with DTM

At the time that 3D and EOS entered into the 1997 3D/EOS Licensing Agreement, DTM

[1] To extent possible, EOS uses terms as defined in the Complaint and the proposed Final Judgment. Capitalized terms denote the definitions in the Complaint and the proposed Final Judgment, unless otherwise indicated.

was making commercial sales of its laser sintering RP systems and materials. DTM's and EOS' laser sintering RP systems use similar technologies and similar sintering RP material. DTM and EOS directly compete in Europe, Asia, and elsewhere, but not in the United States.

D. The Inability of EOS To Compete in the United States Has Resulted in Much Higher U.S. Prices

The competition between EOS and DTM has greatly benefited customers of industrial RP systems in Europe and Asia, the areas where EOS primarily competes with DTM (now with 3D). As a result of that competition in Europe, customers pay much less for sintering RP material in Europe than in the United States. Due to the lack of competition in the United States, sintering RP material has, on average over the last several years, cost United States customers about three times more than European customers. At the present, U.S. customers of DTM are paying $60 to $65 per pound for DTM's DuraForm®, which EOS believes accounts for about 80% of the material used in DTM's laser sintering RP systems. European customers are paying about $20 to $22 per pound for the same DuraForm® material. The cost of the sintering RP material, which is a continuing and substantial cost that users of RP systems incur, is a very important consideration in the purchase and use of RP systems. Over the life of an RP system, it is not unusual for a user to spend more for the material used in the RP system than the original cost of the RP system. The Antitrust Division has recognized this U.S./Europe price difference, and it was a significant reason that DOJ concluded that the United States is a separate market.

Due to the large discrepancy between the price of laser sintering RP material in the United States as compared to Europe, the growth of laser sintering technology has been inhibited in the United States. Laser sintering RP systems and materials now account for about 55% of all RP industry purchases in Europe. In the United States, however, laser sintering RP systems and materials account for only about 30% of all RP industry purchases. The United States is the largest market in the world for industrial RP systems and material, accounting for almost 45% of all purchases of industrial RP systems, material, and related services. EOS believes that the slower growth rate of laser sintering technology in the United States, despite being the largest market in the world for RP technology, is primarily (if not solely) a result of the much higher U.S. prices for laser sintering materials.

E. EOS' Attempts To Enter U.S. Market

As the United States is the largest market in the world for RP systems and materials, EOS has been attempting to enter into this large market in order to offer its line of laser sintering RP systems and materials. However, as described earlier, EOS has been confronted with DTM's assertion of patent barriers for laser sintering RP systems and materials. In order to settle the legal issues raised by DTM's aggressive position and in an attempt to gain open access to the United States market for industrial RP systems and materials, EOS initiated a lawsuit against DTM in the Central District of California. DTM also filed a complaint against EOS in a related proceeding.

II. The Final Judgment Permits a Significant Period of Monopoly for the Merged 3D and DTM

The proposed Final Judgment has permitted 3D and DTM to merge, despite the adverse independent competitive effects of the Merger cited by DOJ in the Complaint. DTM's corporate existence has ceased, and it is now part of 3D. 3D now unquestionably enjoys a monopoly in the United States RP Industry, as described in the Complaint. See Complaint ¶ 20–30. The proposed Final Judgment purports to remedy the adverse competitive effects of this monopoly in the future by requiring that 3D license its patents to a new competitor. Regardless of the impact that the licensing will have, in the interim period, the merged 3D/DTM has a monopoly. Under the terms of the proposed Final Judgment, this interim period will be a minimum of 120 to 180 days, the time in which 3D has to affect the required divestitures. If the 3D does not affect the divestitures, a trustee will be appointed to divest the assets, which would take additional time. As a practical matter, it will take any Acquirer of the Divestiture Assets at least six months, and probably at least a year, from the date of obtaining the license to establish a sufficient sales and service force in the United States to begin meaningful competition with 3D's monopoly.

A. The Merged Entity's Monopoly Period Will Create Additional Entry Barriers for Any Acquirer of the Divestiture Assets

This period in which 3D enjoys an unchallenged monopoly will create additional barriers to any new competitor's successful entry into the U.S. market. The merged entity already has a large base of installed equipment in the United States. The period before which any new competitor in the United States can be expected to realistically begin competition will allow 3D to increase this installed base. This period provides an opportunity for 3D to bundle its systems, materials, and services without any competitive threat. For this period, which may well be as long as a year, U.S. customers of the merged entity will have no alternative source for RP systems or materials.

Additionally, any Acquirer of the Divestiture Assets will face vigorous competition from 3D, which now can offer a full range of stereolithography and laser sintering RP systems and materials. The proposed Final Judgment's requiring only that 3D divest either its stereolithography patents or its laser sintering patents to establish a new U.S. competitor will make successful entry against a 3D/DTM product line very difficult.

The proposed Final Judgment should have required that the merged 3D/DTM license *both* technologies to an appropriate Acquirer or Acquirers. The restrictions on competition in the United States caused by the Merger are so substantial that a more complete remedy should have been a fundamental condition for the Merger to proceed. This would be the only way to ensure that a competitor or competitors could offer U.S. customers a range of competitive alternatives similar to what the merged 3D and DTM can offer.

B. During the Period in Which 3D Has Had a Monopoly, 3D Has Engaged in Additional Anticompetitive Behavior

Following the settlement with DOJ and during this period in which 3D has possessed a monopoly, 3D has engaged in additional conduct that by itself may violate the antitrust laws. Specifically, this conduct includes the acquisition of RPC Ltd. of Switzerland, previously a competitor of 3D for sales of plastic resins utilized in the stereolithography RP systems. *See* ''3D Systems Completes Acquisition of RPC,'' September 19, 2001 News Release by 3D (Attachment B). During this period, 3D has also attempted to eliminate competing sales of plastic resins by Vantico Inc., 3D's current supplier of resins. See ''3D Systems and Vantico Terminate Relationship, August 24, 2001 News Release by 3D (Attachment C).'' By these actions, 3D, which currently makes about 80% of the U.S. sales of plastic resin, is attempting to reduce the number of plastic resin suppliers in the United States from three to two. This conduct may violate the same antitrust laws under which 3D was sued by DOJ. This conduct does not directly affect EOS, as EOS does not sell plastic resins, but DOJ and the Court should be aware of this conduct and consider it when evaluating the adequacy of the proposed Final Judgment.

III. In Order To Preserve Competition in the Industrial RP Systems Market, the Acquirer Should Be an Independent Laser Sintering Firm

A. Actual Loss of Competition Is the Elimination of an Independent Laser Sintering Competitor

Prior to the Merger, DTM was the only company in the United States that manufactured and sold industrial laser sintering RP systems and materials. As a result of the Merger permitted by DOJ, U.S. purchasers in the industrial RP systems and materials market have lost an independent laser sintering competitor. The proposed Final Judgment does not, however, include a requirement that 3D license its laser sintering patents to a competitor, which would directly replace the competition that has been lost.

The Antitrust Division has acknowledged the beneficial effects caused by the presence of an independent laser sintering firm in the United States industrial RP systems and materials market. In the Competitive Impact Statement, DOJ stated that ''[c]urrently, 3D and DTM offer the most sophisticated systems in the industry and compete directly against each other in the development, manufacture, and sale of industrial RP systems.'' Competitive Impact Statement at 66 FR 49200, 49209 (September 26, 2001). In the Complaint, DOJ correctly recognized that:

[t]he direct competition between 3D and DTM has benefited the purchasers and users of industrial RP systems through lower prices for systems, lower prices for materials, and improved products. In addition, the two

companies would likely remain the most vigorous competitors in the industrial RP systems market as the market continues to grow and mature, If 3D's acquisition of DTM is permitted to proceed, the substantial competition between the two leading manufacturers of industrial RP systems will be permanently eliminated, resulting in increased prices and lessened product innovation. Complaint ¶26.

DOJ also correctly described that ''[t]he competition between 3D and DTM has been the driving force behind the innovative industrial RP system technology.'' Complaint ¶ 22 (emphasis added). See also Competitive Impact Statement at 66 FR 49209. The United States market for industrial RP systems and materials may permanently lose this ''driving force'' of competition between stereolithography and laser sintering technologies unless an independent laser sintering firm becomes a competitor in the United States. 3D licensing its laser sintering patents to a new U.S. entrant should be an absolute and minimum requirement of the proposed Final Judgment.

B. Licensing Only a Stereolithography Company Will Not Preserve Competition

Through the above-referenced statements in the Complaint and the Competitive Impact Statement, it is evident that DOJ understands the vigorous competition brought to the United States industrial RP systems and materials market by an independent laser sintering firm. Nevertheless, DOJ erroneously asserts that the proposed Final Judgment will ''ensure that competition that would have otherwise been eliminated as a result of the proposed acquisition will be preserved.'' Competitive Impact Statement at 66 FR 49209. When the realities of the United States industrial RP systems marketplace are examined, it is also evident that 3D's divestiture to a stereolithography, company would not preserve competition in the United States market for RP systems and materials.

The United States market for industrial RP stereolithography systems has reached a point of saturation. There are substantially more stereolithography RP systems than laser sintering RP systems in operation in the United States. 3D is a stereolithography company, and it derived more than two times as much revenue as DTM during fiscal year 2000. Competitive Impact Statement at 66 FR 49208–09. 3D recently announced the sale of its 2,000th RP system. See ''3D Systems Sells 2,000th Machine,'' May 29, 2001 News Release by 3D (Attachment D). Members of the RP Industry estimate that three out of every four industrial RP systems operating in the United States utilize 3D's stereolithography technology.

Through its present customer rebate program, 3D has effectively acknowledged that the U.S. industrial RP systems market for stereolithography has reached a point of saturation. 3D is currently offering customers cash rebates as high as $200,000, or about 20%–30% for purchasing 3D's stereolithography RP systems. Letter from Dwight Williams, Vice-President Sales for Americas, 3D Systems, dated October 23, 2001 (Attachment E). 3D has not offered similar rebates on sintering RP systems. This indicates that 3D has to offer substantial rebates on its stereolithography systems in order to sell them into this market full of stereolithography RP systems, but 3D does not have to offer rebates in order to sell its sintering systems. Any stereolithography firm that acquires the Divestiture Assets would not only have to contend with 3D's large installed base of customers, but also with a saturated United States market. As a result, with its complete product line of industrial RP systems and materials, 3D will be able to leverage its considerable market power to adversely effect the newly-licensed stereolithography company's attempt to enter the United States market.

Laser sintering RP technology has greater growth prospects than stereolithography RP technology in the United States. Laser sintering RP systems currently account for approximately 55% of all RP industry purchases in Europe, but only about 30% of all industrial RP purchases in the United States. The principal cause of this slower growth in the United States is the much higher prices charged by DTM (now 3D) for laser sintering RP material in the United States than those charged in Europe. The price for laser sintering material is approximately 200% more than the price for the same material in Europe. See Section I.D above. Recognizing this price difference, many potential customers located in the United States have expressed an interest in purchasing EOS laser sintering industrial RP systems and materials. Moreover, United States customers who are familiar with EOS' industrial RP systems are attracted to its features (such as its large build volume and higher operating efficiency) that differentiate it from 3D's industrial RP laser sintering systems. However, because of DTM's aggressive assertion of its patents, EOS has been unable to meet this market demand opportunity. Without competition from an independent laser sintering RP company, the substantial growth prospects for laser sintering RP technology will not be realized, and competition in the RP industry will be irreparably harmed.

C. Any Stereolithography Acquirer May Encounter Additional Patent Barriers to U.S. Market Entry

Aside from having to content with 3D's substantial installed base of stereolithography customers, a newly licensed stereolithography company would face an additional patent barrier controlled by a third party. Aaroflex, Inc. (''Aaroflex'') is the exclusive North American licensee of the stereolithography technology of E.I. du Pont de Nemours and Company (''Du Pont''). Aaroflex is currently involved in litigation with 3D over the scope, enforceability, and validity of their respective stereolithography patent portfolios. Aaroflex has stated that it will assert its rights under the DuPont patents to prevent any other company from selling stereolithography RP systems in the United States. Consequently, should 3D divest its technology to a stereolithography company, the potential new competitor's entry into the United States market for industrial RP systems and materials could be substantially impeded by a patent dispute. DOJ has overlooked this potential obstacle to successful U.S. competition by a new stereolithography company. Despite DOJ's statements in the Competitive Impact Statement, the proposed Final Judgment does not lift all of the patent entry barriers in the industrial RP systems and materials market in the United States for stereolithography equipment.

D. Teijin Sieki/CMET Is Not a Suitable Acquirer of 3D's Patent Rights

The Antitrust Division has recognized Teijin Seiki [2] of Japan as a potential Acquirer of the Divestiture Assets. Competitive Impact Statement at 66 Fed. Reg. 49209. Teijin Seiki currently manufactures and sells stereolithography RP Equipment in Asia. Teijin Seiki is therefore a potential Acquirer of the Divestiture Assets under the terms of proposed Final Judgment.

After DOJ filed the Complaint to challenges the Merger, but before the filing of the proposed Final Judgment, the president of Teijin Seiki sent a letter to EOS mentioning how both EOS and Teijin Seiki might be interested in bidding for assets that 3D and DTM might have to divest to resolve the antitrust challenge to the Merger. See Letter from Ken Sahara, President, CMET Inc. to Dr. Hans Langer, President, EOS GmbH, dated July 23, 2001 (Attachment F). Though Mr. Sahara acknowledged that ''[a]t this stage, I am not sure, it is the proper time or not,'' he invited EOS to meet and to ''discuss or exchange information about Market, Products, and others.'' EOS interprets this communication from Teijin Seiki as an invitation to collude, either regarding the bidding process for the Divestiture Assets or regarding competition generally. Demonstrating an awareness of the impropriety of the contact and the invitation, Mr. Sahara closed the letter with a request to ''[p]lease treat this proposal as a confidential matter between you and I.''

DOJ has previously challenged similar invitations to collude as an attempted violation of the antitrust laws. See. e.g., *United States v. American Airlines,* 570 F. Supp. 654 (N.D. Tex 1983), rev'd, 743 F.2d 1114 (5th Cir. 1984), cert. dismissed, 474 U.S. 1001 (1985). the willingness of the president of Teijin Seiki to engage in such potentially anticompetitive, apparently unethical or illegal conduct establishes that Teijin Seiki is not a suitable Acquirer of the Divestiture Assets. DOJ and the Court should consider this in the evaluation of a potential Acquirer.

IV. The Proposed Final Judgment Has Harmed EOS' Independent Attempt To Enter the Industrial RP Systems and Materials Market in the United States

Under the Antitrust Penalties and Procedures Act (''APPA''), the Court must evaluate the proposed Final Judgment submitted by DOJ. See 15 U.S.C. 16(b)–16 (h) (1994). It is well established that ''Congress, in passing the (APPA), intended to prevent 'judicial rubber stamping' of the Justice Department's proposed consent decrees.''

[2] Teijin Seiki recently acquired another Japanese company called NTT-Data CMET, Inc. Following the acquisition, Teijin Seiki has operated under the CMET trade name.

United States v. Microsoft Corp., 56 F.3d 1448, 1458 (D.C. Cir. 1995) (citation omitted). Specifically, the Court must make an independent determination of whether entry of the proposed Final Judgment is ''in the public interest.'' 15 U.S.C. 16(e). Among the factors that the Court is to consider in conducting its public interest inquiry is whether entry of the proposed Final Judgment ''will result in any positive injury to third parties.'' 15 U.S.C. 16(e)(2); see also *Microsoft Corp.,* 56 F.3d at 1461–62. By permitting the Merger to close prior to remedying the competitive harm, the proposed Final Judgment is causing injury EOS that the Court should consider in its evaluation of whether the enter the proposed Final Judgment without modification.

A. The Proposed Final Judgment Is Hearing EOS' Ability To Litigate Issues Related to Certain Intellectual Property Rights of EOS

As described in Section I.B. above, EOS acquired certain intellectual property rights from 3D through the 1997 3D/EOS Licensing Agreement. These rights include an exclusive license to all 3D patents then existing and applied for prior to August 2002, applicable to a field of use for laser sintering. See Attachment A. The 1997 3D/EOS Licensing Agreement also contains a provision that EOS will not assert against 3D ''any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by [3D] under the licensed patents, at any time, for any reason, during the term of the License Agreement'' (the ''Non-Suit Provision''). See 1997 3D/EOS Licensing Agreement § 2.1(a) (Attachment A).

In December 2000, EOS filed a lawsuit against DTM in an attempt to open the United States industrial RP systems market to competition from EOS. Since 3D has acquired and merged with DTM, 3D has taken the position that EOS may not maintain any claim of patent infringement against 3D because of the Non-Suit Provision. In fact, 3D recently submitted a motion for summary Judgment in the action based entirely on its interpretation of the Non-Suit Provision in the 1997 3D/EOS Licensing Agreement. See 3D Systems, Inc.'s Motion for Summary Adjudication Regarding Damages Under the 3D Patents and the accompanying Memorandum of Points and Authorities in Support Thereof (without attachments) (Attachment G). White EOS strongly disagrees with 3D's interpretation of the license agreement as well as its interpretation of the applicable law, at a minimum 3D's argument has complicated and will prolong the litigation. At worst, if the District Court of the Central District of California accepts 3D's position, EOS will effectively be stripped of its ability to enforce its patent rights in the United States—rights that it acquired originally from 3D. As a result of the proposed Final Judgment's permitting the Merger, EOS is currently, and may be permanently, injured in its ability to enforce its intellectual property rights in the United States. This is an unusual and idiosyncratic anticompetitive effect, but this additional obstacle to a potential new U.S. competitor is a directly created by the Merger and the proposed Final Judgment.

EOS' ability to enforce its patents should not inhibited by the terms of the settlement agreement reached between DOJ and 3D/DTM. Accordingly, the proposed Final Judgment must be modified to prohibit 3D from asserting that EOS cannot enforce intellectual property rights that EOS acquired from 3D.

B. The Merger Has Created Additional Barriers for any Potential Entrants Into the United States Market for Industrial RP Systems and Materials

As described above, the Merger has created a company that can offer both stereolithography and laser sintering industrial RP systems and materials. See Section II.A. above. Meanwhile the Acquirer will only be able to offer industrial RP systems that utilize either stereolithography technology or laser sintering products. As a result, EOS or any other Acquirer will be at a substantial disadvantage to 3D. This effect has been exacerbated by DOJ's permitting 3D and DTM to close the Merger before the Acquirer has obtained the Divestiture Assets. To correct this obstacle to either a stereolithography or a laser sintering competitor's entry, the proposed Fund Judgment should be modified to require both a stereolithography and a sintering Acquirer.

V. Several Miscellaneous Provisions of the Proposed Final Judgment Indicate that DOJ Misunderstands Some Fundamental Concepts of the RP Industry

A. DTM's Plant in Austin, Texas Cannot Be Acquired

Included among the Divestiture Assets is an option for the Acquirer to purchase DTM's plant located in Austin, Texas (the ''Plant''). Proposed Final Judgment ¶ II.G(3); see also Competitive Impact Statement at 66 Fed. Reg. 49210. Through its due diligence, EOS has learned that DTM (now 3D) is merely a lessee of the Plant. As as result, contrary to DOJ's apparent belief, the Acquirer cannot purchase or acquire the Plant. The Acquirer may only assume DTM's lease. The proposed Final Judgment also contains a provision that reads as follows: ''Defendants shall warrant to the Acquirer of the Divestiture Assets that each tangible asset will be operational on the date of sale.'' Proposed Final Judgment ¶ IV.K. In this type of industry, there are no tangible operating assets to transfer. Moreover, the proposed Final Judgment fails to include a requirement that 3D/DTM transfer any employment contracts associated with the Plant. So, DOJ has negotiated a divestiture that only amounts to an option to assume a lease. The inclusion of the option to ''purchase'' the Plant does not provide an Acquirer with any assistance in establishing a presence in the United States market for industrial RP systems and materials. This provision in the proposed Final Judgment suggests that DOJ does not understand what divestiture commitments it has extracted from 3D and DTM.

B. The Peoposed Final Judgment Does Not Permit Potential Acquirers To Obtain Information on Necessary Service Personnel of the 3D and DTM

Another aspect of the proposed Final Judgment which suggests that DOJ does not comprehend the requirements of affecting a successful entry into the United States market for industrial RP systems and materials is its failure to include the service personnel of 3D/DTM as part of the required due diligence. The proposed Final Judgment only requires that 3D/DTM provide the Acquirer, after the Acquirer has been determined, ''information relating to the personnel involved in sales, marekting and manufacturing of RP Industrial Equipment in the Selected Technology to enable the Acquirer to make offers of employment * * *.'' Proposed Final Judgment ¶ IV.I. Service personnel are omitted, and this omission is particularly troubling. EOS had previously conveyed to DOJ the importance of having access to service personnel. EOS had clearly communicated that obtaining competent and experienced service personnel was essential to establishing a viable presence in the United States market for industrial RP systems. In fact, EOS identified the task of identifying and hiring knowledgeable service personnel as one of the most significant barriers to entry in the United States industrial RP systems market. The Federal Trade Commission has recognized the importance of including a requirement in its orders involving the divestiture of technology that the defendants facilitate the transfer of knowledgeable personnel. Bureau of Competition, Federal Trade Commission, A Study of the Commission's Divestiture Process (1999) at 27–28, and at 36–37. Requiring the transfer of knowledgeable personnel is necessary to ensure that the Acquirer has the ability to exploit its newly acquired technological rights. *Id.*

Aside from its failure to include service personnel as part of the initial due diligence process, the Antitrust Division did not require that 3D/DTM share *any* personnel information with any potential Acquirer until the Acquirer has been identified. Proposed Final Judgment ¶ IV.I. Consequently, in submitting their offers to 3D, potential Acquirers must attempt to value the Divestiture Assets without any information on personnel. In light of the information that has been provided to DOJ and its experience with negotiating divestiture orders, it is difficult to conceive of a procompetitive explanation for DOJ's failure to require that 3D provide timely due diligence information on all types of its personnel (sales, marketing, manufacturing, and service) to potential Acquirers.

C. The Schedule Established by the Proposed Final Judgment Dictates That Public Comments Must be Submitted Prior to the Identification of an Acquirer

Finally, the schedule established for completing the divestiture required by the proposed Final Judgment allowed the deadline for the submission of public comments to pass before 3D selected an Acquirer. This schedule makes it impossible to address concretely the actual effect that the proposed Final Judgment will have on competition in the United States market for industrial RP systems and materials. There is no reason why DOJ could not have required that 3D identify its proposed Acquirer prior to the expiration of the period for submitting

public comments. In fact, EOS submits that if DOJ had done so, then the public comments would have been much more useful to the Antitrust Division's evaluation of the competitive merits of 3D's proposed Acquirer and the Court's determination of whether the proposed Final Judgment sufficiently protects the public interest. The Court should modify the proposed Final Judgment to allow a 30-day comment period after an Acquirer has been selected by 3D, but before approval by DOJ.

Conclusion

EOS does not seek a better treatment for itself than the proposed Final Judgment allows other potential Acquirers. EOS is seeking to identify what is necessary to ensure that it or some other Acquirer has the resources required to compete adequately in the United States. For the reasons discussed above, EOS recommends that DOJ or the Court modify the proposed Final Judgment so that a new competitor will be permitted to sell laser sintering RP systems and material in the United States, without regard to whether 3D licenses its stereolithography technology. United States customers of laser sintering RP systems and material should be guaranteed an independent competitive source of supply. EOS also requests that the proposed Final Judgment be modified to prohibit 3D from asserting that EOS is precluded from enforcing its patent rights against 3D in the pending litigation.

Further, EOS requests that the court conduct a hearing to examine more carefully the adequacy of the competitive relief that DOJ has agreed to in the proposed Final Judgment.

Should you have any questions about the information that EOS has provided or if you would like additional information, please do not hesitate to contact me.

Sincerely yours,

Dr. Hans Langer,
Chief Executive Officer, EOS GmbH Electro Optical Systems, 49 (89) 85685–111.

David J. Laing,
Baker & McKenzie, U.S. Antitrust Counsel to EOS GmbH Electro Optical Systems.

License Agreement

Agreement, effective as of the 27th day of August, 1997, between 3D Systems Corporation, having its principal office at 26081 Avenue Hall, Valencia, California, and 3D Systems GmbH, having its principal office at Röntgenstraëette 41, D–64291, Darmstadt, Germany (both hereinafter called ''*Licensor*'') and EOS Gmbh Electro Optical Systems, having a place of business at Pasinger Str. 2, D–82152 Planegg, Munich, Germany (hereinafter called ''*Licensee*'') (being sometimes hereinafter referred to individually as a *Party* and collectively as the ''*Parties*'');

Witnesseth

Whereas, Licensor and *Licensee* are, contemporaneously herewith, entering into a settlement, purchase and transfer agreement (''Purchase Agreement'') under which they are, *inter alia,* settling all Court and other patent-related proceedings pending between *Licensor* on the one hand, and *Licensee* and its customers on the other; and

Whereas, the Purchase Agreement also covers a purchase by *Licensor* of certain assets of *Licensee*; and

Whereas, in partial consideration of the settlement of litigation between the Parties, and the acquisition by *Licensor* of *Licensee*'s business unit known as the ''*Stereos*'' product line, *Licensor* is willing to grant to *Licensee* throughout the world under its Licensed Patents a license upon the terms and conditions set forth hereinbelow;

It is Agreed:

Article I—Definitions

1.1 Licensed Patents shall mean the following patents to the extent, and only to the extent, applicable to the field of Laser Sintering:

(a) All U.S. and foreign patents, including reissued and reexamined patents and utility models owned by *Licensor* as of the effective date of this Agreement, and all patents and utility models assigned from EOS to 3D; and

(b) U.S. and foreign patents and utility models, which may issue to *Licensor* on patent and utility model applications filed prior to August 20, 2002, or filed subsequent thereto, but receiving, or entitled to receive, the benefit of a filing date prior to August 20, 2002, including any patents of addition and utility models, and further including any extensions, renewals, continuations, reexaminations, and/or reissues thereof.

1.2 Laser Sintering shall mean and include only apparatus, methods and supplies for producing three-dimensional objects, layer-by-layer, from (a) coated or uncoated powders not contained within a solidifiable fluid, through sintering by a laser or other heat source, (b) dry polymer-coated powders, through curing by an IR laser or other heat source, and (c) coated or uncoated powders in a mixture with a liquid, in which the liquid is no greater than 15 percent of the total volume;

1.3 Stereolithography shall mean and include apparatus, methods and supplies for producing three-dimensional objects layer-by-layer from photocurable fluids;

1.4 Jetting R.P. shall mean and include apparatus, methods and supplies for producing three-dimensional objects layer-by-layer from jettable materials for hot melt ink jet technology that are solid at room temperature.

Article II—The License

2.1 *License Grant.* Upon execution of this Agreement, *Licensor* hereby grants to *Licensee,* an exclusive, worldwide, personal, non-transferable and paid-up license under the Licensed Patents, to make, use, lease, sell, offer for sale, and import, products solely for use in the field of Laser Sintering; provided, however, that such license is subject to the following limitations:

(a) *Licensee* expressly agrees not to assert against *Licensor,* or vendees or customers, mediate or immediate, of *Licensor,* any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by *Licensor* under the Licensed Patents, at any time, for any reason, during the term of this License Agreement;

(b) The license shall only be effective during the term of this License Agreement.

2.2 *Release. Licensor* hereby grants to *Licensee* and its prior customers, mediate and immediate, of products respectively sold and used, a paid-up release under the Licensed Patents.

2.3 *Sublicensing.* During the term of this License Agreement, the license hereby granted shall include the right of *Licensee* to grant written sublicenses; provided, however, that *Licensee* agrees to deliver to *Licensor* a true and correct copy of each and every sublicense entered into by *Licensee* within thirty (30) days after execution thereof, and shall promptly advise *Licensor* in writing of any modification (and supply same) for termination of each sublicense. Upon termination of this License Agreement for any cause, any and all existing sublicenses hereunder shall thereupon be assigned to *Licensor.* This shall be made a condition of any such sublicense that may be granted by *Licensee. Licensee* agrees that one-half (½) of any royalty income received by *Licensee* in any form, whether in monies or other valuable consideration (but not including license rights as received, for example, under a cross-license agreement), whether by agreement or as a result of litigation or otherwise, shall be shared equality (i.e., 50/50) with *Licensor.*

2.4 No license is granted by *Licensor* to *Licensee,* either directly or by implication, estoppel or otherwise, under any patents other than patents included in the Licensed Patents, or for any field other than the field of Laser Sintering.

2.5 *Licensee* agrees to mark every licensed product manufactured or sold by it under this Agreement, and to require same of any sublicensees, in accordance with the applicable statutes of the country of manufacture and sale.

Article III—Enforcement of Patents

3.1 In the event *Licensee* becomes aware of any actual or threatened infringement of a patent which is included in the Licensed Patents, *Licensee* shall have the right to bring, at its own expense, an infringement action to enforce the infringed-upon patent. In the event it is determined by a court of competent jurisdiction, after all appeals or right to appeal have been completed, that *Licensor* is an indispensable party to any such litigation, then *Licensor* agrees to be joined in any such litigation, provided that *Licensee* agrees to pay for all costs incurred by *Licensor* in connection with such joinder, including *Licensor's* own attorneys' fees as well as any court costs, travel and living expenses, and all other costs incurred in connection therewith. Furthermore, in respect of any litigation under the Licensed Patents, whether brought by *Licensee* or brought pursuant to Article 3.2, in the event of any discovery proceedings involving *Licensor, Licensee* agrees to pay for all costs incurred by *Licensor*, including internal personnel costs involved in discovery at an hourly rate representing the cost to *Licensor* for any such employees, as well as any travel and living expenses, together with all other costs and expenses.

3.2 In the event a third party brings an action to obtain a declaration of patent invalidity or non-infringement (a ''DJ

Action'') based upon or related to allegations of infringement by *Licensee* with respect to the field of Laser Sintering, against either *Licensee* or *Licensor*, or both with respect to a patent which is included in the Licensed Patents:

3.2.1 *Licensee* shall be required to defend said DJ Action at its cost and expense, whether such DJ Action is against *Licensor* or *Licensee*, or both.

3.3 In the event a litigation subject to 3.1 or 3.2.1 involves an assertion of invalidity of any Licensed Patent, *Licensor* shall have the right, but not the obligation, to participate in such litigation at its own cost and expense, and thereby to control the litigation insofar as the issue of validity is concerned.

Article IV—Term of License, Termination

4.1 The term of this Agreement shall, unless otherwise terminated as provided in Article 4.2, extend for the life of the last to expire of the Licensed Patents and shall thereupon terminate.

4.2 *Licensor* may terminate this Agreement, in whole, or with respect to any patent included in the Licensed Patents, in the event of any breach of the non-compete provision (set forth in Article 2, paragraph 7, ''Prohibition of Competition'' of the Purchase Agreement between the Parties dated August 27, 1997), unless such breach with due regard to all circumstances is immaterial or unless the party in breach of Prohibition of Competition shows that such breach was committed for reasons beyond its reasonable control. Furthermore, *Licensor* shall have the right to terminate this Agreement, in whole or with respect to any patent included in the Licensed Patents, in the event that at any time during the term hereof, EOS or its affiliated companies, or Dr. Hans J. Langer (who shall indicate his agreement with this provision by his subscription hereto) engage in any manner in the manufacture, sale or use of Stereolithography products or Jetting R.P. (other than as permitted in the above-noted non-compete provision).

4.3 Any termination pursuant hereto shall not relieve *Licensee* from any obligation or liability accrued hereunder prior to such termination, not rescind or give rise to any right to rescind anything done or any payments made, or other consideration given hereunder, or in the Purchase Agreement dated August 27, 1997, or any other consideration given hereunder prior to the time of such termination, and shall not affect in any manner any remedies of *Licensor* arising out of this Agreement prior to such termination.

V—Warranty

5.1 *Licensor* warrants and represents that it has the full right and power to grant the license under the Licensed Patents as set forth herein, and that there are no outstanding agreements, assignments or encumbrances inconsistent with the provision of this Agreement other than as expressly set forth herein. Licensor makes no other representation or warranty, express or implied, nor does licensor assume any liability in respect of any infringement of any patent or other right of third parties due to licensee's activities under this agreement except as expressly set forth herein. By way of example, but not of limitation, licensor makes no representation or warranty of commercial utility, merchantability or fitness for a particular purpose, or that operating under the license herein granted will not infringe any patent or other property right of others (other than the right to license hereunder). In no event shall licensor be liable for any claim or loss incurred by licensee (including, without limitation, compensatory or exemplary damages, lost profits, lost sales or business, expenditures, investments or commitments in connection with any business, or loss of any goodwill) irrespective of whether licensor has been informed of, knows of, or should have known of the likelihood of such damages, except as expressly otherwise provided in this agreement. This limitation applies to all causes of action in or with respect to the agreement, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other sorts.

5.2 Nothing in this Agreement shall be construed as:

(a) A warranty or representation by LICENSOR as to the validity or scope of any Licensed Patent; or

(b) A warranty or representation that anything made, used, sold, or otherwise disposed of under any license granted in this Agreement is or will be free from infringement of patents of third persons; or

(c) A requirement that LICENSOR shall file any patent application, secure any patent, or maintain any patent in force; or

(d) An obligation to bring or prosecute actions or suits against third parties for infringement of any patent; or

(e) An obligation to furnish any technical or other information concerning pending patent applications; or

(f) Conferring a right to use in any advertising, publicity or otherwise, any trademark or trade name of LICENSOR; or

(g) Granting by implication, estoppel or otherwise, any licenses or rights under patents other than the Licensed Patents.

Article VI—Assignments

6.1 This Agreement shall not be assigned by *Licensee,* nor shall it pass by succession in ownership of all, substantially all or any part of *Licensee's* business interests, without the prior written consent of *Licensor.* Any attempted assignment or passage by succession shall be void.

Article VII—Communication

7.1 Any notice or other communication required or permitted to be made or given to a party hereto pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to the Party by certified or registered mail, postage prepaid, addressed to it at its address set forth, or to such other address as it shall designate by written notice to the other Party as follows:

In the case of Licensor: Chief Executive Officer, 3D Systems Corporation, 26081 Avenue Hall, Valencia, CA 91355.

In the case of Licensee: Geshäftsführer, EOS GmbH Electro Optical Systems, Pasinger Str. 2, D–82152 Planegg, Munich, Germany.

VIII—Miscellaneous

8.1 *Execution.* This Agreement will not be binding upon the Parties until it has been signed hereinbelow on behalf of each Party, in which event it shall be effective as of the date first above written. No amendment or modification hereof shall be valid or binding upon the Parties unless made in writing and signed as aforesaid. The effectiveness of this Agreement shall be subject to the completion of the Settlement, Purchase and Transfer Agreement between the Parties dated August 27, 1997 and, if such agreement is not completed, or is thereafter held invalid, void ab initio, or otherwise rendered ineffective, then this agreement shall be void ab initio as well.

8.2 *Integration.* This Agreement embodies the entire understanding of the Parties and shall supersede all previous communications, representations or undertakings, either verbal or written between the Parties relating to the subject matter hereof.

8.3 *Indemnification. Licensee* agrees to indemnify and hold harmless *Licensor,* its officers, employees and agents from and against any and all claims, damages and liabilities asserted by third parties, both government and private, arising from *Licensee's* assertion of rights under Licensed Patents and the sale and use of products licensed hereunder.

8.4 *Anonymity. Licensee* shall have no right to use the names or other designation of *Licensor* in connection with any sales or promotion of products licensed hereunder without the express consent of *Licensor.*

8.5 *Severability.* If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

8.6 *Governing Law and Dispute Resolution.* This Agreement shall be governed and interpreted in accordance with the substantive laws of the State of California irrespective of any choice of law rules in the State of California or in any other jurisdiction. The parties agree that any action for relief based in whole or in part on this Agreement (or the breach thereof) or otherwise relating in whole or in part to this Agreement shall be filed in, and the parties consent to personal jurisdiction and venue in, the Federal and State Courts closest to the above-identified place of business of 3D Systems, Inc. in Valencia (Los Angeles County), California having subject matter jurisdiction over such action. In any such action between the parties, the prevailing party shall be entitled to recover (in addition to any other relief awarded or granted) its reasonable costs and expenses (including attorneys' fees) incurred in the proceeding. This Agreement has been concluded in English (American legal usage) and if translated into German for any purpose, in case of discrepancy, the English text shall prevail.

8.7 *Headings, Tense and Gender.* The headings of the several sections are inserted for convenience of reference only, and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

In this Agreement, where the context so permits, the singular shall include the plural, and vice versa, and references to a particular gender shall include any other gender.

8.8 *No Waiver.* Failure by any Party to enforce any provision of this Agreement or assert a claim on account of breach hereof shall not be deemed a waiver of its right to enforce the same or any other provision hereof on the occasion of a subsequent breach.

8.9 *Remedies.* The remedies provided in this Agreement are not and shall not be deemed to be exclusive and shall be in addition to any other remedies which any Party may have at law or in equity.

8.10 *Independent Contractors.* The Parties hereto are independent contractors and are not and shall not be considered as joint venturers, partners, employers, or agents of each other, and none shall have the power to bind or obligate the other except as set forth in this Agreement.

8.11 *Force Majeure.* No Party hereto shall be liable in damages or have the right to cancel this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control, including but not limited to acts of God, government restrictions, wars or insurrections.

8.12 *Counterparts.* This Agreement may be executed in three (3) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

In Witness Whereof, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

3D Systems Corporation.

Sid Alpert, Vice President, General Counsel.

Witness: Brenda L. Webb.

EOS GmbH Electro Optical Systems

Hans J. Langer, Chief Executive Officer.

Witness: Elmor Dimmelmeier.

News Releases

3D Systems Completes Acquisition of RPC

Newly Branded Stereolithography Materials To be Developed and Manufactured in 2002

Contacts: Jeff Krinks, Public Relations Manager,
(661) 295–5600, ext. 2910,
Krinksj@3dsystems.com.
Trudy Self, Self & Associates, (818) 880–5437, *tmself@aol.com.*

Valencia, Calif., Sept. 19, 2001—3D Systems Corp. (Nasdaq: TDSC) today announced it has completed its acquisition of materials developer and manufacturer RPC Ltd.

RPC, now a wholly owned subsidiary of 3D Systems, will continue to manufacture and distribute from its headquarters in Marly, Switzerland, where it has developed 16 stereolithography (SL) materials for SLA® systems.

''When our current obligation for SL material development ends in February 2002, we will work with RPC to further enhance our SL material product lines and develop new materials,'' said Grant Flaharty, senior vice president of worldwide sales and marketing for 3D Systems. ''The combination of RPC and 3D Systems allows us to add a greater materials focus to the high-quality hardware customers have come to expect. We plan to provide a full range of materials with comparable or improved properties.''

RPC's materials are fully compatible with 3D Systems' SLA product line and provide a variety of properties, including durability, heat resistance and detailed surface finish. Any questions regarding RPC materials should be directed to RPC at (41) 26 439 95 90 or *www.rpc.ch.*

About 3D Systems

Founded in 1986, 3D Systems provides solid imaging products and solutions that help reduce the time and cost of designing products and facilitate direct and indirect manufacturing. Its systems utilize patented technologies that create physical objects from digital input.

3D Systems currently offers the ThermoJet® solid object printer, stereolithography (SLA®) systems and selective laser sintering (SLS®) systems, as well as related software and materials. Product pricing in the U.S. ranges from $49,995, for the ThermoJet printer, to $799,000 for the high-end SLA 7000 system. The company licenses the complementary 3D Keltool® process, a method for producing steel mold inserts, and currently is developing systems that use composite paste materials for direct manufacturing. In August, 3D Systems merged with DTM Corp.

More information on the company is available at *www.3dsystems.com,* or by phoning 888/337–9786, extension 791, or 661/295–5600 internationally. An investor packet can be obtained by calling 800/757–1799.

About RPC

Based in Marly, Switzerland, RPC develops and distributes a complete range of materials used in SLA solid imaging systems. Since its founding in 1997, the company's R&D efforts have concentrated on thermosetting and photopolymer materials as well as laser technology. The company has introduced 16 resins for all three laser configurations on the SLA machines.

Note to editors: ThermoJet, SLA, SLS, Keltool and the 3D logo are registered trademarks of 3D Systems.

Certain statements in this news release may include forward-looking statements that express the expectation, prediction, belief or projection of 3D Systems. These statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance and achievement of 3D systems to be materially and adversely different from any future results, performance or achievement expressed or implied by these forward-looking statements. Factors that may cause actual results to differ from the forward-looking statements contained in this release and that may affect the company's prospects in general include, but are not limited to: worldwide economic conditions; successful enhancement of the current RPC product line in a timely manner; RPC's ability to produce sufficient quantities of material to meet customer needs; actions of competitors, particularly materials producers, all of which have considerably more resources at their disposal than 3D Systems; actions of customers and their acceptance of RPC's products, and such other factors as are described in the companies' filings with the Securities and Exchange Commission, including annual reports on Form 10–K for the year ended Dec. 31, 2000, quarterly reports on Form 10–Q for the quarters ended March 31 and June 30, 2001, and 3D Systems' current reports on Form 8–K filed on April 6, April 10, and Sept. 4, 2001.

News Releases

3D Systems and Vantico Terminate Relationship

3D Systems Agree To Acquire RPC Ltd.

Contacts:
Jeff Krinks, Public Relations Manager (3D Systems), (661) 295–5600, ext. 2910, *krinksj@3dsystems.com.*
Trudy Self, Self & Associates (3D Systems), (818) 880–5437, *tmself@aol.com.*

Valencia, Calif., Aug. 24, 2001—3D Systems Corp. (Nasdaq: TDSC) today announced the severance of its distributor and joint development agreements with Vantico Inc., a subsidiary of Vantico International. 3D Systems has been the exclusive worldwide distributor (except for Japan) of Vantico liquid resins use in stereolithography systems.

Under the terms of the distributor, 3D Systems will continue to distribute Vantico resins for a period of six months. After that period, the distribution agreement will no longer limit 3D Systems from sourcing and developing resins independently.

3D Systems' termination of the joint development agreement with Vantico will prohibit the two companies from exploiting, for a period of three years, any proprietary information owned or developed by the other party. However, the parties dispute the meaning and impact of this provision, and, though conversations between the parties continue, arbitration proceedings have begun regarding this matter.

3D Systems believe a significant portion of the Vantico resins currently used in 3D Systems machines were developed and enhanced by 3D Systems and that its proprietary information is pervasive in a substantial portion of Vantico's products currently being manufactured, as well as those under development. As a result, 3D Systems believes that Vantico would be prevented from separately marketing those products, unless the companies reach a subsequent agreement.

''These developments present a great opportunity for 3D Systems to further enhance the materials currently used in our systems while maintaining our existing base of materials recurring revenue,'' said Brian K. Service, 3D Systems' president and chief executive officer. ''During this transition period and beyond, we expect to continue to provide quality materials to our customers and further position ourselves to be a much stronger supplier of materials in the future.''

''We will continue to be the exclusive distributor of Vantico materials for the next six months and may arrange with Vantico to

continue to distribute its materials beyond that time,'' Service added. ''We believe that we will continue to be able to offer our customers a full range of materials that are either substitutable or offer improved speed, accuracy, surface finish and functionality. It is our goal to provide as smooth a transition to our customers as possible.''

3D Systems also announced it has signed a letter of intent to acquire Rapid Prototyping Chemicals (RPC) Ltd. of Marly, Switzerland. RPC is an independent supplier of stereolithography resins.

''We are excited about adding RPC's materials offerings to the 3D Systems family of solid imaging products,'' said Grant Flaharty, senior vice president of worldwide sales and marketing for 3D Systems. ''This proposed acquisition reflects our focus on materials versatility and our commitment to providing the best solid imaging solutions for our customers.''

''RPC offers a wide range of materials that have been well received in the market. Our intention is to continue this trend and further enhance the synergy of our systems and materials,'' Flaharty said.

About 3D Systems

3D Systems provides solid imaging products and services that substantially reduce the time and cost required to design, test and manufacture products. The company's systems utilize patented technologies that create physical objects from digital input.

3D Systems currently offers the ThermoJet® office printer and SLA® industrial systems, which include proprietary software and materials. Products pricing in the U.S. begins at $49,995 for the company's entry-level printer and extends up to $799,000 for its feature-rich industrial SLA 7000 system. The company also licenses the 3D Keltool® process, a complementary application that produces injection molding and die casting inserts from SLA system master patterns. In February 2001, 3D Systems announced it acquired OptoForm, a French company that has developed direct composite manufacturing systems that use paste materials. In April 2001, the company announced the signing of a definitive merger agreement to purchase DTM Corp., and it expects to complete the merger this month.

Based in Valencia, Calif., 3D Systems was founded in 1986 and is recognized as a world technology leader in solid imaging. For additional information, visit the company's website at *www.3dsystems.com* or phone 888/337–9786, ext. 788. For an investor packet, call the company's shareholder communications service at 800/757–1799.

About DTM Corporation

DTM develops, manufactures and markets advanced rapid prototyping and manufacturing systems, including the Sinterstation® 2500plus and Vanguard systems. A growing number of manufacturers and service bureaus worldwide use these systems to rapidly create 3–D prototypes, parts, molds, tooling and casting patterns.

All Sinterstation SLS® systems utilize a process called selective laser sintering to create 3–D objects from computer-aided design (CAD) data. The Sinterstation system creates the part in a matter of hours using a CO2 laser to fuse together layers of powdered plastic, metal or ceramic powers. The results are durable 3–D parts produced in a fraction of the time it would typically take using other traditional methods.

Among the companies currently using Sinterstation systems are manufacturers such as BMW, Boeing, Pitney Bowes, Rockwell International, Volvo Penta and others. In addition, numerous service bureaus throughout the world include Sinterstation systems in their offerings to companies with only an occasional need for rapidly produced functional prototypes and parts. Parts and prototypes made on Sinterstation systems also are used in non-industrial settings, such as science and medicine. For more information on DTM's systems, customers and applications, visit the company's website at *www.dtm-corp.com.*

About RPC

Based on Marly, Switzerland, RPC develops and distributes a complete range of materials used in SLA solid imaging systems. Since its founding in 1997, the company's R&D efforts have concentrated on thermosetting and photopolymer materials as well as laser technology. The company has introduced 13 resins for all three laser configurations on the SLA machines and anticipates 7% to 10% market growth this year for its materials. For more information, visit *www.rpc.ch*.

Note to editors: ThermoJet, SLA, Keitool and the 3D logo are registered trademarks of 3D Systems. Sinterstation and SLS are registered trademarks, and DuraForm and Vanguard are trademarks, of DTM Corporation.

Certain statements in this news release may include forward-looking statements which express the expectation, prediction, belief or projection of 3D Systems. These statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance and achievement of 3D Systems to be materially and adversely different from any future results, performance or achievement expressed or implied by these forward-looking statements. Factors that may cause actual results to differ from the forward-looking statements contained in this release and that may affect the company's prospects in general include, but are not limited to: the funding of amounts of capital adequate to provide for the working capital needs of the company; actions of competitors and customers; reliance on single or limited suppliers, the ability to timely and cost-effectively identify and obtain or independently develop resins adequate for use with 3D Systems' products, the negotiation and execution of definitive documents to acquire RPC, the efficient integration of DTM into the business of 3D Systems, and such other factors as are described in the companies' filings with the Securities and Exchange Commission, including annual reports on Form 10–K for the year ended Dec. 31, 2000, quarterly reports on Form 10–Q for the quarters ended March 31 and June 30, 2001, and 3D Systems' current reports on Form 8–K filed on April 6 and April 10, 2001.

News Releases

3D Systems Sells 2,000th Machine

Includes 100 SLA 7000 Systems Shipped

Contacts:

Jeff Krinks, Public Relations Manager, (661) 295–5600, ext. 2910, *krinksj@3dsystems.com.*

Trudy Self, Self & Associates, (818) 880–5437, *tmself@aol.com.*

Valencia, Calif., May 29, 2001—3D Systems Corp. (Nasdaq: TDSC) today announced the sale of its 2,000th solid imaging system. The company also reached a milestone by shipping its 100th high-end SLA® 7000 system since its introduction in February 1999.

''We're pleased that, throughout 3D Systems' 15-year history, our products have continued to gain market acceptance,'' said Chuck Hull, company founder and chief technology officer. ''Even as we celebrate the 2,000th system sold, we look forward to accelerating our growth via new technologies and solutions.''

Hull added, ''We anticipate the functionality of our new Viper si2™ SLA system will be attractive to the marketplace—much like its predecessor, the SLA 250 system. And we're excited about our current R&D work with non-liquid material systems, which will address the growing market for rapid tooling and direct and indirect in-line manufacturing applications.''

The first solid imaging machine off 3D Systems' production line in 1986 was the SLA 1 system. Subsequent machines included the SLA 190, 250, 350 and 500 systems. In 1996, 3D Systems introduced its first solid object modeler, the Actua™ printer, which was replaced in 1999 by the ThermoJet® printer.

In 2000, 3D Systems shipped 387 systems globally with revenues of $109.7 million. its $27.9 million revenues for first-quarter 2001 were 21.3% greater than its first-quarter 2000 revenues.

100th SLA 7000 System Shipped

Reaching another milestone, 3D Systems shipped the 100th high-end SLA 7000 system to The Boeing Company for use at its PhantomWorks facility in St. Louis. 3D Systems introduced the SLA 7000 system in February 1999 and shipped 29 that year and 57 in 2000.

''We've used stereolithography technology since 1989 for aircraft configuration and marketing models,'' said Ed Langenderfer, prototype design specialist engineer at Boeing's PhantomWorks, ''Our main application of the technology is wind-tunnel testing.''

According to Langenderfer, the group recently used stereolithography for the development of the U.S. Air Force's Unmanned Combat Air Vehicle (UCAV). ''We made various flaps and aileron configurations to verify computer analyses. And we're planning to move into more advanced tooling and manufacturing applications with our SLA systems.''

Grant Flaharty, senior vice president of worldwide sales and marketing at 3D Systems, said, ''We are pleased that the SLA 7000 system continues to gain acceptance in

the market. As our installed base of high-end systems grows, we have more opportunities for ongoing support and materials sales. In 2000, our materials sales accounted for 23% of total revenue.''

About 3D Systems

3D Systems provides solid imaging products and services that substantially reduce the time and cost required to design, test and manufacture products. The company's systems utilize patented technologies that create physical objects from digital input.

3D Systems currently offers the ThermoJet® office printer and SLA® industrial systems, which include proprietary software and materials. Product pricing in the U.S. begins at $49,995 for the company's entry-level printer and extends up to $799,000 for its feature-rich industrial SLA 7000 system. The company also licenses the 3D Keltool® process, a complementary application that produces injection molding and die casting inserts from SLA system master patterns. In February 2001, 3D Systems announced it acquired OptoForm, a French company that developed stereolithography systems that use paste materials. In April 2001, the company announced the signing of a definitive merger agreement to purchase DTM Corporation, contingent on, among other conditions, closing the loan funding.

Based in Valencia, Calif., 3D Systems was founded in 1986 and is recognized as the world technology and market leader in solid imaging. For additional information, visit the company's website at *www.3dsystems.com* or phone 888/337–9786, ext. 775. For an investor packet, call the company's shareholder communications service at 800/757–1799.

Note to editors: Actua is a trademark; and ThermoJet, SLA, Keltool and the 3D logo are registered trademarks of 3D Systems.

Certain statements in this news release may include forward-looking statements which express the expectation, prediction, belief or projection of 3D Systems. These statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance and achievement of 3D Systems to be materially different from any future results, performance or achievement expressed or implied by these forward-looking statements. Factors that may cause actual results to differ from the forward-looking statements contained in this release and that may affect the company's prospects in general include, but are not limited to: changes in general and industry-wide economic and business conditions; the availability of capital on acceptable terms; the funding of amounts adequate to acquire DTM Corporation and provide for the working capital needs of 3D Systems under the definitive loan document; the results of the inquiry by the Department of Justice into the acquisition by 3D Systems of DTM Corporation; actions of competitors and customers; the uncertain outcome of litigation, including the class action lawsuit filed in connection with the acquisition of DTM Corporation; the impact of competitive products and pricing; the availability and acceptance of products generally; the extent to which the companies are able to develop new products and markets for their products; and such other factors as are described in 3D Systems' filings with the Securities and Exchange Commission, including its annual report on Form 10–K for the year ended Dec. 31, 2000, its quarterly report on Form 10–Q for the quarter ended March 30, 2001, and its current reports on Form 8–K filed on April 6 and April 10, 2001.

October 23, 2001.

Dear Friend,

With the federal government taking steps to spur the economy, 3D Systems has developed various programs to provide our customer's with the solutions they need to continue their growth and expansion. This Instant Rebate Program * provides accessibility to solid imaging systems that have greatly enhanced the solid imaging and manufacturing process.

We believe that businesses will recover from these difficult conditions and there will be a continue demand for cost effective solutions.

THE INSTANT REBATE PROGRAM FOR SOLID IMAGING SYSTEMS

Solid imaging system	Instant rebate offer
SLA 7000 system	$200,000 instant rebate *.
SLA 5000 system	$100,000 instant rebate *.
SLA 3500 system	$50,000 instant rebate *.

*Instant Rebate Program is based on standard list U.S. prices, and may not be combined with any other promotions or discounts. Offer valid until December 15, 2001. The Instant Rebate Program is restricted to U.S.-based companies and the shipment of systems are limited to U.S. locations. All shipment of systems must occur by December 31, 2001.

3D Systems is offering the Instant Rebate Program for business that are making capital investments. Attractive leasing programs are available; including six-month free financing,[1] to assist you in making your year-end capital purchase decision and allow you to update or increase your solid imaging capacity.

To express your interest in these attractive offerings, please contact 3D Systems at 1 (888) 337–9786, or (661) 295–5600 ext 2882.

Sincerely,
Dwight Williams,
VP Sales for Americas, 3D Systems.

CMET

EOS GmbH, Pasinge, Strasse 2, D–82152 Planegg Munchen, Germany, President, Dr. Hans J. Langer.

Dear Dr. Langer,

Please accept my discourteous manner to write a letter directly to you. At first, I would like to introduce our company and myself.

My name is Ken Sahara and I am president of CMET Inc. CMET Inc. is not a big company but a leading company of the Stereolithography (SLA) market in Asia. Last December NTT-Data CMET Inc. was acquired by TEIJIN SEIKI Co., Ltd. and changed its name to CMET Inc. I was dispatched to CMET Inc. as a president from TEIJIN SEIKI Co., Ltd. at that time. And, at this April Stereolithography business of TEIJIN SEIKI integrated to CMET.

At the beginning of this July, TEIJIN SEIKI and CMET were requested from United States Department of Justice (DOJ) regarding the Marge of 3D Systems and DTM to make a presentation about the will and the way to enter the SLA or SLS market in the USA.

At that time, we heard that your company, EOS also has a keen interest to enter the USA market and already made a good presentation to DOJ.

At the moment, we suppose that EOS and CMET are waiting for the judge of DOJ to step up the next stage.

At this stage, I am not sure, it is proper time or not. But, I believe that we can discuss or exchange information about Market, Products and others. Because, your company and our company are not competitive company in the market and I am convinced that such discussion will help to make each company's short or mid-term strategy.

If you can agree with my proposal to discuss, I am very happy to meet you soon in your company or in our company. Your E-mail answer is more convenient for me.

Again, please accept my apology to write you direct. I do hope that you will be able to spare time to write your answer. Please treat this proposal as a confidential matter between you and I.

Sincerely yours,
Ken Sahara,
President, CMET Inc.

THOMAS, WALTON & GRAVES LLP, Philip J. Graves (SB#: 153441), 550 South Hope Street, Suite 1000, Los Angeles, California 90071, Telephone: (213) 488–1600, Facsimile: (213) 228–0256.

Attorneys for Defendants 3D SYSTEMS, INC., DTM CORPORATION, and COMPRESSION, a division of MOLL INDUSTRIES, INC.

United States District Court for the Central District of California Southern Division

[Case No. SA CV 00–1230 DOC (MLGx)]

EOS GMBH Electro Optical Systems, Plaintiff, v. 3d Systems, Inc., DTM Corporation, and Compression, a division of MOLL Industries, Inc., Defendants and Related Actions

3D Systems, Inc.'s Notice of Motion and Motion in Support of its Motion for Summary Adjudication Re Damages Under the 3D Patents Against EOS GmbH Electro Optical Systems; Declaration of Philip J. Graves in Support Thereof

Date: December 10, 2001.
Time: 8:30 a.m.
Ctrm: 9D, Honorable David O. Carter.
To All Parties and to Their Attorneys of Record:

Please Take Notice that on December 10, 2001, at 8:30 a.m. or as soon thereafter as the matter may be heard, before the Honorable David O. Carter, in the above-entitled Court located at 411 West Fourth Street, Suite 1053,

[1] No payments for six-months, certain restrictions apply.

Santa Ana, California 92701, Defendant 3D Systems Inc. (''3D'') will and hereby does move for summary adjudication under Rules 56(d) of the Federal Rules of Civil Procedure and Rule 56–4 of the Local Rules of the United States District Court for the Central District of California, that plaintiff EOS GmbH Electro Optical Systems (''EOS'') shall recover no relief, by way of damages, injunction or otherwise, as against 3D under U.S. Patent No. 4,929,402, U.S. Patent No. 5,554,336, U.S. Patent No. 5,630,981, U.S. Patent No. 5,059,359, U.S. Patent No. 5,137,662, U.S. Patent No. 5,174,931, U.S. Patent No. 5,182,056, U.S. Patent No. 5,184,307, U.S. Patent No. 5,345,391, U.S. Patent No. 5,609,812, U.S. Patent No. 5,609,813, U.S. Patent No. 5,711,911, U.S. Patent No. 5,779,967, U.S. Patent No. 5,785,918 and U.S. Patent No. 5,814,265 based upon the manufacture, use, sale or offer for sale of any laser sintering system that has occurred or shall occur after August 31, 2001.

This Court should grant 3D summary adjudication as to this issue for the following reasons. First, EOS is precluded under the August 27, 1997 3D–EOS License Agreement from asserting any claims for infringement under the licensed 3D patents against 3D based on the manufacture, use, sale or offer for sale of any apparatus, including laser sintering systems. Second, on August 31, 2001, DTM was merged into 3D and ceased to exist; accordingly, it is now 3D, not DTM, that is making and selling the accused laser sintering systems. These facts are undisputed; indeed, this Court has already found both of these facts to be true in prior Orders entered in this case. Thus, there is no genuine issue regarding the fact that EOS is entitled to recover no damages or other relief as against 3D under the licensed 3D patents based upon the manufacture or sale of the accused laser sintering systems after August 31, 2001.

This motion is made following the conference of counsel pursuant to Rule 7–3 of the Local Rules of the United States District Court for the Central District of California, which took place on October 16 and November 7 and 9, 2001. Counsel for 3D informed counsel for EOS by letter on October 17, 2001, that 3D intended to move for summary adjudication that EOS may recover no damages based on 3D's manufacture, use, sale and offering for sale of laser sintering systems, and that therefore any damages recovered by EOS in this action shall only run for the period up to and including August 30, 2001. (Graves Decl. ¶ 2; Ex. 1) Subsequently, on November 7, 2001, counsel for 3D and counsel for EOS discussed the grounds for 3D's motion for summary adjudication and the evidence that would be pertinent to adjudication of the motion. (Graves Decl. ¶ 3) On November 9, 2001, counsel engaged in further discussion regarding these matters. (Graves Decl. ¶ 4) No resolution was accomplished. (Graves Decl. ¶ 5)

This Motion is based on this notice of motion, the supporting memorandum of points and authorities, the separate statement of uncontroverted facts and conclusions of law, the declarations of A. Sidney Alpert, Karen Shotting and Philip J. Graves, the attached exhibits, all papers and pleadings on file herein, and such other evidence as the Court may receive at or before the hearing on this matter.

Dated: November 12, 2001.

Thomas, Walton & Graves LLP.

Philip J. Graves,

Attorneys for Defendants 3D Systems, Inc., DTM Corporation, and Compression, a division of Moll Industries, Inc.

Declaration of Philip J. Graves

I, Philip Graves declare as follows:

1. I am a partner at the law firm of Thomas, Walton & Graves LLP (''TWG''), counsel of record for 3D Systems, Inc. (''3D'') in the case entitled *EOS GmbH Electro Optical Systems, et al. v. DTM Corp., at al.,* Case No. SA CV 00–1230 DOC (MLGx). I am a member in good standing of the State Bar of California and have been admitted to practice before this Court. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. On October 17, 2001, I notified Michael Gannon, counsel for EOS GmbH Electro Optical Systems (''EOS''), by letter of 3D's intention to move for summary adjudication that EOS may recover no damages based on 3D's manufacture, use, sale and offering for sale of laser sintering systems, and that therefore any damages recovered by EOS in this action shall only run for the period up to and including August 30, 2001. A true and correct copy of this letter is attached hereto as Exhibit 1.

3. On November 7, 2001, Mr. Gannon and I discussed the grounds for 3D's motion for summary adjudication and the evidence that would be pertinent to adjudication of the motion.

4. On November 9, 2001, Mr. Gannon and I engaged in further discussion regarding these matters.

5. No resolution was accomplished.

Executed on November 12, 2001, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Philip Graves.

Thomas, Walton & Graves LLP, Lawyers

October 17, 2001.

By Facsimile

Michael D. Gannon, Esq., Baniak Pine & Gannon, 150 North Wacker Drive, Ste. 1200, Chicago, Illinois 60606.

Re: EOS GmbH Electro Optical Systems v. DTM Corporation and *Compression, Case No. SACV 00–1230 DOC*

Dear Mike:

Supplementing my letter of yesterday on this subject, I am writing pursuant to Local Rule 7.4.1 to inform you that 3D Systems, Inc. (''3D'') intends to move for leave to file a supplemental or amended pleading that seeks a declaratory judgment against EOS GmbH Electro Optical Systems (''EOS'') to the effect that 3D's manufacture, use, sale and offering for sale of laser sintering systems (or any other type of rapid prototyping system) does not and will not constitute infringement of any patents licensed to EOS pursuant to the August 27, 1997 3D–EOS License Agreement.

3D also intends to move for summary adjudication that EOS may recover no damages in the above-referenced action based on 3D's manufacture, use, sale and offering for sale of laser sintering systems, and that therefore if EOS establishes any right to damages based on DTM Corporation's manufacture, use, sale and offering for sale of laser sintering systems, such damages shall only run for the period up to and including August 30, 2001.

Please give me a call at your earliest convenience to discuss whether EOS is willing to stipulate to the filing of 3D's amended or supplemental pleading, and to entry of the other relief that will be sought by 3D.

Sincerely,

Philip J. Graves.

Proof of Service

State of California, County of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1511 West Beverly Blvd., Los Angeles, CA 90026.

On November 12, 2001, I served the foregoing document described as *3D Sytems, Inc.'s Notice of Motion and Motion in Support of its Motion for Summary Adjudication re Damages Under the 3D Patents Against EOS GmbH Electro Optical Systems; Declaration of Philip J. Graves in Support Thereof* on the interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows: Kenneth L. Wilton, Small Larkin LLP, 10940 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90024.

I caused such envelope to be delivered by hand to the offices of each interested party.

Executed on November 12, 2001 at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

James McLean.

Thomas, Walton & Graves LLP, Philip J. Graves (SB#: 153441), 550 South Hope Street, Suite 1000, Los Angeles, California 90071, Telephone: (213) 488–1600, Facsimile: (213) 228–0256.

Attorneys for Defendants 3D Systems, Inc., DTM Corporation, and Compression, a division of Moll Industries, Inc.

United States District Court for the Central District of California Southern Division

[Case No. SA CV 00–1230 DOC (MLGx)]

EOS GMBH Electro Optical Systems, Plaintiff, v. 3D Systems, Inc., DTM Corporation, and Compression, a division of Moll Industries, Inc., Defendants And Related Actions

3D Systems, Inc.'s; Memorandum of Points and Authorities in Support of its Motion for Summary Adjudication Re Damages Under the 3D Patents Against EOS GmbH Electro Optical Systems; Declarations of Karen Shotting, A. Sidney Alpert and Philip Graves in Support Thereof

Date: December 10, 2001.
Time: 8:30 a.m.
Ctrm: 9D, Honorable David O. Carter.

Proof of Service

State of California, County of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 550 S. Hope Street. Suite 1000, Los Angeles, CA 90071–2644.

On November 12, 2001, I served the foregoing document described as 3D Systems, Inc.'s Notice of Motion and Motion in Support of its Motion for Summary Adjudication Re Damages Under the 3D Patents against EOS GmbH Electro Optical Systems; Declaration of Philip J. Graves in Support Thereof on each interested party, as follows: Michael H. Baniak, Michael D. Gannon, Baniak Pine & Gannon, 150 North Wacker Drive, S. 1200, Chicago, IL 60606.

I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. In the ordinary course of business under that practice, it would be deposited with U.S. Postal Service on the same day that it is collected and processed, with postage thereon fully prepaid at Los Angeles, California. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated in the affidavit.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 12, 2001 at Los Angeles, California.

Nancy R. Fischer.

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Statutes

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Fed. R. Civ. P. 56(e)

I. Preliminary Statement

Defendant 3D Systems, Inc. (''3D'') hereby moves for summary adjudication that plaintiff EOS GmbH Electro Optical Systems (''EOS'') may recover no damages or other relief as against 3D or nominal defendant DTM under the 3D patents asserted by EOS in this action based upon the manufacture, use, sale or offer for sale of any of the accused laser sintering systems that occurs after August 31, 2001. 3D's motion rests on the following *two* undisputed facts:

• EOS expressly agreed in the August 27, 1997 3D–EOS License Agreement that EOS shall not assert against 3D ''any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by [3D] under the Licensed Patents, at any time, for any reason, during the term of this License Agreement.''

• DTM Corporation (''DTM'') was merged into 3D on August 31, 2001, with 3D as the surviving entity.

EOS cannot create a genuine issue as to either of these facts; indeed, this Court has already found them to be true, in rulings on prior motions in this case. These facts foreclose any opportunity that EOS might otherwise have had to recover damages or other relief under the licensed 3D patents based upon the manufacture or sale of the accused laser sintering systems after August 31, 2001, because those activities are now being carried on by 3D, which succeeded as a matter of law to DTM's laser sintering operations.

Accordingly, this Court should grant 3D's motion for summary adjudication that EOS is entitled to no relief under the licensed 3D patents as against 3D or nominal defendant DTM for any manufacture, use, sale or offer for sale of the accused laser sintering systems that occurs after August 31, 2001.

II. Statement of Facts

A. The 3D–EOS License Agreement

On August 27, 1997, 3D and EOS[1] entered into an agreement pursuant to which 3D licensed EOS under (i) all U.S. and foreign patents ''owned by LICENSOR as of the effective date of this Agreement,'' and (ii) all U.S. and foreign patents ''which may issue to LICENSOR,'' on applications filed prior to August 20, 2002, but only in the field of laser sintering. (SUF No. 1; Alpert Decl. ¶ 2; Ex. 1, ¶ 1.1, at p. 31) EOS expressly agreed not to assert against 3D ''any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by LICENSOR under the Licensed Patents, at any time, for any reason, during the term of this Licensed Agreement.'' (SUF No. 2; Ex. 1, ¶ 2.1(a), at p. 31) The License Agreement has an integration clause, and a provision stating that it is to be interpreted according to the substantive law of California. (SUF Nos. 3–4; Ex. 1, ¶ 8.2, at p. 36)

B. EOS' Infringement Suit

On December 14, 2000, EOS filed suit against DTM and Compression, alleging infringement of certain of the 3D patents that 3D had licensed to EOS. On March 16, 2001, this Court ordered EOS to join 3D (the licensor of the patents under which EOS is suing DTM and Compression) as an involuntary plaintiff, because 3D had not licensed all substantial rights under the patents to EOS. (Graves Decl. ¶ 2; Ex. 2 at p. 40) Central to this Court's ruling was its determination that ''*3D itself may still make products using the licensed patents*'', citing to paragraph 2.1 of the License Agreement. (Ex. 2, at p. 40) EOS filed and served its

[1] While the License Agreement identifies EOS, 3D Systems GmbH and 3D Systems Corporation (''3D Corp.'') as the contracting parties, 3D contemplated that 3D (the entity that owned the licensed patents) would be bound by and receive the benefit of the License Agreement. (Alpert Decl. ¶ 5) In any event, the License Agreement was assigned from 3D Corp. to 3D as of August 31, 2001. (SUF No. 5; Ex. 5 at p. 54)

Third Amended Complaint, naming 3D as an involuntary plaintiff, on May 7, 2001; in its Third Amended Complaint, EOS asserted fifteen licensed 3D patents against DTM and Compression. (SUF No. 6; Graves Decl. ¶ 3; Ex. 6, ¶¶ 6–20, 22)

C. 3D's Merger with DTM

On August 31, 2001, 3D filed with the California Secretary of State an Agreement of Merger between 3D and DTM. (SUF No. 7; Ex. 3 at pp. 45–46) 3D also filed a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of 3D, and a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of DTM. (SUF No. 7; Ex. 3 at pp. 47–50) Pursuant to these documents, DTM was merged into 3D, and its corporate existence extinguished. (SUF No. 8) Cal. Corp. Code § 1107(a). The laser sintering operations of the now-defunct DTM were acquired by 3D as a result of the merger. Cal. Corp. Code § 1107(a).

On October 17, this Court granted 3D's motion for reconsideration regarding realignment, and realigned 3D as a defendant. The Court explicitly held that ''On August 31, 2001, 3D merged DTM into 3D. DTM now no longer exists.'' (Ex. 4, at p. 52)

III. Statement of Law

Summary adjudication is appropriate on particular facts and issues as to which no genuine issue of material fact exists, regardless of whether the motion disposes of an entire claim. Rule 56–4, C.D. Cal. Local Rules. ''Summary judgment is as appropriate in a patent case as in any other.'' *Avia Group Int'l Inc.* v. *L.A. Gear California, Inc.,* 853 F.2d 1557, 1561 (Fed. Cir. 1988) (affirming summary adjudication of willful infringement). Once the movant has shown the absence of a genuine issue of fact, the non-moving party has the burden of coming forth with specific evidence to demonstrate the existence of a genuine issue of material fact; mere denials or conclusory statements are insufficient. *Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 256 (1986); Fed. R. Civ. P. 56(e). ''To create a genuine issue of fact, the nonmovant must do more than present some evidence on an issue it asserts is disputed.'' *Avia Group,* 853 F.2d at 1560. As explained by the Supreme Court: ''If the evidence is merely colorable, * * * or is not significantly probative, summary judgment may be granted. *Anderson,* 477 U.S. at 249–50 (citations omitted)

IV. Argument

A. This Court Must Apply California Substantive Law to the Interpretation of the 1997 3D–EOS License Agreement

The License Agreement provides that ''[t]his Agreement shall be governed and interpreted in accordance with the substantive laws of the State of California irrespective of any choice of law rules in the State of California or in any jurisdiction'' (Ex. 1, ¶ 8.6 at p. 36) Thus, this Court must apply California law in interpreting paragraph 2.1(a) of the License Agreement.

Because jurisdiction in this case is predicated on 28 U.S.C. § 1338 rather than on diversity, the Court should look to federal common law rather than state law to determine the enforceability of the choice of law provision contained in the License Agreement. *Wang Laboratories, Inc.* v. *Kagan,* 990 F.2d 1126, 1128 (9th Cir. 1993). Federal courts generally apply the choice of law rules set forth in the Restatement (Second) of Conflicts of Laws. *Chan* v. *Society Expeditions, Inc.,* 123 F.3d 1287, 1297 (9th Cir. 1997). Under the Restatement, 'courts should enforce the parties' choice of law if the issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.'' *Id.* (quoting Restatement (Second) Conflict of Laws § 187(1)). Here, the issue is whether EOS may sue 3D under the licensed patents, and the parties did in fact resolve that issue by an explicit provision in the contract—paragraph 2.1(a). (Ex. 1, at p. 31) Accordingly, this Court must enforce the parties' choice of California substantive law.

In addition, even if the issue were not subject to explicit resolution in the License Agreement (and, of course, it is), this Court would still be impelled to enforce the parties' choice of California law:

''unless the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice or application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and that state would be the state of applicable law in the absence of a choice-of-law clause.''

Id. (quoting Restatement (Second) Conflict of Laws § 187(2)). Here, California has a substantial relationship to the parties and the transaction because 3D is headquartered and incorporated in California. (Shotting Decl. ¶ 4) Similarly, EOS can make no showing that Germany has a materially greater interest than California in the interpretation of the License Agreement—indeed, in light of the fact that the particular provision at issue protects the right of a California corporation to make and sell products in California and elsewhere, it is difficult to divine how any other jurisdiction could have an interest in this matter as substantial as that of California. Accordingly, this Court must enforce the parties' choice of California substantive law.

Finally, it bears noting that even if this Court were to find California law applicable to the choice of law question. California courts routinely enforce such choice of law provisions under the standards set forth in the Restatement. *E.g., Nedlloyd Lines B.V. v. Seawinds Ltd.*, 3 Cal. 4th 459, 464–65, 11 Cal. Rptr. 2d 330 (1992) (''In determining the enforceability of arm's-length contractual choice-of-law provisions, California courts shall apply the principles set forth in Restatement section 198, which reflects a strong policy favoring enforcement of such provisions.''); Cal. Civ. Code § 1646.5 (''the parties to any contract, agreement, or undertaking, contingent or otherwise, relating to a transaction involving in the aggregate'' at least $250,000, ''may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not the contract, agreement, or undertaking or transaction bears a reasonable relation to this state.'').

B. EOS May Not Assert Any Claims for Infringement Under the Licensed 3D Patents Against 3D

The 3D–EOS License Agreement provides as follows:

''LICENSEE expressly agrees not to assert against LICENSOR any claims for infringement based on the manufacture, use, sale or offer for sale of any apparatus made or sold by LICENSOR under the Licensed Patents, at any time, for any reason, during the term of this License Agreement.''

(SUF No. 2; Ex. 1, ¶ 2.1(a), at p. 31) The licensee is EOS; the licensor is 3D. The language could not possibly be more clear: EOS may not sue 3D for infringement based on the manufacture, use, sale or offer for sale of any apparatus—including laser sintering systems—under the licensed 3D patents.

This Court has already examined paragraph 2.1 of the License Agreement and ruled that it means exactly what it says: ''3D itself may still make products using the licensed patents.'' (Ex. 2, at p. 40) In January, DTM filed a motion to dismiss EOS' complaint on the ground, inter alia, that EOS lacked standing to sue under the licensed 3D patents without joining 3D as a plaintiff because the 1997 3D–EOS License Agreement did not grant to EOS ''all substantial rights'' in the patents. EOS opposed the motion, arguing that it did in fact obtain all substantial rights in the patents. On March 16, this Court granted DTM's motion in part, ruling that EOS lacked standing to sue without joining 3D because its rights in the patents were insubstantial. The Court, as an initial matter, noted that the limitations of paragraph 2.1(a) ''prohibit EOS from asserting claims in infringement against 3D and its vendees or customers during the term of the Agreement.'' (Ex. 2, at 39) The Court reviewed EOS' arguments, and then held as follows:

''However, the Court agrees with Defendants that other provisions of the Agreement render the rights obtained by EOS insubstantial. First, 3D itself may still make products using the licensed patents. Agreement § 2.1(a). This right is a significant one when considering whether substantial rights have been transferred.''

(Ex. 2, at 40) Thus, this Court has already visited the issue of whether EOS may assert the licensed 3D patents against 3D based on 3D's manufacture and sale of the accused laser sintering systems, and has held that it may not. The Court's determination that paragraph 2.1(a) prohibits EOS from asserting claims of infringement against 3D, and that 3D itself may make and sell products using the licensed patents, is entitled to finality as law of the case because EOS can show no grounds on which to reopen the issue. *Magnesystems, Inc.* v. *Nikken, Inc.,* 933 F. Supp. 944, 948–49 (C.D. Cal. 1996).

Moreover, even if this Court had not already resolved this issue in its March 16 Order, application of California contract law would lead ineluctably to the same result. A patent license is a contract governed by

ordinary principles of state contract law. *McCoy* v. *Mitsuboshi Cutlery, Inc.,* 67 F.3d 917, 920 (Fed. Cir. 1995). California law provides that ''[t]he language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.'' Cal. Civ. Code § 1638. In addition, ''[w]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; . . . .'' Cal. Civ. Code § 1639. Thus, a party's ''subjective intent or understanding cannot be used to establish an intent independent from the express written terms of the agreement.'' *Sunniland Fruit, Inc.* v. *Verni,* 233 Cal. App. 3d 892, 898, 284 Cal. Rptr. 824 (1991).

It is well established that the interpretation of an unambiguous contract is solely a question of law, unless the interpretation turns on the credibility of extrinsic evidence. *Brobeck, Phleger & Harrison* v. *Telex Corp.,* 602 F.2d 866, 871–72 (9th Cir. 1979) (applying California law; citation omitted); *Parsons* v. *Bristol Development Co.,* 62 Cal. 2d 861, 865 (1965). Extrinsic evidence is not admissible to vary the terms of the contract, but only to prove a meaning to which the language of the contract is ''reasonably susceptible.'' *Brobeck,* 602 F.2d at 871–72; *Sunniland Fruit,* 233 Cal. App. 3d at 898. If the court finds that the language of the contract is unambiguous and not reasonably susceptible to the meaning suggested by the extrinsic evidence, then the case is particularly amenable to disposal on summary judgment because interpretation of the unambiguous contract is solely a question of law. *Brobeck,* 602 F.2d at 871–72; *Government Systems Advisors, Inc.* v. *United States,* 847 F.2d 811, 812 n.1 (Fed. Cir. 1988) (noting that under Federal Circuit law ''[c]ontract interpretation is a matter of law and thus amenable to decision on summary judgment.'').

Thus, California courts enforce unambiguous contracts containing exculpatory provisions similar to that contained in the 3D–EOS License Agreement according to their terms. For example, in *Appalachian Ins. Co.* v. *McDonnell Douglas Corp.,* 214 Cal. App. 1, 262 Cal. Rptr. 716 (1989), Western Union entered into a contract with McDonnell Douglas pursuant to which McDonnell was to manufacture an upper stage rocket for a Western Union communications satellite. The contract contained a provision stating that ''under no circumstances will [McDonnell] be liable to Purchaser under or in connection with this Agreement, for any tort, negligence, strict liability, contract or other legal or equitable theory, ...'' *Id.* at 12. In addition, the parties agreed to extend their inter-party waiver of liability ''to their respective contractors and subcontractors . . .''

Id. at 14. After the rocket failed, five insurance companies that paid a portion of the resulting claim filed suit against McDonnell and two of the subcontractors. The trial court granted summary adjudication in favor of the defendants, based on exculpatory clauses in the contract between the insured and McDonnell, and the court of appeals affirmed. Noting that ''[t]he language of the instrument must govern its interpretation if it is clear and explicit,'' the court rejected the plaintiffs' argument that the exculpatory provision regarding the subcontractors should be construed to reflect the intent set forth in the contrary provision of a related agreement:

''To ignore the differences in the language used in the two agreements would violate a fundamental rule of contract interpretation, that is, the words of a contract, if clear, must govern its interpretation. The words of the McDonnell Douglas/Western Union contract are clear; they unambiguously preclude a suit by Western Union against McDonnell Douglas' respective contractors and subcontractors, i.e., against Morton Thiokol and Hitco.''

Id. at 18. Similarly, here, EOS has unambiguously agreed not to sue 3D under the licensed patents based on 3D's manufacturing and sales activities at any time, for any reason. Under California law, the Court must enforce the contract. Accordingly, EOS cannot assert its patent infringement claims against 3D based upon 3D's manufacture and sale of the accused laser sintering systems.

C. Because EOS May Not Sue 3D Under the Licensed 3D Patents, EOS Cannot Obtain Damages Under Those Patents for any Manufacturing or Sales of the Accused Laser Sintering Systems That Occurred After August 31, 2001, the Date That DTM was Merged Into 3D

The undisputed evidence shows that on August 31, 2001, 3D filed with the California Secretary of State an Agreement of Merger between 3D and DTM. (SUF No. 7; Ex. 3) 3D also filed a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of 3D, and a Certificate of Approval of Agreement of Merger executed by the CEO and President and Secretary of DTM. (SUF. No. 7; Ex. 3) Pursuant to these filings, DTM was merged into 3D as of August 31, 2001, with 3D as the surviving entity. (SUF No. 8) The legal effect of these filings was that DTM's corporate existence was extinguished as of August 31, 2001.[2] Cal. Corp. Code §§ 1103, 1107(a); *Asher v. Pacific Power and Light Co.,* 249 F. Supp. 671, 677 (N.D. Cal. 1965). In recognition of these facts, this Court ruled on October 17 that ''[o]n August 31, 2001, 3D merged DTM into 3D. *DTM now no longer exists.*'' (Ex. 4, at p. 52) Thus, the Court need not revisit this issue, because its prior ruling is entitled to finality as law of the case. *Magnesystems,* 933 F. Supp. at 948–49.

As a result of the merger, 3D succeeded to the assets of DTM, including its laser sintering manufacturing and sales operations. Cal. Corp. Code § 1107(a). EOS cannot possibly fabricate a genuine issue as to the fact that it is now 3D, *not* DTM, that is making and selling the accused laser sintering systems, because the merger extinguished the existence of DTM *as a matter of law.* Cal. Corp. Code ¶ 1107(a). Accordingly, EOS is not entitled to obtain any damages or other relief based on the conduct of 3D in manufacturing and selling the accused laser sintering systems after August 31, 2001, because EOS agreed in paragraph 2.1(a) of the License Agreement not to assert any of the licensed patents against 3D ''based on the manufacture, use, sale or offer for sale of any apparatus made or sold by [3D] under the Licensed Patents, at any time, for any reason.'' (Ex. 1, ¶ 2.1(a), at p. 31)

[2] California law governs the effect of the merger, because the surviving entity–3D–is a California corporation. Cal. Corp. Code § 1108(b). (Shotting Decl. ¶ 4)

V. Conclusion

For the reasons set forth above, the Court should grant 3D's motion for summary adjudication that EOS may recover no damages or other relief as against 3D or nominal defendant DTM under the licensed 3D patents based upon the manufacture, use, sale or offer for sale of any of the accused laser sintering systems that occurs after August 31, 2001.

Dated: November 12, 2001.

Thomas, Walton & Graves LLB.

Philip J. Graves,

Attorneys for Defendants 3D Systems, Inc., DTM Corporation, and Compression, a division of Moll Industries, Inc.

[FR Doc. 02–4699 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 12, 2001, Chiragene, Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances to supply their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections 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 May 13, 2002.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–5792 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substance; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001, (66 FR 38321), High Standard Products Corp., 14441 Beach Boulevard, #225, Westminster, California 92683, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture analytical reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of High Standard Products Corp. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated High Standard Products Corp. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–5794 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 31, 2001, ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Freetown, Massachusetts 02702, made application by renewal and by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Fentanyl (9801)	II

The firm plans to bulk manufacture amphetamine, methamphetamine, and fentanyl for customers and to bulk manufacture the phenylacetone for the manufacture of the amphetamine. The bulk 2,5-dimethoxyamphetamine will be used for conversion into a non-controlled substance.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections 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 May 13, 2002.

Dated: February 19, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–5793 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Market Street Market; Denial of Application

On or about August 27, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Market Street Market (MSM), located in Chehalis, Washington, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated November 2, 1998, 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 MSM that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received September 6, 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 MSM 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 Administrator finds that on or about November 2, 1998, an application was received by the DEA Chemical Operations Registration section on behalf of MSM for DEA registration as a distributor of the three above-mentioned List I chemicals.

MSM is a convenience store located in Chehalis, Washington. At all relevant times, it was owned and operated by Chol Jung Kim and his wife Hy Suk Kim (hereinafter collectively referred to as the Kims). In the Fall of 1998, MSM attempted to purchase 20 cases of pseudoephedrine from a distributor located in Columbus, Ohio. When DEA learned of this attempted purchase, personnel from the DEA Seattle Field Division contacted the Kims and alerted them to the dangers of List I chemicals, including pseudoephedrine, being diverted to the illicit manufacture of methamphetamine. The Kims assured DEA personnel that MSM would limit its sales to two bottles per customer. Subsequently, on or about November 2, 1998, MSM submitted the present application for DEA registration as a distributor of List I chemicals.

The DEA Seattle Field Division received information that documented MSM's purchase of 718 bottles of 100 count 60 mg. pseudoephedrine tablets from a single distributor between October and December, 1998. On March 24, 1999, DEA Headquarters received a letter from a registered manufacturer of pseudoephedrine located in New Jersey informing DEA that MSM had recently purchased 144 bottles of 100 count 60 mg. pseudoephedrine tablets, and that MSM had placed an identical order in January, 1999. DEA's investigation reveals that these amounts of pseudoephedrine exceed the legitimate retail needs of MSM.

On March 5, 1999, DEA investigators conducted a pre-registration inspection of MSM. During an interview at this time, the Kims were again warned about the dangers of the diversion of List I chemicals, including pseudoephedrine, to the illicit manufacture of methamphetamine. At this time, the Kims were provided with copies of official DEA notices and various criminal statutes pertaining to the diversion of listed chemicals and the duties and obligations of List I chemical registrants. The Kims again assured DEA investigators that they would limit their sales to two bottles per customer.

On March 25, 1999, a confidential source purchased 17 bottles of 60 count 60 mg. pseudoephedrine tablets from the Kims at MSM. Thereafter, a confidential source and an undercover detective from a State of Washington law enforcement agency made five purchases of pseudoephedrine tablets at MSM between December, 2000, and February, 2001.

The first undercover buy took place on December 29, 2000, when the confidential source purchased ten bottles of 100 count 60 mg. pseudoephedrine tablets from the Kims at MSM. The second undercover buy took place on January 4, 2001, when the confidential source purchased 20 bottles of 100 count 60 mg. pseudoephedrine tablets from the Kims at MSM. At this time, one of the Kims stated that MSM would be willing to sell pseudoephedrine in half-case quantities (a case contains 144 bottles). On January 11, 2001, the undercover detective purchased 20 bottles of 100 count 60 mg. pseudoephedrine tablets from the Kims at MSM. On January 18, 2001, the undercover detective made the fourth buy, purchasing 25 bottles of 120 count 60 mg. pseudoephedrine tablets from the Kims at MSM. The fifth undercover buy took place on February 15, 2001, when the undercover detective purchased 35 bottles of 100 count 60 mg. pseudoephedrine from the Kims at MSM.

On March 23, 2001, a Federal Search Warrant was executed at MSM, and the Kims were arrested for violations of the Controlled Substances Act relating to their purchases and sales of pseudoephedrine List I chemical products. During the search, a total of 50,214 dosage units of List I chemical products as well as $44,408 in United States currency was seized.

On April 4, 2001, MSM's State of Washington license to handle over-the-counter chemicals, including pseudoephedrine, expired. MSM failed to renew the license, and as a result, MSM is not currently authorized by the State in which it seeks DEA registration to handle the List I chemicals listed in its application. The DEA investigation revealed that MSM purchased at least 451,800 dosage units of pseudoephedrine between August 1, 1999, and August 1, 2000. This amount of pseudoephedrine well exceeds the legitimate needs of MSM. DEA had delayed acting on MSM's application because of MSM's association with other targets of criminal investigations.

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).

As a preliminary matter, DEA consistently has held that a retail store operates under the control of its owners, stockholders, or other employees, and therefore the conduct of these individuals is relevant in evaluating the fitness of an applicant for registration. See, e.g., Rick's Pharmacy, 62 FR 42,595 (1997); Big T Pharmacy, Inc. 47 FR 51,830 (1982). The conduct of the Kims is therefore relevant in determining the fitness of MSM for DEA registration.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA investigation revealed that MSM and the Kims actively participated in the diversion of List I chemicals, in that on

at least five occasions they distributed the List I chemical pseudoephedrine knowing or having reasonable cause to believe that said chemical would be diverted to the illicit manufacture of a controlled substance.

Regarding factor two, the applicant's compliance with applicable law, the Administrator finds that MSM through its owners/operators the Kims significantly violated applicable law by selling the List I chemical pseudoephedrine in quantities and under circumstances sufficient to engender a reasonable belief that the chemical would be diverted to the manufacture of a controlled substance. Despite having been extensively briefed twice by DEA personnel in the Fall of 1998 and in March of 1999 concerning the risks of diversion of listed chemical products, including being served with official DEA written notifications and guidelines concerning the obligations and responsibilities of listed chemical registrants, the Kims subsequently significantly violated applicable law. During a two-week period from December 29, 2000, to January 11, 2001, the Kims sold an undercover confidential source at least 5,000 dosage units of pseudoephedrine.

During the next four weeks, from January 18, 2001, to February 15, 2001, the Kims sold an undercover detective (introduced to the Kims by the undercover confidential source) an additional 6,500 dosage units of pseudoephedrine. The Administrator finds that, given the Kim's obvious knowledge of the dangers of diversion, as directly transmitted to them orally and in writing by DEA, the sale of these quantities of pseudoephedrine to the same individuals within such a relatively short time frame, certainly gave rise to a reasonable belief, if not knowledge, that the pseudoephedrine would be diverted to the manufacture of a controlled substance, in violation of 21 U.S.C. 841(d)(2) and 841(g)(1). (Note: subparagraphs (d) and (g) of 841 have been redesignated as (c) and (f)).

Regarding factor three, the investigative file reveals that Hy Suk Kim was arrested April 29, 1998 for Washington State violations involving possession of drug paraphernalia and a drug violation.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that MSM and the Kims actively participated in distributing the List I chemical pseudoephedrine knowing or having reasonable cause to believe it would be diverted to the manufacture of a controlled substance, as set forth in factor two.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that on two separate occasions, the Kims stated to DEA personnel that MSM only sold List I chemical products in quantities not exceeding two bottles per customer. The DEA investigation revealed that, on at least five occasions over a six-week period, the Kims sold in quantities of 10, 20, 20, 25, and 35 bottles to an undercover confidential source and an undercover detective. The Kims additionally stated to the undercover detective that they were willing to sell in half-case quantities (72 bottles). The Administrator finds this lack of candor, taken together with MSM's and the Kim's demonstrated cavalier disregard of the law and responsibilities concerning the distribution of listed chemicals, makes questionable MSM's and the Kim'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).

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of MSM.

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 Market Street Market be denied. This order is effective April 11, 2002.

Dated: February 22, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02–5795 Filed 3–11–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Parole Commission

[5 U.S.C. Section 552b]

Public Announcement; Pursuant To The Government In the Sunshine Act (Public Law 94–409)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m. Thursday, March 14, 2002.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of Previous Commission Meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

3. Adoption of retroactive application of 28 CFR 2.80.

4. Adoption of informal policy regarding participation in employment training.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 7, 2002.

Michael Stover,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 02–5959 Filed 3–8–02; 11:32 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

[5 U.S.C. Section 552b]

Public Announcement; Pursuant To The Government In the Sunshine Act (Public Law 94–409)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 10:30 a.m., Thursday, March 14, 2002.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately four cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 7, 2002.

Michael Stover,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 02–5960 Filed 3–8–02; 11:32 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

RIN 1219–AB20

Mine Rescue Teams

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of public meeting.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public meeting to gather ideas and suggestions from the mining community on the current state of availability, quality and preparedness of mine rescue teams. The ideas and suggestions will be considered by MSHA in determining what actions can be taken to improve mine rescue capabilities.

DATES: The public meeting will be held on March 28, 2002.

ADDRESSES: The public meeting will be held at the following location: National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia 25813–9426, Phone: 304–256–3257.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984. He can be reached at *nichols-marvin@msha.gov* (Internet e-mail), 703–235–1910 (Voice), or 703–235–5551 (Fax).

SUPPLEMENTARY INFORMATION:

I. Background

In the wake of several mine disasters, Congress promulgated the Federal Mine Safety and Health Act of 1977 (Mine Act). Congress believed that the ready availability of mine rescue capability in the event of an accident would be vital to protect miners. Accordingly, § 115(e) of the Mine Act required the Secretary of Labor to publish regulations requiring that mine rescue teams be available for rescue and recovery work at each underground mine. Section 115(e) also allowed mine operators to make cooperative arrangements to provide for the availability of mine rescue teams.

On July 3, 1980, (45 FR 46992), MSHA promulgated a new part 49, in title 30 of the Code of Federal Regulations, that included requirements for mine rescue teams in the coal and metal and nonmetal mining industries. The purpose of the rule was to implement § 115(e) of the Mine Act by ensuring the availability of rescue teams at underground mines in case of a mine emergency.

The regulation generally requires two mine rescue teams per mine and allows outside coverage teams. To limit the expense, many mines now choose to contract for mine rescue service. Existing part 49 places no restrictions on the number of mines a contractor can agree to cover.

In 1995, MSHA hosted a Mine Emergency Preparedness Conference at the National Mine Health and Safety Academy in Beckley, West Virginia. Attendees included mine rescue association members, mine rescue team trainers and captains, operators, state and federal government officials, educators, and international representatives. Issues addressed at the conference included the need to (1) increase the numbers of qualified mine rescue personnel, (2) improve the availability of trained mine rescue teams, (3) assure the quality of contract teams, and (4) provide incentives for mine operators to maintain mine rescue teams. One outcome of this conference was the establishment of a committee to study the issues identified at the conference and to make recommendations to MSHA on ways to address those issues.

In 1998, MSHA established the Mine Rescue Team Initiative Committee to investigate a decline in the number of available mine rescue teams, to make recommendations for maintaining the quality of existing mine rescue teams, and to emphasize MSHA's commitment to mine rescue. MSHA conducted interviews with industry and labor, and state agencies to gather input from all facets of the mining community. Given the passage of time since the committee completed its work, we are conducting a meeting to gather current information concerning mine rescue capabilities.

II. Public Meeting

MSHA will conduct a public meeting to gather input from interested parties on the subject of mine rescue teams, quality and preparedness.

We will conduct the meeting in an informal manner, and a court reporter will make a verbatim transcript of the proceeding.

The meeting is open to the public and will begin at 9:00 a.m. and finish after the last speaker.

Upon request, after all scheduled speakers have made an oral statement, we will allow members of the public to speak at the meeting on a first-come, first-serve basis. However, if there are no additional speakers after the last scheduled speaker, the meeting will be adjourned.

Send your requests to make oral presentations to MSHA, Office of Standards, Regulations, and Variances; 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Phone or fax requests may be made at voice: 703–235–1910; or fax: 703–235–5551. You may also request to speak when you sign in at the meeting.

In addition to making an oral statement, any member of the public may submit written statements, and other data to MSHA representatives at the meeting.

This meeting will give mine operators, miners and their representatives, and other interested parties an opportunity to present their views on the actions that can be taken to result in more effective mine rescue team capabilities.

We are specifically interested in comments addressing the issues described below, although parties are encouraged to submit comments on any relevant mine rescue team issue. Information received will help us resolve these issues and determine the most effective way to address the changing needs of the underground mining industry and its mine rescue team capability.

A. Availability of Mine Rescue Teams

How can mine operators be encouraged to provide for more mine rescue team capability?

B. Mine Rescue Team Membership

How should an individual's employment history in underground mining affect that individual's ability to serve on a mine rescue team?

C. Training for Mine Rescue Team Members

Should additional training be required for a former mine rescue team member who rejoins a team which still uses the same breathing apparatus?

Should there be joint training of mine rescue teams not located at the same rescue station?

For mine rescue teams not located at the same rescue station, how many hours of joint training would be required?

Should both teams participate concurrently in MSHA-supported rescue contests or MSHA emergency response drills (MERD)?

Should teams that participate in a MSHA-supported mine rescue contest or MERD exercises earn ''training credit'' for each participating member?

D. Instructor Qualifications

How should an individual's employment history in underground mining affect that individual's ability to serve as a mine rescue team instructor?

E. Equipment Availability, Maintenance, and Testing Requirements

Comments from the mining community have suggested that the costs associated with the current equipment requirements prevent some mine operators from establishing a mine rescue team.

In light of today's mine rescue team needs, what type, amount, maintenance and testing of equipment is appropriate to ensure the same level of protection for miners?

F. Incentives

A recommendation was received by the Agency to consider an incentive in the form of penalty reductions for mine operators that establish and maintain mine rescue teams.

The Agency believes this type of incentive would be prohibited by the Mine Act. We would, however, welcome suggestions on other types of incentives which would encourage operators to establish their own mine rescue teams.

Dated: March 7, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–5947 Filed 3–11–02; 8:45 am]

BILLING CODE 4510–43–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, March 21, 2002, and Friday, March 22, 2002, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on March 21, and at 9 a.m. on March 22.

Topics for discussion include: Assessing the Medicare benefit package; changes in medical practice and the delivery of care—implications for the Medicare benefit package; changes in private sector benefit packages—implications for the Medicare benefit package; supplementing the Medicare benefit package: Medicaid, Medigap, retiree health care, and the role of Medicare+Choice; total spending and sources of payment for beneficiaries' health care; coverage of and payment for non-physician practitioners; beneficiaries' access to Medicare hospice care; Medicare coverage of cardiac rehabilitation programs and pulmonary rehabilitation services; Medicare benefit package: preliminary findings; criteria for evaluating potential changes to the Medicare benefit package; options for changing the Medicare benefit package, and reviewing the SGR update for 2003.

Agendas will be mailed on March 12, 2002. The final agenda will be available on the Commission's website (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 1730 K Street, NW., Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 02–5921 Filed 3–11–02; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL SCIENCE FOUNDATION

Request for Clearance; Public Information Collection Requirements To Be Submitted to the Office of Management and Budget; Notice

AGENCY: National Science Foundation.

ACTION: Request for clearance: Public information collection requirements to be submitted to the Office of Management and Budget (OMB).

SUMMARY: The National Science Foundation (NSF) is announcing plans to request extension of approval for this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB extend clearance of this collection for at least 3 years.

DATES: Written comments should be received by May 13, 2002, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*, and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Lauren Wittenberg, NSF Desk Officer.

Comments: Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Cross-Site Evaluation of the National Science Foundation's Directorate for Education and Human Resources' Urban Systemic Program.

OMB Approval Number: 3145–0186.

Expiration Date of Approval: July 31, 2002.

Abstract:

The National Science Foundation (NSF) requests a three-year clearance for an evaluation of the Urban Systemic Program (USP), a study that has been on-going since October 1999 first under OMB 3145–0136 and now under OMB 3145–0186. Due to a change in OMB terms of clearance for OMB 3145–0136, NSF established an independent clearance for the USP study under the terms of an emergency clearance.

USP began in 1999 when NSF made competitive awards of up to $3 million per year, for up to 5 years, to 5 urban school districts. Since then, the program has made awards to 13 additional districts in 2000, and another 9 districts in 2001. The USP represents one of NSF's major investments in improving science and mathematics education in

urban school systems across the country, and having third-party evaluation is important in order for the agency to interpret the worthiness of the investment.

NSF uses the data to: (1) Determine whether to modify or extend the USP concepts and (2) share best practices and lessons learned about reform in mathematics and science education for K–12 schools.

Specifically, during the first two years of the USP Cross-Site Evaluation, the third-party, COSMOS Corporation of Bethesda, MD, has produced reports for others at NSF (*e.g.*, the National Science Board). Though there are other sources of such documentation, the information provided by the Cross-Site team is valued because the team is not associated in any way with the program sites. Second, the Division of Educational System Reform uses the information to supplement its annual *program monitoring.* Third, NSF will use the information, both to assess its investment in the USP program and potentially to help to guide the design of future programs, such as the Mathematics and Science Partnerships.

During the extended period of clearance, the cross-site evaluation will conduct site visits to the first 18 districts that received USP awards and will collect student achievement data in mathematics and science from all of the districts. This data collection complements earlier efforts already undertaken by the Cross-Site team under earlier OMB clearance.

Respondents: State, local or tribal governments.

Number of Respondents: 378.

Burden on the Public: 270 hours.

Dated: March 7, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–5870 Filed 3–11–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

OMB Submission and Review

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 66 FR 48280, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send e-mail to *tpierce@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Outcomes and Impacts of The NSF Minority Postdoctoral Research Fellowships (MPRF) Program.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Notice of Intent to Seek Approval to Establish an Information Collection.

Abstract: Outcomes and Impacts of The NSF Minority Postdoctoral Research Fellowships (MPRF) Program.

Proposed Project: The National Science Foundation (NSF), through its Minority Postdoctoral Research Fellowships (MPRF) Program within the Directorates of Biosciences and Social and Behavioral Sciences, manages a program, established in 1990 that is designed to prepare minority scientists for positions of scientific leadership in academia, government, and industry. To achieve this, funding is provided through the program to enable new PhDs in BIO and SBE fields from underrepresented minority groups to have an opportunity to start their career by conducting fully funded independent research for several years. Approximately 12 fellowships are funded each year.

The purpose of the proposed study is to examine the results of the Program in the form of the awardees' career outcomes.

Use of the Information: The information will be used by NSF to understand the extent to which this program assists awardees in beginning their research careers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 157.

Estimated Total Annual Burden on Respondents: 78.5 hours—157 respondents at ½ hour per response.

Frequency of Responses: One time.

Dated: March 6, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–5871 Filed 3–11–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–02384–CivP; EA 99–290; ASLBP No. 02–797–01–CivP]

Earthline Technologies; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.205, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic

Safety and Licensing Board is being established to preside over the following proceeding:

Earthline Technologies, Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of Earthline Technologies (previously known as RMI Environmental Services) for a hearing regarding an Order issued by the Deputy Executive Director for Materials, Research, and State Programs, dated January 15, 2002, entitled ''Order Imposing Civil Monetary Penalty'' (67 FR 3,917 (Jan. 28, 2002)).

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents and other materials shall be filed with the Panel Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 6th day of March 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–5873 Filed 3–11–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of March 11, 18, 25, April 1, 8, 15, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 11, 2002

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

Monday, March 25, 2002

1:00 p.m. Discussion of Intergovernmental Issues (Closed)

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)

Week of April 15, 2002—Tentative

There are no meetings scheduled for the Week of April 15, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on March 5 and 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held on March 8, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

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: March 7, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–6014 Filed 3–8–02; 12:52 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25453; File No. 812–12550]

Jefferson Pilot Financial Insurance Company, et al.; Notice of Application

March 6, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (''1940 Act'').

Applicants: Jefferson Pilot Financial Insurance Company (''Jefferson Pilot Financial''), and its JPF Separate Account A (''JPF Account A''), JPF Separate Account C (''JPF Account C''), JPF Variable Annuity Separate Account (''JPF VA Account''), JPF Variable Annuity Separate Account II (''JPF VA Account II''); and Jefferson Pilot LifeAmerica Insurance Company (''JP LifeAmerica'') and its JPF Separate Account B (''JPF Account B'') (all collectively, the ''Applicants'').

SUMMARY OF THE APPLICATION: Applicants request an order pursuant to Section 26(c) of the 1940 Act to permit certain registered unit investment trusts to substitute shares of certain underlying portfolios for shares of certain other portfolios.

FILING DATE: The Application was filed on June 14, 2001, and amended on February 28, 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 Secretary of the Commission 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 April 1, 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 issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street,

NW, Washington, DC 20549–0609. Applicants, c/o Jorden Burt, LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007–0805, Attention: Christopher S. Petito, Esq.

FOR FURTHER INFORMATION CONTACT: Martha Atkins, Attorney, at (202) 942–0668, or William J. Kotapish, Assistant Director, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Applicants Jefferson Pilot Financial and JP LifeAmerica (''Insurance Company Applicants''), are affiliated companies wholly owned by Jefferson-Pilot Corporation, a North Carolina corporation. Jefferson Pilot Financial is a stock-life insurance company chartered in 1903 in Tennessee, redomesticated to New Hampshire in 1991, and redomesticated to Nebraska effective June 12, 2000. It is engaged primarily in the sale of annuities and life insurance. JP LifeAmerica is a stock life insurance company chartered in 1897 in New Jersey. It is a wholly-owned subsidiary of Jefferson Pilot Financial and is engaged primarily in the sale of individual annuities and life insurance.

2. JPF Account A was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on August 20, 1984 in accordance with the laws of the State of Tennessee and is registered as a unit investment trust under the 1940 Act. It is now governed by the laws of the State of Nebraska, as a result of Jefferson Pilot Financial's redomestication. JPF Account A is used to fund certain variable life insurance policies issued by Jefferson Pilot Financial.

3. JPF Account C is a segregated asset account of Jefferson Pilot Financial. It was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on August 3, 1993, in accordance with the laws of the State of New Hampshire and is registered as a unit investment trust under the 1940 Act. It is now governed by the laws of the State of Nebraska, as a result of Jefferson Pilot Financial's redomestication. JPF Account C is used to fund certain variable life insurance policies issued by Jefferson Pilot Financial.

4. JPF VA Account was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on November 18, 1999 in accordance with the laws of the State of New Hampshire and is registered as a unit investment trust under the 1940 Act. It is now governed by the laws of the State of Nebraska, as a result of Jefferson Pilot Financial's redomestication. JPF VA Account is used to fund certain variable annuity contracts issued by Jefferson Pilot Financial.

5. JPF VA Account II was established by Alexander Hamilton Life, a predecessor of Jefferson Pilot Financial, as a separate investment account under the laws of the State of Michigan on January 24, 1994. On August 1, 2000, Alexander Hamilton Life, together with the Separate Account, was merged into Jefferson Pilot Financial. The Separate Account survived the merger intact. It is now governed by the laws of the State of Nebraska. It is registered as a unit investment trust under the 1940 Act. JPF VA Account II is used to fund certain variable annuity contracts issued by Jefferson Pilot Financial.

6. JPF Account B is a segregated asset account of JP LifeAmerica. It was established by JP LifeAmerica pursuant to a resolution of its Board of Directors on March 2, 1994, in accordance with the laws of the State of New Jersey and is registered as a unit investment trust under the 1940 Act. JPF Account B is used to fund certain variable life insurance policies issued by JP LifeAmerica.

7. The above-noted segregated asset accounts are referred to as the ''Separate Account Applicants.'' Certain variable annuity contracts and variable life insurance policies issued by the Insurance Company Applicants through the Separate Account Applicants are referred to herein as ''Contracts.'' The variable interests under the Contracts are registered with the Commission under the Securities Act of 1933 (the ''1933 Act'').

8. Oppenheimer Bond Fund/VA (''OVAF Bond''), Oppenheimer Strategic Bond Fund/VA (''OVAF Strategic Bond'') and Oppenheimer Capital Appreciation Fund/VA (''OVAF Capital Appreciation'') are separate series of Oppenheimer Variable Account Funds (''OVAF''). (Oppenheimer Bond Fund/VA and Oppenheimer Strategic Bond Fund/VA are sometimes collectively referred to as the ''OVAF Bond Funds''.) OVAF was organized as a Massachusetts business trust in 1984. It offers its shares in ten series and two classes. The class of OVAF shares purchased by the Separate Account Applicants is offered at net asset value and is not subject to Rule 12b–1 fees. OVAF is registered as an open-end management investment company under the 1940 Act, and its shares are registered as securities under the 1933 Act. OVAF shares are sold only to insurance company separate accounts to fund variable annuity contracts and variable life insurance policies. Oppenheimer Funds, Inc., serves as investment adviser to all three OVAF funds. Oppenheimer Funds, Inc., is not affiliated with the Insurance Company Applicants.

9. JPVF Global Hard Assets Portfolio (''JPVF Global Hard Assets'') is a separate series of Jefferson Pilot Variable Fund, Inc. (''JPVF''). JPVF was organized as a Maryland corporation on October 19, 1984. It offers its shares in fifteen series. Its shares are offered at net asset value and are not subject to Rule 12b–1 fees. JPVF is registered as an open-end management investment company under the 1940 Act, and its shares are registered as securities under the 1933 Act. Its shares are sold only to separate accounts of Jefferson Pilot Financial and its affiliates to fund variable annuity contracts and variable life insurance policies, and to qualified retirement plans. Jefferson Pilot Investment Advisory Corporation (''JPIA''), like the Insurance Company Applicants, is a wholly-owned subsidiary of Jefferson-Pilot Corporation. JPIA acts as manager for JPVF Global Hard Assets and has retained Van Eck Associates to act as sub-adviser. Van Eck Associates is not affiliated with the Insurance Company Applicants.

10. If the requested substitution order is granted, Administrative Class shares of the PIMCO Total Return Bond Portfolio (''PIMCO Total Return Bond'') of the PIMCO Variable Insurance Trust (''PIMCO VIT'') will be substituted for shares of the OVAF Bond Funds. PIMCO VIT was organized as a Delaware business trust on October 3, 1997. It offers its shares in thirteen series and two classes. Administrative Class Shares, which the Separate Account Applicants purchase, are offered at net asset value and are not subject to Rule 12b–1 fees. However, they have a service fee, which is used to reimburse financial intermediaries who provide non-distribution services relating to this class of shares. PIMCO VIT is registered as an open-end management investment company under the 1940 Act, and its shares are registered as securities under the 1933 Act. Both classes of shares currently are sold only to separate accounts to fund variable annuity contracts and variable life insurance policies. They also may be sold to qualified pension and retirement plans. Pacific Investment Management Company (''PIMCO'')

serves as investment adviser to PIMCO Total Return Bond. PIMCO is not affiliated with the Insurance Company Applicants.

11. If the requested substitution order is granted, Initial Class Shares of the Growth Portfolio (''Fidelity VIP Growth'') of the Fidelity Variable Insurance Products Fund (''VIP Fund'') will be substituted for shares of OVAF Capital Appreciation. VIP Fund was organized as a Massachusetts business trust on November 13, 1981. It offers its shares in six series and three classes. Initial Class Shares, which the Separate Account Applicants purchase, are offered at net asset value and are not subject to Rule 12b–1 fees. Initial Class Shares are sold to insurance company separate accounts to fund variable annuity contracts and variable life insurance policies and to certain qualified retirement and pension plans. VIP Fund is registered as an open-end management investment company under the 1940 Act and its shares are registered as securities under the 1933 Act. Fidelity Management & Research Company (''FMR'') serves as investment adviser to Fidelity VIP Growth. FMR is not affiliated with the Insurance Company Applicants.

12. If the requested substitution order is granted, shares of JPVF World Growth Stock Portfolio (''JPVF World Growth Stock'') will be substituted for shares of JPVF Global Hard Assets. JPVF World Growth Stock is a series of JPVF. JPIA serves as investment adviser to JPVF World Growth Stock, and has retained Templeton Investment Counsel LLC (''Templeton''), an indirect wholly-owned subsidiary of Franklin Resources, Inc., to act as sub-adviser. Templeton is not affiliated with the Insurance Company Applicants.

13. In 2000 and early 2001, the Insurance Company Applicants reviewed the investment options available under the Contracts. This review had several goals. One was to standardize the array of investment options so that the same options would be available under all of the contracts offered by the Insurance Company Applicants. A second goal was to reduce duplication of investment options. A third goal was to eliminate or replace investment options that in Applicants' view were not performing well or were not popular with contract owners. As relevant to the Application, this review resulted in the following recommendations:

- Replace the OVAF Bond Funds with PIMCO Total Return Bond,
- Replace OVAF Capital Appreciation with Fidelity VIP Growth, and
- Eliminate JPVF Global Hard Assets as an investment option under the Contracts, and substitute shares of JPVF World Growth Stock (referred to collectively as the ''Substitutions'').

Applicants submitted the Application to implement those recommendations. (OVAF Bond, OVAF Strategic Bond, OVAF Capital Appreciation, and JPVF Global Hard Assets are referred to collectively as the ''Replaced Portfolios;'' PIMCO Total Return Bond, Fidelity VIP Growth, and JPVF World Growth Stock are referred to collectively as the ''Replacement Portfolios.'')

14. Each Insurance Company Applicant will redeem for cash all of the shares of each Replaced Portfolio that it currently holds on behalf of its respective Separate Account Applicants at the close of business on the date selected for the Substitutions. Each Insurance Company Applicant, on behalf of its respective Separate Account Applicants, will simultaneously place a redemption request with each Replaced Portfolio and a purchase order with the corresponding Replacement Portfolio, so that each purchase will be for the exact amount of the redemption proceeds. As a result, at all times monies attributable to contract owners then invested in the Replaced Portfolios will remain fully invested and will result in no change in the amount of any contract owner's contract value, death benefit or investment in the applicable Separate Account Applicant.

15. The full net asset value of the redeemed shares held by the Separate Account Applicants will be reflected in the contract owners' accumulation values or annuity unit values following the Substitutions. The Insurance Company Applicants hereby undertake to assume all transaction costs and expenses relating to the Substitutions, including any direct or indirect costs of liquidating the assets of the Replaced Portfolios, so that the full net asset value of redeemed shares of the Replaced Portfolios held by the Separate Account Applicants will be reflected in the contract owners' accumulation values or annuity unit values following the Substitutions.

16. Applicants anticipate that until the Substitutions occur, the manager of each Replaced Portfolio will conduct the trading of portfolio securities in accordance with the investment objectives and strategies stated in the Replaced Portfolios' prospectuses and in a manner that provides for the anticipated redemptions of shares held by the Separate Account Applicants.

17. After the Substitutions, each Insurance Company Applicant will treat each division currently invested in a Replaced Portfolio as one division with the division currently invested in the corresponding Replacement Portfolio.

18. Each of the Contracts gives the relevant Insurance Company Applicant the right, consistent with the requirements of Section 26(c) of the 1940 Act, to eliminate or add divisions, combine two or more divisions, or substitute one or more underlying mutual funds or portfolios for others in which one or more divisions are invested. These contractual provisions have also been disclosed in the prospectuses or statements of additional information relating to the Contracts.

19. The Insurance Company Applicants will schedule the Substitutions to occur after issuance of the requested order and any required state insurance department approvals. Affected contract owners will not incur any fees or charges as a result of the Substitutions, nor will the rights or obligations of the Insurance Company Applicants under the Contracts be altered in any way. The proposed Substitutions will not have any adverse tax consequences to contract owners. The proposed Substitutions will not cause Contract fees and charges currently being paid by existing contract owners to be greater after the proposed Substitutions than before the proposed Substitutions. The proposed Substitutions will not be treated as transfers for the purpose of transfer limits or assessing transfer charges. The Insurance Company Applicants will not, with respect to shares substituted, exercise any right they may have under the Contracts to collect transfer fees or impose any additional restrictions on transfers for a period of at least 30 days following mailing of the notice of the proposed Substitutions referred to below (the ''Free Transfer Period''). During the Free Transfer Period, transfers will be permitted without that transfer being counted against any limits on free transfers under the Contracts.

20. The Insurance Company Applicants supplemented the prospectuses for the Contracts to reflect the proposed Substitutions. Within five days after the Substitutions, each Insurance Company Applicant will send to its respective contract owners written notice of the Substitutions (the ''Notice'') identifying the shares of the Replaced Portfolios that have been eliminated and the shares of the Replacement Portfolios that have been substituted. Each Insurance Company Applicant will include in such mailing the applicable prospectus supplement for the Contracts of the relevant Separate Account Applicant describing

the Substitutions. The Insurance Company Applicants also will mail a copy of prospectuses for the Replacement Portfolios to contract owners who have not already received a copy of those prospectuses in the ordinary course.

21. Contract owners will be advised in the Notice that during the Free Transfer Period, they may transfer all assets, as substituted, to any other available division without limit or charge and without that transfer being counted against any limit on free transfers under their Contract.

Applicants' Legal Analysis

22. Section 26(c) of the 1940 Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(c) of the 1940 Act was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five (5) days after the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

23. The purposes, terms, and conditions of the Substitutions are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Simply put, contract owners will be assessed no charges in connection with the Substitutions, and their annual fund expense ratios are expected to decrease. In addition, to the extent a contract owner does not wish to participate in the Substitutions, he or she is free to transfer to any other option available under the relevant Contract and, during the Free Transfer Period, no transfer fee will be charged and the transfer will not be counted against any limit on free transfers under the Contracts. Moreover, as discussed below, in three of the four proposed substitutions, the proposed Replacement Portfolio has investment objectives and policies that are substantially similar in all material respects to those of the Replaced Portfolio. In the fourth proposed substitution, involving JPVF Global Hard Assets, the proposed Replacement Portfolio has the most similar investment objective of funds currently available under the Contracts, and better long-term performance and lower expenses than the Replaced Portfolio.

24. Applicants submit that the Substitutions do not present the type of costly forced redemption or other harms that Section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

a. The Substitutions will continue to fulfill contract owners' objectives and risk expectations, because the Replacement Portfolios corresponding to the OVAF Replaced Portfolios have objectives, policies, and restrictions substantially similar in all material respects to the objectives, policies, and restrictions of the OVAF Replaced Portfolios, and JPVF World Growth Stock has investment objectives and policies most similar to JVF Global Hard Assets;

b. After receipt of the Notice informing a contract owner of the Substitutions, a contract owner may request that his or her assets be reallocated to another division at any time during the Free Transfer Period without any limit or charge, and without the transfer being counted against any limit on free transfers under the Contracts. This right also will be granted to contract owners of variable annuity Contracts who are receiving variable payments based on the Replaced Portfolios. The Free Transfer Period provides sufficient time for contract owners to consider their reinvestment options;

c. The Substitutions will be at net asset value of the respective shares, without the imposition of any transfer or similar charge;

d. Each Insurance Company Applicant has undertaken to assume all expenses and transaction costs, including, but not limited to, legal and accounting fees and any brokerage commissions, in connection with the Substitutions involving their respective Separate Account Applicants;

e. The Substitutions will in no way alter the contractual obligations of the Insurance Company Applicants or the rights and privileges of contract owners under the Contracts;

f. The Substitutions will in no way alter the tax benefits to contract owners;

g. The Substitutions are expected to confer certain economic benefits on contract owners by virtue of lower expenses, as described below;

h. At the time of the Substitutions, the aggregate fees and expenses under each Replacement Portfolio are expected to be lower than those of the corresponding Replaced Portfolio;

i. Each Insurance Company Applicant and its affiliates currently do not, and will not for a period of three years from the date of the order requested herein, receive any direct or indirect benefit from Fidelity VIP Growth or its adviser (or its adviser's affiliates) at a higher rate, as a percentage of such Applicant's separate account assets invested in the Replacement Portfolio, than it had received from the corresponding Replaced Portfolio, its adviser, and/or its adviser's affiliates, including, without limitation, 12b-1, shareholder service, administrative or other service fees, revenue sharing or other arrangement, either with specific reference to Fidelity VIP Growth or as part of any overall business arrangement;

j. Each Insurance Company Applicant agrees that for a period of two years after the effective date of the Substitutions, it will not increase the Contract charges or the total separate account charges of the divisions that invest in PIMCO Total Return Bond for those contract owners whose Contracts were issued before May 1, 2001, except to the extent of any increase in premium or similar taxes charged by a state or other locality. Each Insurance Company Applicant further agrees that if the total operating expenses for PIMCO Total Return Bond (taking into account any expense waiver or reimbursement) for any fiscal quarter for the two-year period following the effective date of the Substitutions exceed on an annualized basis the relevant Maximum Portfolio Expense Limit as stated below (which is the lower of the expense ratios for the two corresponding Replaced Portfolios as of December 31, 2000), each Insurance Company Applicant will make a corresponding reduction (through waiver or reimbursement) in the separate account expenses for that quarter of the division that invests in PIMCO Total Return Bond for contract owners whose Contracts were issued before May 1, 2001. The Maximum Portfolio Expense Limits for PIMCO Total Return Bond is 0.76%. Applicants submit that it is appropriate to apply this expense limit only to Contracts issued before May 1, 2001, because the OVAF Bond Funds were not available under Contracts purchased on or after that date, and accordingly owners of Contracts purchased on or after that date have never had an expectation of being

able to invest in those Replaced Funds; and

k. Each Insurance Company Applicant agrees that for a period of two years after the effective date of the Substitutions it will not increase the Contract charges or the total separate account charges of the divisions that invest in JPVF World Growth Stock for those contract owners affected by the Substitution for JPVF Global Hard Assets shares, except to the extent of any increase in premium or similar taxes charged by a state or other locality. Each Insurance Company Applicant further agrees that if the total operating expenses for JPVF World Growth Stock (taking into account any expense waiver or reimbursement) for any fiscal quarter for the two-year period following the effective date of the Substitutions exceed on an annualized basis the relevant Maximum Portfolio Expense Limit as stated below (which is the expense ratio for JPVF Global Hard Assets as of December 31, 2000), each Insurance Company Applicant will make a corresponding reduction (through waiver or reimbursement) in the separate account expenses for that quarter of the division that invests in JPVF World Growth Stock for contract owners affected by the Substitution for JPVF Global Hard Assets shares. The Maximum Portfolio Expense Limit for JPVF World Growth Stock is 1.10%.

25. As described below, the OVAF Replaced Portfolios and the corresponding Replacement Portfolios have investment objectives and policies that are substantially similar in all material respects, and JPVF World Growth Stock has investment objectives and policies that are most similar among funds available under the Contracts to those of JPVF Global Hard Assets.

26. OVAF Bond's primary investment objective is to seek a high level of current income. As a secondary goal, OVAF Bond seeks capital appreciation when consistent with its goal of high current income. The fund invests primarily in investment grade debt securities, U.S. government securities, and money market instruments. The fund also may invest up to 35% of its assets in high yield debt securities, other below investment grade debt securities, and other investments such as preferred stock. The fund may invest in securities of any maturity.

27. PIMCO Total Return Bond's investment objective is to seek maximum total return, consistent with preservation of capital and prudent investment management. The ''total return'' sought by the fund consists of income earned on its portfolio securities and capital appreciation, if any. The fund invests primarily in investment grade debt securities. It may also invest up to 10% of its assets in certain high yield securities. It also may invest up to 20% of its assets in securities denominated in foreign currencies and may invest beyond that limit in U.S. dollar-denominated foreign securities. The average portfolio duration usually varies between three and six years, depending on the adviser's forecast as to interest rates.

28. Applicants represent that PIMCO Total Return Bond has objectives, policies, and restrictions substantially similar in all material respects to the objectives, policies and restrictions of OVAF Bond. Both funds invest primarily in high-quality, fixed-income instruments. While PIMCO Total Return Bond places more emphasis on capital appreciation, it appears that both funds rely significantly upon the income from their portfolio investments to earn investment return. Accordingly, Applicants believe that PIMCO Total Return Bond will continue to fulfill the investment objectives and risk expectations of contract owners who want a fixed-income investment option.

29. Applicants believe that the total return orientation of PIMCO Total Return Bond may be more attractive to contract owners. Variable annuities and life insurance are designed to be long-term investments. Accordingly, Applicants believe that owners of variable products may prefer a fixed income investment alternative that is oriented toward total return (i.e., both income and capital appreciation) because it can invest in some types of fixed income investments that do not generate significant current income. In addition, Applicants note that PIMCO Total Return Fund, which has the same investment adviser and similar investment objectives, but is offered to retail and institutional investors, reportedly was the largest bond mutual fund in the United States with assets of $43.5 billion as of March 31, 2001.

30. OVAF Strategic Bond's investment objective is to seek a high level of current income principally derived from interest on debt securities. The fund invests in three market sectors: debt securities of foreign governments and companies; U.S. government securities; and lower-rated, high-yield securities of U.S. and foreign companies. Under normal market conditions, the fund invests in each sector. However, the fund is not obligated to do so. At times, it may invest 100% of its assets in a single sector, if the adviser believes that the fund can achieve its objectives without undue risk. The fund does not seek capital appreciation.

31. Applicants represent that PIMCO Total Return Bond has objectives, policies, and restrictions substantially similar in all material respects to the objectives, policies and restrictions of OVAF Strategic Bond. Both funds are bond funds. While PIMCO Total Return Bond has total return rather than a high level of income as its investment objective, income usually has been and will be a significant portion of both funds' return. While OVAF Strategic Bond has more flexibility in the allocation of its assets among different sectors of the fixed income securities market, both funds can invest in the same types of fixed income securities. Accordingly, Applicants believe that PIMCO Total Return Bond will continue to fulfill contract owners' investment objectives and risk expectations. Moreover, Applicants believe that the total return orientation of PIMCO Total Return Bond may be more attractive to contract owners.

32. OVAF Capital Appreciation's investment objective is capital appreciation. The fund invests primarily in the common stocks of well-known established companies that the adviser believes may appreciate in value over the long-term. The adviser looks primarily for companies with a high potential for growth, using fundamental analysis of the companies' finances and management, as well as other factors. Although the adviser currently emphasizes mid-capitalization and large-capitalization issuers, the fund can invest in issuers of all sizes.

33. Fidelity VIP Growth's investment objective is to seek to achieve capital appreciation. It usually invests primarily in common stocks. The adviser looks for companies that it believes have above-average growth potential. The adviser selects investments using fundamental analysis of each issuer's financial condition, industry position, and other factors. The fund may invest in domestic and foreign issuers of all sizes. As of December 31, 2000, 7.2% of the fund's assets were invested in foreign securities.

34. Applicants represent that Fidelity VIP Growth has objectives, policies, and restrictions substantially similar in all material respects to the objectives, policies and restrictions of OVAF Capital Appreciation. Both funds are growth equity funds with a primary investment objective of capital appreciation. Both funds select stocks using fundamental analysis. Both funds can invest in issuers of all sizes. While Fidelity VIP Growth, unlike OVAF Capital Appreciation, may invest in foreign equity securities, it does so only to a limited extent. The broader scope

of permissible investments for Fidelity VIP Growth should not preclude a substitution, given the overall similarity in the two funds' investment orientation. Accordingly, Applicants believe that substituting Fidelity VIP Growth for OVAF Capital Appreciation will continue to fulfill contract owners' investment objectives and risk expectations.

35. JPVF Global Hard Assets has as its investment objective long-term capital appreciation by globally investing primarily in ''Hard Asset Securities.'' Income is a secondary consideration. Hard Asset Securities are equity and debt securities of companies that are directly or indirectly involved to a significant extent in the exploration, development, production or distribution of precious metals, ferrous and non-ferrous metals, fossil fuels, forest products, real estate or other basis non-agricultural commodities. This fund also may invest in securities and structured notes whose value is linked to the price of a hard asset commodity or a commodity index. The fund seeks investment opportunities worldwide. Normally, the fund will invest in at least three countries, including the United States.

36. JPVF World Growth Stock's investment objective is long-term capital growth, which it seeks to achieve through a flexible policy of investing primarily in stocks of companies organized in the United States or any foreign nation. The fund also may invest in debt obligations of domestic and foreign companies.

37. Applicants have determined to eliminate JPVF Global Hard Assets as an investment option under the Contracts because this fund has not attracted sufficient investor interest. JPVF Global Hard Assets has been in operation since August 1, 1985. As of December 31, 2001, it had $4.2 million in net assets. Applicants represent that as of December 31, 2001, it was the smallest series of JPVF and the least popular investment option available under the Contracts.

38. Over the past five years, the fund's net assets have declined. Applicants submit that the lack of owner interest also may be attributable to the fund's negative long-term performance. Applicants also note that despite positive performance in 1999, which continued into 2000, the fund's net assets declined in 2000. Accordingly, Applicants do not expect that, in the foreseeable future, contract owner interest in the fund will increase significantly.

39. Because of the low asset level in the fund, its expense ratio is higher than most of the other investment options available under the Contracts. While the management fee is comparable to the fee charged other equity funds available under the Contracts, the other expenses are significantly higher because they are spread over a smaller asset base. Because the fund's asset base is not expected to increase significantly, Applicants expect that the comparatively high level of the fund's expense ratio will continue.

40. For the foregoing reasons, Applicants believe that it would serve contract owners' interests to eliminate JPVF Global Hard Assets as an investment option under the Contracts. Applicants believe that JPVF World Growth Stock is an appropriate substitute for JPVF Global Hard Assets because its objectives, policies, and restrictions are most similar to the objectives, policies, and restrictions of JPVF Global Hard Assets. Both portfolios seek long-term capital appreciation in their investment objectives. Both portfolios can invest in both equity and debt instruments. And while JPVF World Growth Stock is not limited to the narrow sector focus of JPVF Global Hard Assets, both portfolios invest in a mix of domestic and foreign securities, both debt and equity. Accordingly, Applicants believe that JPVF World Growth will permit contract owners who wish to diversify into the global securities assets class to satisfy that need.

41. The following table sets forth the total net assets for each of the Replaced Portfolios and the corresponding Replacement Portfolios:

TOTAL NET ASSETS

[In thousands of dollars; Dec. 31, 2001 (unaudited)]

Replaced portfolios	Amount	Replacement portfolios	Amount
OVAF Bond	695,900	PIMCO Total Return Bond	357,899
OVAF Strategic Bond	350,400	Same	.....
OVAF Capital Appreciation	1,979,900	Fidelity VIP Growth	11,485,436
JPVF Global Hard Assets	4,227	JPVF World Growth Stock	118,932

The net asset information for JPVF Global Hard Assets and JPVF World Growth Stock shown in the table above also represents the net assets of the corresponding divisions under the Contracts, because these two Funds are available only under the Contracts.

42. The management fee and total expenses for each Replacement Portfolio are less than or equal to the fees and expenses of the corresponding Replaced Portfolio. Applicants note that each Insurance Company Applicant is entitled to receive a service fee from the adviser for each of the OVAF Replaced Portfolios and the corresponding Replacement Portfolios, in return for providing certain administrative support services to the funds. Notwithstanding the payment of service fees by the advisers to those two Replacement Portfolios, both of those Replacement Portfolios have lower expense ratios than the OVAF Replaced Portfolios, as set forth in the table below.

EXPENSE RATIOS AS OF DEC. 31, 2000

[As a percentage of average daily net assets]

OVAF Bond:	
Management Fee	0.72
Other Expenses	0.04
Total Expenses	0.76
OVAF Strategic Bond:	
Management Fee	0.74
Other Expenses	0.05
Total Expenses	0.79
OVAF Capital Appreciation:	
Management Fee	0.64
Other Expenses	0.03
Total Expenses	0.67
JPVF Global Hard Assets:	
Management Fee	0.75
Other Expenses	0.35
Total Expenses	1.10
PIMCO Total Return Bond:	
Management Fee	0.25
Service Fee	0.15

EXPENSE RATIOS AS OF DEC. 31, 2000—Continued

[As a percentage of average daily net assets]

Other Expenses	0.26
Total Expenses (before reduction)	0.66
Expense Reduction	0.01
Total Expenses (after reduction)	0.65
Fidelity VIP Growth:	
Management Fee	0.57
Other Expenses	0.08
Total Expenses	0.65
JPVF World Growth Stock:	
Management Fee	0.75
Other Expenses	0.10
Total Expenses	0.85

43. The Insurance Company Applicants represent that they currently do not, and for a period of three years from the date of the requested Order will not, receive any direct or indirect benefit from Fidelity VIP Growth or its adviser (or its adviser's affiliates) at a higher rate, as a percentage of such Applicant's separate account assets invested in the Replacement Portfolio, than it had received from the corresponding Replaced Portfolio, its adviser, and/or its adviser's affiliates, including, without limitation, 12b-1, shareholder service, administrative or other service fees, revenue sharing or other arrangement, either with specific reference to Fidelity VIP Growth or as part of any overall business arrangement. In addition, each Insurance Company Applicant has agreed to a two-year expense limitation with respect to PIMCO Total Return Bond and JPVF World Growth Stock, as set forth in paragraphs 24(j) and (k) above.

44. Applicants submit that each of the Replacement Portfolios has sufficient assets to achieve economies of scale. Accordingly, it is expected that the lower expense ratios should continue.

45. The following chart sets forth the average annual total returns for each of the Replaced Portfolios and the corresponding Replacement Portfolios.

AVERAGE ANNUAL TOTAL RETURNS AS OF DEC. 31, 2000

[In percent]

Portfolio	One year	Five years or since inception	Ten years or since inception
OVAF Bond	6.10	5.02	7.58
OVAF Strategic Bond	2.63	5.76	[1] 5.71
PIMCO Total Return Bond	10.15	[2] 5.95	.....
OVAF Capital Appreciation	−0.23	22.69	19.45
Fidelity VIP Growth	−10.96	19.31	20.04
JPVF Global Hard Assets	8.19	−8.81	−1.74
JPVF World Growth Stock	1.54	11.65	13.02

[1] Since May 3, 1993.
[2] Since Dec. 31, 1997.

AVERAGE ANNUAL TOTAL RETURNS AS OF SEPTEMBER 30, 2001 (UNAUDITED)

[In percent]

Portfolio	YTD	One year	Five years or since inception	Ten years or since inception
OVAF Bond	9.52	11.91	6.59	7.24
OVAF Strategic Bond	0.54	0.32	4.22	[1] 5.26
PIMCO Total Return Bond	8.13	12.31	[2] 6.94	.....
OVAF Capital Appreciation	−24.34	−30.64	12.14	14.73
Fidelity VIP Growth	−29.52	−38.19	8.68	12.72
JPVF Global Hard Assets	−18.86	−15.63	−13.84	−3.12
JPVF World Growth Stock	−15.81	−14.70	5.92	9.41

[1] Since May 3, 1993.
[2] Since Dec. 31, 1997.

46. As shown in the total return chart, the total returns of PIMCO Total Return Bond have been higher than the returns of OVAF Strategic Bond for the corresponding periods. As to OVAF Bond, the total returns of PIMCO Total Return as of December 31, 2000, upon which Applicants based their decision to seek a substitution, also were higher than the returns of OVAF Bond. Since the beginning of 2001, however, OVAF Bond has had a higher return than PIMCO Total Return Bond. However, PIMCO Total Return Bond's one-year return and return since inception (on 12/31/97) still are higher than OVAF Bond's performance for the corresponding periods. PIMCO Total Return Bond's one-year return still is higher than OVAF Bond's one-year performance. Applicants submit that these short-term fluctuations are not significant and do not detract from the appropriateness of PIMCO Total Return Bond as a substitution for OVAF Bond.

47. While the one-year and five-year returns for Fidelity VIP Growth as of December 31, 2000, were lower than the corresponding returns for OVAF Capital Appreciation, Applicants submit that a significant portion of that difference was attributable to the year 2000, in which the U.S. stock markets and growth stocks in particular dropped significantly. Over the 10-year period ending December 31, 2000, the average annual return for Fidelity VIP Growth was higher than the average annual return for OVAF Capital Appreciation. Since the beginning of 2001, OVAF Capital Appreciation has declined less than Fidelity VIP Growth, such that OVAF Capital Appreciation's unaudited five-year and 10-year returns, measured as of September 30, 2001, also are higher than Fidelity VIP Growth's returns. Applicants argue that while the difference may appear significant, it

reflects more the effect of the starting point from which return is measured: in contrast, from January 1, 1991 (the starting point for the 10-year returns reported as of December 31, 2000) to September 30, 2001, the average annual return of the OVAF Capital Appreciation and Fidelity VIP Growth are 14.96% and 14.72%, respectively. In light of the long-term perspective that is particularly appropriate under variable contracts, Applicants believe that the longer-term results are more significant for contract owners. Even with year-to-date losses factored in, Applicants submit that Fidelity VIP Growth's 10-year performance is comparable to the 10-year performance of OVAF Capital Appreciation.

48. Applicants submit that although the one-year return for JPVF World Growth Stock as of December 31, 2000, was lower than the corresponding return for JPVF Global Hard Assets, the five- and 10-year returns were significantly higher. Moreover, JPVF World Stock Growth Stock's unaudited total returns as of September 30, 2001, for all periods shown were higher than the corresponding returns of JPVF Global Hard Assets. Accordingly, in light of the long-term perspective that is particularly appropriate under variable contracts, Applicants believe that JPVF World Growth Stock's performance further supports its appropriateness as a substitute for JPVF Global Hard Assets.

49. While there is no guarantee that past performance will continue, Applicants believe that the foregoing return data support the view that the Substitutions are not expected to diminish performance or otherwise adversely affect Contract values.

50. Applicants request an order of the Commission pursuant to Section 26(c) of the 1940 Act to permit them to effect the Substitutions on the terms set forth in this Amended Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–5878 Filed 3–11–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held the following additional meetings during the week of February 25, 2002:

Closed meetings were held on Thursday, February 28, 2002 at 5:45 p.m., and Friday, March 1, 2002 at 4:00 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meetings. Certain staff members who had an interest in the matter were also present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matter at the closed meetings.

The subject matter of the closed meetings held on Thursday, February 28, 2002 and Friday, March 1, 2002 was:

Regulatory matter concerning financial markets.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 6, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–5927 Filed 3–7–02; 4:19 pm]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 3889]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Friday, April 12, 2002 at 2:00 p.m. in the Diplomatic Reception Rooms. The meeting will last until approximately 3:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on November 16, 2001 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 200l through December 31, 2001. Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by April 1, 2002, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: February 28, 2002.

Gail F. Serfaty,

Secretary, Fine Arts Committee, Department of State.

[FR Doc. 02–5913 Filed 3–11–02; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF STATE

[Public Notice 3912]

Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Tuesday, March 26, 2002, in Room 600, 301 4th St., SW, Washington, DC from 12 Noon to 3:30 p.m.

The Commission, reauthorized pursuant to Public Law 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will discuss direction for a new executive director, and general update on the effectiveness of public diplomacy initiatives.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

Dated: March 6, 2002.

David Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–5914 Filed 3–11–02; 8:45 am]

BILLING CODE 4710–11–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending February 22, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11618.

Date Filed: February 19, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SEA 0135 dated 22 February 2002; Mail Vote 207—TC23/TC123 Europe-South East Asia; Standard Revalidation Resolution 002 r1–r25; Intended effective date: 1 October 2002.

Docket Number: OST–2002–11632.

Date Filed: February 20, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0900 dated 15 February 2002; Mail Vote 200—Resolution 010c; New Fare Construction Package; Intended effective date: 1 April 2002.

Docket Number: OST–2002–11637.

Date Filed: February 20, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0549 dated 22 February 2002; Mail Vote 205—Resolution 010f; TC3 Special Passenger Amending Resolution between China (excluding Hong Kong SAR and Macau SAR) and Japan; Intended effective date: 1 April 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–5912 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 22, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–11658.

Date Filed: February 21, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 14, 2002.

Description: Application of Linea Aerea Puertorriquena, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property, and mail.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–5911 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Freedom Airlines, Inc. D/B/A America West Express for Issuance of New Certificate Authority

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2002–3–3), Docket OST–01–11206.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Freedom Airlines, Inc. d/b/a America West Express fit, willing, and able, and (2) awarding it a certificate to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than March 20, 2002.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–01–11206 and addressed to Department of Transportation Dockets (SVC–124, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: March 6, 2002.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–5909 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–11724]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0071 and 2115–0038

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Official Logbook, and (2) Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before May 13, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–11724] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. *Caution:* Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(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 notice. Comments and material received from the public, as well as documents mentioned in this notice 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.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2002–11724], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Request

1. *Title:* Official Logbook.

OMB Control Number: 2115–0071.

Summary: The official logbook contains information about the voyage, the vessel's crew, drills, and operations conducted during the voyage. Its entries identify all particulars of the voyage, including the name of the ship, the official number, the port of registry, the tonnage, the names and the numbers of the merchant mariners' documents of the master and crew, the nature of the voyage, and the class of ship. It also contains entries for the vessel's drafts, maintenance of watertight integrity of the ship, drills and inspections, crew list and report of character, a summary of laws applicable to Logbooks, and miscellaneous entries.

Need: 46 U.S.C. Chapter 113 requires that most merchant vessels maintain an official logbook. The logbook contains information about the vessel, voyage, and crew. Lack of these particulars would make it difficult for a seaman to verify vessel employment and wages, and for the Coast Guard to verify compliance with laws and regulations concerning vessel operations and safety procedures. The logbook serves as an official record of recordable events occurring at sea such as births, deaths, marriages, disciplinary actions etc. Absent the logbook there would be no official civil record of these events. Log entries are accepted by the courts as proof that the event recorded occurred. If this information was not collected, the Coast Guard's program for safety of commercial vessels would suffer, as there would be no official record of voyages by U.S. merchant vessels. Similarly, those seeking to prove that an event occurred would not have any record available.

Respondents: Shipping companies.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,750 hours a year.

2. *Title:* Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures.

OMB Control Number: 2115–0038.

Summary: The collection of information requires respondents to provide to the Coast Guard, on two applications (CG–2554 and CG–4143), vital information about private aids to navigation.

Need: 33 CFR parts 66 and 67 authorize the Coast Guard to collect and process the information furnished from applications for private aids to ensure that the aids appropriately mark the associated hazard or waterway.

Respondents: Owners of private aids to navigation.

Frequency: On occasion.

Burden Estimate: The estimated burden is 3,037 hours a year.

Dated: March 4, 2002.

N. S. Heiner,

Acting Director of Information and Technology.

[FR Doc. 02–5806 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11781]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: MERPAC will meet on Tuesday, April 9, 2002, from 8 a.m. to 4 p.m. and on Wednesday, April 10, 2002, from 8 a.m. to 3 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before March 26, 2002. Written material and requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before March 26, 2002.

ADDRESSES: MERPAC will meet on both days at the MEBA Engineering School, 27050 St. Michaels Road, Easton, MD 21601. Further directions regarding the location of the MEBA School may be obtained by contacting Mr. Lee Kincaid at (410) 822–9600. Send written material and requests to make oral presentations to Commander Brian J. Peter, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570, or e-mail *mgould@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of April 9, 2002 Meeting

The full committee will meet to discuss the objectives for the meeting. The committee will then break up into the following working groups: Task Statement 30, concerning utilization of military sea service and training for merchant marine licenses; Task Statement 31, concerning manning on vessels engaged in domestic service; and, Task Statement 32, concerning updating Automatic Radar Plotting Aid (ARPA) and radar observer training. New working groups may be formed to address any new issues or tasks. At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of April 10, 2002 Meeting

The agenda includes the following:

(1) *Introduction*.

(2) *Working Group Reports*:

(a) Task Statement 30, concerning utilization of military sea service and training for merchant marine licenses.

(b) Task Statement 31, concerning manning on vessels engaged in domestic service.

(c) Task Statement 32, concerning updating ARPA and radar observer training.

(3) *Other items to be discussed*:

(a) Standing Committee—Prevention Through People.

(b) Other items brought up for discussion by the committee or the public.

Procedural

Both meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than March 26, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than March 26, 2002. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than March 26, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: March 6, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–5875 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Boone and Scenic Valley Railroad

[Docket Number FRA–2001–10817]

The Boone and Scenic Valley Railroad seeks a waiver of compliance, number FRA–2001–10817, from the Inspection and Maintenance Standards for Steam Locomotives, 49 CFR Part 230, published November 17, 1999. Section 230.3(c) of the standards requires steam locomotives having flue tubes replaced prior to September 25, 1995, have a 1,472 service day inspection [49 CFR 230.17] performed prior to being allowed to operate under the requirements. The Boone and Scenic Valley Railroad seeks this waiver for one locomotive, number JS 8419, which had the flue tubes replaced and was returned to service in 1998. The Boone and Scenic Valley Railroad was unaware of the requirement to file for special consideration and failed to meet the cut off filing date of January 18, 2001.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–10817) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on March 6, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–5800 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket No. FRA–2002–11371]

Applicant: CSX Transportation, Inc., Mr. Gregory C. Martin, Ph.D., P.E., Chief Mechanical Officer, Engineering and Quality Assurance, 500 Water Street J344, Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks relief from the requirements of the Rules, Standards and Instructions, Title 49 CFR part 236 § 236.586, to the extent that a visual inspection of the track receiver bars and associated conduit, in the winter months on locomotives equipped with Ultra Cab cab signal equipment, not be required if track receiver bars are packed with ice and snow.

Applicant's justification for relief: Ultra Cab equipment has a cab signal self test feature which checks to see if the cab signal track receiver bars are in the circuit. It verifies the track receiver bars and associated wiring are not open or shorted and that it can pass 100 Hz through them. Removal of snow and ice is very time consuming and labor intensive. In some instances, this is almost impossible, unless the locomotive is shopped in a warm shop to thaw. CSX does not believe having to go to this extreme to satisfy a rule was the intent of the FRA.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after

that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 6, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–5803 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2002–11415]

Applicant: Union Pacific Railroad Company, Mr. Phil M.. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance and removal of two automatic signals; one approach ''D'' signal, and conversion of an automatic signal to an operative ''D'' signal. The two westbound automatic signals that are proposed to be removed are approach signals to a controlled signal that governs train movements from the Julesburg branch onto the UP main line at Julesburg, Colorado. The eastbound automatic signal is proposed to be converted to an operative ''D'' signal. These signals are located at M.P. 0.7 on the Julesburg Subdivision. The eastbound ''D'' signal that is proposed to be removed is located at M.P. 2.0.

The reason given for the proposed changes is due to decreased traffic from the Julesburg branch, the signals are no longer needed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 6, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–5801 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2002–11414

Applicant: Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance and removal of a switch machine, power-operated derail and four controlled signals; 163L, 163R, 164L, and 164R, at Cyanamid, Louisiana, M.P. 16.5, on the Livonia Subdivision.

The reason given for the proposed changes is that these signals protected a crossover switch location that had been retired at an earlier time. Due to removal of the crossover and decrease in traffic on the spur caused by removal of connection to a foreign railroad, the control point is no longer needed. The mainline signals are being retired to eliminate a short block between the existing location and a controlled power switch location at M.P. 17.1.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately

present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on March 6, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–5802 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[DOCKET NO. MARAD–11788]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 13, 2002.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Maritime Administration, MAR–250, 400 Seventh St., SW., Washington, D.C. 20590. Telephone: 202–366–0284; FAX 202–493–2288, or e-mail: rita.jackson@marad.dot.gov.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for Admission to the U.S. Merchant Marine Academy.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0010.

Form Numbers: KP–2–65

Expiration Date of Approval: October 31, 2002.

Summary of Collection of Information: The collection consists of Parts I, II, and III of Form KP 2–65 (U.S. Merchant Marine Academy Application for Admission.) Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy.

Need and Use of the Information: The information is necessary to select the best qualified candidates for the U.S. Merchant Marine Academy.

Description of Respondents: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Annual Responses: 2,500

Annual Burden: 12,500 hours

Dated: March 7, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–5910 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10944; Notice 2]

Advanced Bus Industries, Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Advanced Bus Industries, LLC, (ABI) of Marysville, Ohio, has determined that approximately 68 Mauck Special Vehicles (MSV) with tag axles, manufactured between May 31, 1995 and February 2, 2000, do not meet the requirements of paragraph S5.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 105, ''Hydraulic and Electric Brake Systems.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), ABI petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and filed an appropriate report pursuant to 49 CFR Section 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published on November 14, 2001, with a 30-day comment period (66 FR 57151). NHTSA received no comments on this application.

ABI is the original equipment manufacturer of the MSV. ABI manufactures the MSV as a complete bus, which is then purchased by city transit organizations, or as a shell, which is purchased by up-fitters that customize and sell it to a first purchaser.

The four-wheel independent suspension of the MSV is augmented by a tag axle with small wheels. The tag axle is manufactured by Dexter, has a maximum support capacity of 3,500 pounds, and is installed behind the MSV's two rear wheels. A supporting force of 1,500 pounds is provided by the tag axle via the air pressure inside the two air-filled rubber springs mounted between the tag axle and the MSV chassis.

Vehicle braking is provided by the hydraulic, caliper-disc service brakes on the four main wheels. The two small wheels of the tag axle are not fitted with brakes. The lack of brakes on the two small wheels of the tag axle does not satisfy paragraph S5.1 of FMVSS 105, which states that a vehicle must have service brakes at all wheels.

ABI argued that the noncompliance is inconsequential to motor vehicle safety because these vehicles exceed the current FMVSS No.105 braking performance requirements. To support this claim ABI submitted, along with its petition for inconsequential non-compliance, a test report compiled in August 1999. The test facility that produced the report, Radlinski & Associates, tested a MSV to the procedures specified in FMVSS No. 105 and a complete Certification Test Report was generated. The FMVSS No. 105 Certification Test Report indicates that the MSV exceeded all FMVSS No.105 performance requirements.

The agency believes that the true measure of inconsequentiality in this case is the effect of the noncompliance on the vehicle's ability to meet the stopping distance and vehicle stability performance requirements of FMVSS No. 105. The report of the testing conducted by Radlinski & Associates in August 1999 indicates that the brake system of the MSV complies with the fully functional and partially failed brake system requirements of FMVSS No. 105.

On February 8, 2000, the National Highway Traffic Safety Administration (NHTSA) granted ABI a temporary exemption from the requirement in FMVSS No. 105, paragraph S5.1, for service brakes at all wheels. The temporary exemption expired on January 1, 2002. Based on information supplied to the agency by ABI, including the report of brake testing according to FMVSS No. 105 procedures

by Radlinski & Associates, NHTSA Temporary Exemption No. 2000–1 was granted in order to allow the sale of mass transit vehicles that serve the public interest. It is our understanding that ABI no longer produces the MSV with the tag axles.

In consideration of the foregoing, NHTSA has decided that the burden of persuasion has been met and that the noncompliance is inconsequential to motor vehicle safety. Accordingly, the application from ABI is granted and the applicant is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(Authority: 49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 5, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–5799 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–11443; Notice 01]

RIN 2127–AI73

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2000, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2000. The theft data preliminarily indicate that the vehicle theft rate for CY/MY 2000 vehicles (2.89 thefts per thousand vehicles) did not change from the theft rate for CY/MY 1999 vehicles (2.89 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before May 13, 2002.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with two copies to: U.S. Department of Transportation, Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the section 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2000, the most recent calendar year for which data are available.

In calculating the 2000 theft rates, NHTSA followed the same procedures it used in calculating the MY 1999 theft rates. (For 1999 theft data calculations, *see* 66 FR 39554, July 31, 2001). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 2000 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2000 vehicles of that line stolen during calendar year 2000, by the total number of vehicles in that line manufactured for MY 2000, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 2000 theft data show no change in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1999. The preliminary theft rate for MY 2000 passenger vehicles stolen in calendar year 2000 of 2.89 thefts per thousand vehicles produced, did not change from the rate of 2.89 thefts per thousand vehicles experienced by MY 1999 vehicles in CY 1999. For MY 2000 vehicles, out of a total of 206 vehicle lines, 51 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 51 vehicle lines with a theft rate higher than 3.5826, 45 are passenger car lines, six are multipurpose passenger vehicle lines, and none are light-duty truck lines.

In Table I, NHTSA has tentatively ranked each of the MY 2000 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon

receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR 2000 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000

No.	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
1	DAIMLERCHRYSLER	PLYMOUTH BREEZE	173	15,723	11.0030
2	MITSUBISHI	MONTERO SPORT/NATIVA [1]	509	46,272	11.0002
3	MITSUBISHI	MONTERO	22	2,147	10.2469
4	BMW	X5	12	1,312	9.1463
5	DAIMLERCHRYSLER	CHRYSLER INTREPID [2]	4	449	8.9087
6	DAIMLERCHRYSLER	DODGE STRATUS	1,040	118,845	8.7509
7	DAIMLERCHRYSLER	DODGE INTREPID	1,400	162,279	8.6271
8	MITSUBISHI	MIRAGE	502	61,957	8.1024
9	DAIMLERCHRYSLER	PLYMOUTH NEON	626	89,142	7.0225
10	DAIMLERCHRYSLER	DODGE NEON	1,191	170,098	7.0018
11	GENERAL MOTORS	CHEVROLET METRO	210	30,521	6.8805
12	DAIMLERCHRYSLER	JEEP CHEROKEE	1,040	153,816	6.7613
13	HONDA	ACURA NSX	2	305	6.5574
14	DAIMLERCHRYSLER	CHRYSLER LHS	139	22,944	6.0582
15	ASTON MARTIN	VANTAGE COUPE	1	175	5.7143
16	DAIMLERCHRYSLER	CHRYSLER CIRRUS	267	46,849	5.6992
17	FORD MOTOR CO	FORD CONTOUR	350	61,603	5.6815
18	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	287	50,940	5.6341
19	GENERAL MOTORS	OLDSMOBILE BRAVADA	186	33,179	5.6060
20	MITSUBISHI	GALANT	520	94,773	5.4868
21	HONDA	CIVIC	1,807	339,223	5.3269
22	GENERAL MOTORS	PONTIAC GRAND AM	1,194	225,321	5.2991
23	GENERAL MOTORS	OLDSMOBILE ALERO	586	118,421	4.9484
24	DAEWOO	LEGANZA	128	25,960	4.9307
25	HONDA	ACURA INTEGRA	136	28,095	4.8407
26	DAEWOO	LANOS	116	24,049	4.8235
27	KIA MOTORS	SEPHIA/SPECTRA	487	101,027	4.8205
28	GENERAL MOTORS	OLDSMOBILE INTRIGUE	352	73,399	4.7957
29	FORD MOTOR CO	MERCURY MYSTIQUE	98	20,839	4.7027
30	DAIMLERCHRYSLER	CHRYSLER CONCORDE	268	59,453	4.5078
31	TOYOTA	COROLLA	839	187,996	4.4629
32	SUZUKI	VITARA/GRAND VITARA	197	46,188	4.2652
33	AUDI	S4	23	5,396	4.2624
34	GENERAL MOTORS	CADILLAC DEVILLE/LIMOUSINE	380	92,619	4.1028
35	FORD MOTOR CO	FORD MUSTANG	832	202,972	4.0991
36	KIA MOTORS	SPORTAGE	271	66,519	4.0740
37	HYUNDAI	ACCENT	232	57,111	4.0623
38	MITSUBISHI	ECLIPSE	185	45,850	4.0349
39	GENERAL MOTORS	CHEVROLET CAMARO	177	43,990	4.0236
40	GENERAL MOTORS	PONTIAC SUNFIRE	366	91,198	4.0132
41	SUZUKI	ESTEEM	78	19,520	3.9959
42	ISUZU	TROOPER	75	19,100	3.9267
43	GENERAL MOTORS	CHEVROLET CAVALIER	975	256,972	3.7942
44	GENERAL MOTORS	CHEVROLET MALIBU	817	215,601	3.7894
45	TOYOTA	LEXUS GS	102	26,952	3.7845
46	GENERAL MOTORS	CHEVROLET LUMINA/MONTE CARLO	368	98,556	3.7339
47	GENERAL MOTORS	PONTIAC FIREBIRD/TRANS AM/FORMULA.	115	31,093	3.6986
48	HYUNDAI	SONATA	182	49,340	3.6887
49	FORD MOTOR CO	FORD FOCUS	1,112	304,049	3.6573
50	AUDI	A6	94	26,000	3.6154
51	GENERAL MOTORS	BUICK REGAL	224	62,502	3.5839
52	JAGUAR	S–TYPE	117	32,818	3.5651
53	NISSAN	MAXIMA	604	175,111	3.4492
54	FORD MOTOR CO	LINCOLN TOWN CAR	296	89,164	3.3197
55	NISSAN	ALTIMA	484	147,978	3.2708
56	VOLVO	C70	17	5,293	3.2118
57	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	800	249,486	3.2066
58	SUZUKI	SWIFT	9	2,860	3.1469
59	DAIMLERCHRYSLER	CHRYSLER NEON[2]	4	1,303	3.0698
60	NISSAN	PATHFINDER	88	28,983	3.0363
61	GENERAL MOTORS	CHEVROLET PRIZM	116	38,920	2.9805
62	AUDI	TT	21	7,215	2.9106
63	MERCEDES BENZ	220 (S–CLASS)	118	40,612	2.9055
64	HYUNDAI	ELANTRA	354	122,625	2.8869
65	ISUZU	RODEO	155	54,169	2.8614

PRELIMINARY REPORT OF THEFT RATES FOR 2000 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000—Continued

No.	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
66	GENERAL MOTORS	GMC JIMMY S–15	251	87,839	2.8575
67	HONDA	PRELUDE	29	10,165	2.8529
68	GENERAL MOTORS	CADILLAC SEVILLE	89	31,414	2.8331
69	MAZDA	MILLENIA	49	17,334	2.8268
70	DAEWOO	NUBIRA	67	23,985	2.7934
71	GENERAL MOTORS	PONTIAC GRAND PRIX	431	156,496	2.7541
72	FORD MOTOR CO	FORD TAURUS	945	350,145	2.6989
73	FORD MOTOR CO	MERCURY MOUNTAINEER	134	50,023	2.6788
74	DAIMLERCHRYSLER	DODGE AVENGER	17	6,376	2.6662
75	MERCEDES BENZ	208 (CLK–CLASS)	47	17,796	2.6410
76	FORD MOTOR CO	FORD EXPLORER	1,001	383,386	2.6109
77	GENERAL MOTORS	CHEVROLET IMPALA	519	199,319	2.6039
78	GENERAL MOTORS	CHEVROLET CORVETTE	81	31,189	2.5971
79	DAIMLERCHRYSLER	CHRYSLER 300 M	138	53,353	2.5865
80	FORD MOTOR CO	MERCURY SABLE	239	93,301	2.5616
81	TOYOTA	CELICA	154	60,368	2.5510
82	MAZDA	626	192	76,444	2.5116
83	ISUZU	VEHICROSS	2	808	2.4752
84	NISSAN	INFINITI Q45	10	4,045	2.4722
85	DAIMLERCHRYSLER	JEEP GRAND CHEROKEE	741	299,988	2.4701
86	BMW	Z3	24	9,857	2.4348
87	TOYOTA	CAMRY/CAMRY SOLARA	1,097	451,343	2.4305
88	FORD MOTOR CO	LINCOLN LS	164	68,527	2.3932
89	JAGUAR	XK8/XK8 CONVERTIBLE	11	4,698	2.3414
90	TOYOTA	RAV4	103	44,645	2.3071
91	TOYOTA	4-RUNNER	302	132,248	2.2836
92	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND	727	333,712	2.1785
93	FORD MOTOR CO	FORD RANGER PICKUP TRUCK	747	346,291	2.1571
94	FORD MOTOR CO	FORD F–150 PICKUP TRUCK	318	151,791	2.0950
95	GENERAL MOTORS	CHEVROLET S–10 PICKUP TRUCK	514	246,662	2.0838
96	DAIMLERCHRYSLER	PLYMOUTH VOYAGER/GRAND	258	123,906	2.0822
97	FORD MOTOR CO	FORD ESCORT	200	96,287	2.0771
98	MAZDA	PROTÈGÈ	166	80,346	2.0661
99	GENERAL MOTORS	SATURN SC	33	16,009	2.0613
100	BMW	7	35	17,141	2.0419
101	TOYOTA	ECHO	114	56,699	2.0106
102	HYUNDAI	TIBURON	32	15,958	2.0053
103	MITSUBISHI	DIAMANTE	17	8,629	1.9701
104	GENERAL MOTORS	SATURN SL	255	130,551	1.9533
105	FORD MOTOR CO	MERCURY COUGAR	87	44,911	1.9372
106	DAIMLERCHRYSLER	CHRYSLER SEBRING COUPE	21	10,910	1.9248
107	DAIMLERCHRYSLER	JEEP WRANGLER	178	92,672	1.9208
108	GENERAL MOTORS	BUICK CENTURY	272	144,495	1.8824
109	NISSAN	XTERRA	200	108,434	1.8444
110	GENERAL MOTORS	GMC SAFARI VAN	54	30,093	1.7944
111	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP TRUCK	322	181,011	1.7789
112	VOLVO	S40/V40	63	35,817	1.7589
113	NISSAN	SENTRA	120	68,587	1.7496
114	BMW	5	80	45,769	1.7479
115	BMW	3	155	89,026	1.7411
116	FORD MOTOR CO	LINCOLN CONTINENTAL	42	24,210	1.7348
117	GENERAL MOTORS	CHEVROLET ASTRO VAN	155	89,660	1.7288
118	GENERAL MOTORS	CHEVROLET TRACKER	77	45,063	1.7087
119	HONDA	PASSPORT	35	20,493	1.7079
120	VOLVO	S70/V70	69	40,581	1.7003
121	NISSAN	INFINITI G20	23	13,635	1.6868
122	MAZDA	B SERIES PICKUP TRUCK	53	31,627	1.6758
123	MERCEDES BENZ	203 (C–CLASS)	44	26,439	1.6642
124	VOLVO	XC	24	14,489	1.6564
125	TOYOTA	TACOMA PICKUP TRUCK	236	142,518	1.6559
126	VOLKSWAGEN	JETTA	224	137,940	1.6239
127	GENERAL MOTORS	CADILLAC ELDORADO	22	13,845	1.5890
128	GENERAL MOTORS	PONTIAC BONNEVILLE	94	59,334	1.5843
129	ISUZU	HOMBRE PICKUP TRUCK	7	4,449	1.5734
130	JAGUAR	XJR	2	1,290	1.5504
131	NISSAN	FRONTIER PICKUP TRUCK	217	143,358	1.5137
132	MERCEDES BENZ	215 (CL-CLASS)	2	1,338	1.4948
133	FORD MOTOR CO	MERCURY GRAND MARQUIS	200	135,282	1.4784
134	HONDA	ACCORD	627	430,595	1.4561

PRELIMINARY REPORT OF THEFT RATES FOR 2000 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000—Continued

No.	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
135	PORSCHE	911	11	7,578	1.4516
136	GENERAL MOTORS	GMC SONOMA PICKUP TRUCK	86	60,124	1.4304
137	JAGUAR	XJ8	10	7,086	1.4112
138	VOLKSWAGEN	GOLF/GTI	37	26,862	1.3774
139	AUDI	A8	3	2,189	1.3705
140	MERCEDES BENZ	210 (E-CLASS)	64	46,709	1.3702
141	TOYOTA	LEXUS LS	15	11,179	1.3418
142	DAIMLERCHRYSLER	DODGE VIPER	2	1,559	1.2829
143	GENERAL MOTORS	SATURN LS	105	82,956	1.2657
144	TOYOTA	LEXUS RX	113	89,410	1.2638
145	GENERAL MOTORS	BUICK LESABRE	240	190,269	1.2614
146	FORD MOTOR CO	FORD WINDSTAR VAN	291	232,403	1.2521
147	AUDI	A4	24	19,304	1.2433
148	VOLVO	S80	44	35,864	1.2269
149	SUBARU	IMPREZA	21	17,353	1.2102
150	GENERAL MOTORS	PONTIAC MONTANA VAN	75	62,640	1.1973
151	MERCEDES BENZ	170 (SLK-CLASS)	7	5,891	1.1883
152	TOYOTA	LEXUS ES	54	45,885	1.1769
153	DAIMLERCHRYSLER	PLYMOUTH PROWLER	3	2,576	1.1646
154	GENERAL MOTORS	BUICK PARK AVENUE	59	51,365	1.1486
155	VOLKSWAGEN	CABRIO	10	8,836	1.1317
156	NISSAN	INFINITI I30	45	39,815	1.1302
157	JAGUAR	VANDEN PLAS	4	3,596	1.1123
158	NISSAN	QUEST	52	46,834	1.1103
159	HONDA	ACURA TL	74	67,287	1.0998
160	GENERAL MOTORS	CADILLAC CATERA	17	15,629	1.0877
161	GENERAL MOTORS	CHEVROLET VENTURE VAN	107	100,041	1.0696
162	HONDA	CR–V	121	114,387	1.0578
163	TOYOTA	TUNDRA PICKUP TRUCK	11	10,527	1.0449
164	HONDA	ACURA RL	17	16,470	1.0322
165	MERCEDES BENZ	129 (SL-CLASS)	5	4,845	1.0320
166	SUBARU	FORESTER	29	28,950	1.0017
167	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY	93	96,298	0.9658
168	ISUZU	AMIGO	3	3,199	0.9378
169	MAZDA	MPV	47	50,565	0.9295
170	FORD MOTOR CO	MERCURY VILLAGER MPV	29	31,495	0.9208
171	GENERAL MOTORS	CADILLAC FUNERAL COACH	1	1,100	0.9091
172	TOYOTA	AVALON	98	108,025	0.9072
173	VOLKSWAGEN	NEW BEETLE	81	89,819	0.9018
174	NISSAN	INFINITI QX4	25	28,258	0.8847
175	VOLKSWAGEN	PASSAT	59	67,216	0.8778
176	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	34	41,705	0.8152
177	SAAB	9–3	14	17,929	0.7809
178	GENERAL MOTORS	SATURN LW	11	14,418	0.7629
179	SAAB	9–5	13	17,162	0.7575
180	TOYOTA	SIENNA VAN	96	131,405	0.7306
181	TOYOTA	MR2	4	5,597	0.7147
182	SUBARU	LEGACY	65	97,215	0.6686
183	JAGUAR	XKR	1	1,508	0.6631
184	GENERAL MOTORS	SATURN SW	6	9,113	0.6584
185	PORSCHE	BOXSTER/BOXSTER S	8	13,563	0.5898
186	HONDA	S2000	5	9,206	0.5431
187	MAZDA	MX–5 MIATA	8	16,107	0.4967
188	FORD MOTOR CO	FORD CROWN VICTORIA	50	103,784	0.4818
189	HONDA	INSIGHT	2	5,603	0.3570
190	HONDA	ODYSSEY	33	122,131	0.2702
191	ASTON MARTIN	VANTAGE VOLANTE	0	573	0.0000
192	BMW	Z8	0	2,936	0.0000
193	DAIMLERCHRYSLER	CHRYSLER STRATUS [2]	0	131	0.0000
194	FIAT	FERRARI 360	0	452	0.0000
195	FIAT	FERRARI 456	0	82	0.0000
196	FIAT	FERRARI 550	0	256	0.0000
197	LOTUS	ESPRIT	0	200	0.0000
198	ROLLS-ROYCE	BENTLEY ARNAGE	0	422	0.0000
199	ROLLS-ROYCE	BENTLEY AZURE	0	93	0.0000
200	ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	23	0.0000
201	ROLLS-ROYCE	BENTLEY CONTINENTAL SC	0	3	0.0000
202	ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	2	0.0000
203	ROLLS-ROYCE	BENTLEY CORNICHE	0	97	0.0000

PRELIMINARY REPORT OF THEFT RATES FOR 2000 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2000—Continued

No.	Manufacturer	Make/model (line)	Thefts 2000	Production (Mfr's) 2000	2000 theft rate (per 1,000 vehicles produced)
204	ROLLS-ROYCE	SILVER SERAPH	0	154	0.0000
205	TOYOTA	LEXUS SC	0	823	0.0000
206	VOLKSWAGEN	EUROVAN	0	2,791	0.0000

[1] Nativa is the name applied to Montero Sport vehicles that are manufactured for sale only in Puerto Rico.
[2] These vehicles were manufactured for sale in the U.S. territories under the Chrysler nameplate.

Issued on: March 4, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–5807 Filed 3–11–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of International Financial Analysis within the Department of the Treasury is soliciting comments concerning Treasury International Capital Forms CQ–1 and CQ–2, Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

DATES: Written comments should be received on or before May 13, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5457 MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Because of slower mail, please also e-mail or FAX or phone directly to Dwight Wolkow at the contact points listed in the next paragraph.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5457 MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Phone: (202) 622–1276. Fax: (202) 622–7448. E-mail: *dwight.wolkow@do.treas.gov*.

SUPPLEMENTARY INFORMATION: *OMB Number*: 1505–0024.

Abstract: Forms CQ–1 and CQ–2 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 USC 286f; 22 USC 3103; EO 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements: Forms CQ–1 and CQ–2 are quarterly reports filed by nonbanking enterprises in the U.S. to report their international portfolio transactions with unaffiliated foreigners. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: No changes to reporting requirements for the forms are proposed at this time.

Type of Review: Extension.

Affected Public: Business or other for-profit organizations.

Forms: CQ–1 and CQ–2 (1505–0024).

Estimated Number of Respondents: 500.

Estimated Average Time per Respondent: 4 hours per respondent per filing.

Estimated Total Annual Burden Hours: 8,000 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether Forms CQ–1 and CQ–2 are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 02–5818 Filed 3–11–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 4, 2002.

The Department of the 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 11, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1672.

Regulation Project Numbers: REG–142299–01 and REG–209135–88 NPRM and Temporary.

Type of Review: Extension.

Title: Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

Description: The regulation applies with respect to the net built-in gain of C corporation property that becomes property of a Regulated Investment Company (RIC) or Real Estate Investment Trust (REIT) by the qualification of a C corporation as a RIC or REIT or by the transfer of property of a C corporation to a RIC or REIT in certain tax-free transactions. Depending

on the date of the transfer of property or qualification as a RIC or REIT, the regulation provides that either (1) the C corporation will recognize gain as if it had sold the property at fair market value, unless the RIC or REIT elects section 1374 treatment or (2) the RIC or REIT will be subject to section 1374 treatment with respect to the net recognized built-in gain, unless the C corporation elects deemed sale treatment. The regulation provides that a section 1374 election is made by filing a statement, signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return for the taxable year in which the property of the C corporation becomes the property of the RIC or REIT. The regulation provides that a deemed sale election is made by filing a statement, signed by an official authorized to sign the income tax return of the C corporation and attached to the C corporation's Federal income tax return for the taxable year in which the deemed sale occurs.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 140.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 70 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. 02–5842 Filed 3–11–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Fair Housing Home Loan Data System Regulation—12 CFR 27.''

DATES: You should submit written comments by May 13, 2002.

ADDRESSES: You should direct comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0159, 250 E Street, SW., Washington, DC 20219. Due to recent, temporary disruptions in the OCC's mail service, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

A copy of the comments should also be sent to the OMB Desk Officer for the OCC: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Fair Housing Home Loan Data System Regulation—12 CFR 27.

OMB Number: 1557–0159.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection. The OCC requests only that OMB extend its approval of the information collection.

The Fair Housing Act (42 U.S.C. 3605) prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, or national origin. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act. The information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

The information collection requirements in 12 CFR part 27 are as follows:

Section 27.3 requires a national bank that is required to collect data on home loans under 12 CFR part 203 to present the data on Federal Reserve Form FR HMDA–LAR, or in automated format in accordance with the HMDA–LAR instructions, and to include one additional item (the reason for denial) on the HMDA–LAR. Section 27.3 also lists exceptions to the HMDA–LAR recordkeeping requirements. Section 27.3 further lists the information banks should obtain from an applicant as part of a home loan application, and states information that a bank must disclose to an applicant.

Section 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log if there is reason to believe that the bank is engaging in discriminatory practices or if analysis of the data compiled by the bank under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) and 12 CFR part 203 indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin.

Section 27.5 requires a national bank to maintain the information for 25 months after the bank notifies the applicant of action taken on an application, or after withdrawal of an application.

Section 27.7 requires a national bank to submit the information to the OCC upon its request, prior to a scheduled examination.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2,400.

Estimated Total Annual Responses: 2,400.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 4,369 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB

approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 5, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 02–5682 Filed 3–11–02; 8:45 am]

BILLING CODE 4810–33–P

Federal Register

Tuesday,

March 12, 2002

Part II

Department of Transportation

Research and Special Programs Administration

Actions on Exemption Applications; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, D.O.T.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given of the actions on exemption applications in January–December 2001. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain employees were issued.

Issued in Washington, DC, on February 27, 2002.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		Modification Exemptions		
4354–M	DOT–E 4354	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.226(b)	To modify the exemption to authorize the use of plastic pallets for the loading of polyethylene drums or composite packagings transporting certain Division 6.1 materials.
4661–M	DOT–E 4661	Chemetall Foote Corporation, Kings Mountain, NC.	49 CFR 173.34(e)(1)	To modify the exemption to allow for alternative retest procedures for 4BA240 and 4BW240 cylinders; to allow for the transportation of Division 4.3 materials.
5022–M	DOT–E 5022	Thiokol Propulsion Corp., Brigham City, UT.	49 CFR 174.101(L), 174.104(d), 174.112(a), 177.834(l)(1).	To modify the exemption to authorize the transportation of an additional Division 1.3C material in temperature controlled equipment.
6614–M	DOT–E 6614	HCI-Clearwater Chemical Corporation, Clearwater, FL.	49 CFR 173.202, 173.203	To modify the exemption to authorize the transportation of an additional Class 8 material in a non-DOT specification polyethylene bottle, packed inside a high density polyethylene box.
7823–M	DOT–E 7823	Honeywell International, Inc., Morristown, NJ.	49 CFR 173.246	To modify the exemption to authorize the transportation of certain Class 3 materials in a non-DOT specification cylinder.
7823–M	DOT–E 7823	Honeywell International, Inc., Morristown, NJ.	49 CFR 173.246	To modify the exemption to allow for the transportation of a Class 8 material in non-DOT specification welded stainless steel cylinders complying with DOT Specification 4BW cylinders with certain exceptions.
7954–M	DOT–E 7954	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d)(2), 173.302(a)(3)	To modify the exemption to change the proper shipping name and placard provisions for the transportation of certain compressed gases in manifolded DOT Specification cylinders.
8013–M	DOT–E 8013	Praxair, Inc., Danbury, CT.	49 CFR 173.302, 173.304, 175.3	To modify the exemption to allow for the use of DOT 4E240 specification cylinders having a capacity up to 2,642 cubic inches to be used exclusively for sampling purposes.
8451–M	DOT–E 8451	TRW Automotive, Queen Creek, AZ.	49 CFR 173.3, 173.52, 173.54, 173.60, 174.3, 175.3, 177.801.	To modify the exemption to waive the requirement to have a copy of the exemption accompany the shipment of not more than 25 grams of Division 1.1 materials.
8698–M	DOT–E 8698	Taylor-Wharton Gas Equipment (Div of Harsco Corp), Theodore, AL.	49 CFR 173.320, 176.76	To modify the exemption concerning the pressure relief valve, specified retest pressure and OWTT recordkeeping requirements of non-DOT specification portable tanks transporting certain Division 2.2 materials.
8757–M	DOT–E 8757	YZ Systems, Inc., Conroe, TX.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To modify the exemption to authorize a design change of the non-DOT specification stainless steel cylinder for shipment of compressed gases.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8760–M	DOT–E 8760	Barton Solvents, Inc., Des Moines, IA.	49 CFR 172.328, 172.334(b)	To modify the exemption to allow for the transportation of additional Class 3 materials in cargo tanks having six or more compartments.
8826–M	DOT–E 8826	Phoenix Air Group, Inc., Cartersville, GA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To modify the exemption to revise Flight Plan language in Section 7.h. of the exemption to apply to flights inside the United States only.
8865–M	DOT–E 8865	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3	To modify the exemption to update the packaging language of the non-DOT specification cylinders to include the reclassified pyrotechnic devices for the transportation of compressed gases.
8865–M	DOT–E 8865	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3	To modify the exemption to allow for the refilling of the gas storage system consisting of a non-DOT specification cylinder with pyrotechnic relief devices for the transportation of helium.
8915–M	DOT–E 8915	Air Liquide America Corporation, Allentown, PA.	49 CFR 173.301(d), 173.302(a)(3), 173.302(a)(5).	To modify the exemption to authorize the addition of certain Division 2.1 and 2.2 materials transported in certain manifolded DOT Specification cylinders.
8971–M	DOT–E 8971	Baker Atlas, Houston, TX.	49 CFR 172.101 Column 4, 173.246, 175.3.	To modify the exemption to authorize the use of additional design assemblies of the non-refillable, non-Dot specification steel cylinders for the transportation of certain Division 5.1 materials.
8995–M	DOT–E 8995	BASF Corporation, Mount Olive, NJ.	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To modify the exemption to allow for the transportation of an additional Division 2.2 material in non-DOT specification steel portable tanks.
9048–M	DOT–E 9048	Sulton Group-Div. of Daniel/Brooks Petroleum, Tulsa, OK.	49 CFR 173.119, 173.304, 173.315	To modify the exemption to authorize the use of an additional portable meter prover and an increase of the internal volume to 290 gallons for the transportation of Division 2.2 and Class 3 materials.
9347–M	DOT–E 9347	PGI International, Houston, TX.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To modify the exemption to change wording in the exemption to clarify the requirements for hydrostatic/pressure testing of the non-DOT specification stainless steel cylinders.
9421–M	DOT–E 9421	Taylor-Wharton (Harsco Corporation), Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To modify the exemption to eliminate the Fracture Toughness Test requirement and to authorize extending the initial requalification period from 5 years to 10 years of the non-DOT specification steel cylinders when used in specific non-corrosive, dry gas service.
9508–M	DOT–E 9508	Callery Chemical Company, Pittsburgh, PA.	49 CFR 173.202(a)(3), 173.34(e), 175.3	To modify the exemption to authorize periodic external inspection of DOT–4BW240 cylinders as an alternative to periodic hydrostatic testing and inspection for the transportation of certain Division 4.3 materials.
9525–M	DOT–E 9525	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 178.42, Part 173, Subparts D, E, H.	To modify the exemption to allow for the transportation of additional Class 3 materials in a non-DOT specification welded stainless steel cylinder.
9729–M	DOT–E 9729	Honeywell International, Inc., Morristown, NJ.	49 CFR 173.246(a)(1), 178.61–5	To modify the exemption to allow for the transportation of a Division 5.1 material in Type 304L stainless steel cylinders complying with the requirements of DOT Specification 4BW.
9758–M	DOT–E 9758	The Coleman Company, Inc., Wichita, KS.	49 CFR 173.304(d)(3)(ii), 178.33	To modify the exemption to authorize a design change of the non-refillable, non-DOT specification inside container for the transportation of certain Division 2.1 gases.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9884–M	DOT–E 9884	Mallinckrodt, Inc. (Puritan Bennett Corp), Indianapolis, IN.	49 CFR 173.316, 178.57–(8)(c), 178.57–2.	To modify the exemption to authorize a new pressure vessel design unit for the transportation of certain Division 2.2 materials.
9929–M	DOT–E 9929	Orbital Sciences Corporation, Germantown, MD.	49 CFR 172.101, 173.62	To modify the exemption to update the list of cargo air carriers and airports of departure for the transport of rocket motors having weights exceeding those specified in the regulations.
10066–M	DOT–E 10066	CONAX Florida Corporation, St. Petersburg, FL.	49 CFR 173.304, 178.36	To modify the exemption to update drawing configurations of the non-DOT specification cylinder pertaining to a self-inflating life raft for shipment of Division 2.2 and Class 9 materials.
10143–M	DOT–E 10143	Eurocom, Inc., Irving, TX.	49 CFR 173.306(a), 178.33a	To modify the exemption to authorize cargo and passenger-carrying aircraft as additional modes of transportation for Division 2.2 materials in a non-DOT specification container.
10389–M	DOT–E 10389	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 174.67(i)	To modify the exemption to authorize the transportation of Bromine, Class 8 (6.1) in tank cars to remain standing with unloading connections attached when no product is being transferred.
10441–M	DOT–E 10441	Pacific Northwest National Laboratory, Richland, WA.	49 CFR 173.12(b)(6), 177.848(b)	To modify the exemption to allow for the transportation of Class 3, 8, 9, Division 4.1, 4.2, 4.3, and 5.1 materials in lab-packs on the same vehicle with non-lab packed acidic materials.
10458–M	DOT–E 10458	Marsulex, Inc., North York, Ontario, CA.	49 CFR 174.67(j)	To modify the exemption to authorize the use of additional unloading facilities for the transportation of Class 8 and Division 2.3 materials in DOT Specification 111A100W2 tank car tanks.
10481–M	DOT–E 10481	M1 Engineering Limited, Bradford, West Yorkshire, UK.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To modify the exemption to authorize a design change of the non-DOT specification vacuum installed portable tank, in an ISO frame, for the transportation of certain refrigerated liquids.
10501–M	DOT–E 10501	Semi-Bulk Systems, Inc., Fenton, MO.	49 CFR 180.352(d)	To modify the exemption to update reference language concerning Flexible Intermediate Bulk Container reuse provisions and repair procedures.
10656–M	DOT–E 10656	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY.	49 CFR 172.203(d), Part 172, Subparts C, D, E, F, G.	To modify the exemption to revise approval provisions and documentation required for shipments of metal containing unknown amounts of unidentified radionuclides.
10672–M	DOT–E 10672	Burlington Packaging, Inc., Brooklyn, NY.	49 CFR 173.13	To modify the exemption to authorize alternative configuration combination packaging for liquid and solid hazardous materials without hazard labels or placards.
10688–M	DOT–E 10688	Alaska Air Taxi, Anchorage, AK.	49 CFR 175.310(c)	To modify the exemption to authorize alternative packaging for the non-DOT specification polyethylene containers with an increased container size to 6 gallons for the transportation of a Class 3 material; the addition of cargo aircraft only as an additional mode of transportation.
10695–M	DOT–E 10695	3M Company, St. Paul, MN.	49 CFR 172.101, 172.400(b), 172.504(e).	To modify the exemption to authorize various changes to the packaging and safety control measures for the transportation of ethylene oxide packaged in aluminum cartridges within a fiberboard box.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10751–M	DOT–E 10751	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 177.848	To modify the exemption to authorize the transportation of Class 1.4D, 1.4B, 1.1B and additional 1.1D explosives in the same motor vehicle with certain bulk combustible liquids and/or bulk Division 5.1 oxidizers.
10798–M	DOT–E 10798	Lyondell Chemical Co/EQUISTAR Chemicals, LP, Houston, TX.	49 CFR 174.67(i), (j)	To modify the exemption to allow for the transportation of additional Division 2.1 and Class 3 materials in DOT specification tank cars.
10869–M	DOT–E 10869	Norris Cylinder Company, Longview, TX.	49 CFR 173.301(b), 173.302(a)(5), 173.304(a), 173.34, 175.3, 178.37.	To modify the exemption to clarify the fracture toughness test requirements, for design qualification only, of non-DOT specification steel cylinders transporting certain compressed gases.
10915–M	DOT–E 10915	Luxfer Gas Cylinders (Composite Cylinder Div), Riverside, CA.	49 CFR 173.302(a)(1), 173.304(a)(d), 175.3.	To modify the exemption concerning the requalification and fiber damage criteria of the non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders for the transportation of various flammable and non-flammable gases.
10945–M	DOT–E 10945	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3 ..	To modify the exemption to allow for the transportation of additional Division 2.2 materials in non-DOT specification fiber reinforced plastic full composite cylinders.
10945–M	DOT–E 10945	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3 ..	To modify the exemption concerning the requalification of the non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders from a 3-year to a 5-year requalification interval for the transportation of various flammable and non-flammable gases.
10945–M	DOT–E 10945	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3 ..	To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification fully wrapped carbon fiber reinforced aluminum lined cylinders.
10977–M	DOT–E 10977	Federal Industries Corporation, Plymouth, NM.	49 CFR 173.402(a)(2), 172.504(a), 173.25(a), 173.3, 175.3, Table 1.	To modify the exemption to eliminate the requirement that the intermediate packaging be placed in a metal can for the transportation of limited quantities of solid hazardous materials in specially designed combination packaging without hazard labels or placards.
10985–M	DOT–E 10985	Georgia-Pacific Corporation, Atlanta, GA.	49 CFR 174.67(i), (j)	To modify the exemption to allow for the transportation of Division 2.1 materials in tank cars.
11044–M	DOT–E 11044	Chem-Tech, Ltd., Des Moines, IA.	49 CFR 173.334	To modify the exemption to authorize the use of additional cylinders without exceeding cylinder service pressure for the transportation of a reformulated organophosphate product.
11054–M	DOT–E 11054	Welker Engineering Company, Sugar Land, TX.	49 CFR 178.36 Subpart C	To modify the exemption to authorize an increase to the outside diameter of the non-DOT specification cylinder, conforming to 3A specification, for use in shipment of Division 2.1, 2.3 and Class 3 materials.
11153–M	DOT–E 11153	Pacific Northwest National Laboratory, Richland, WA.	49 CFR 177.848(d)	To modify the exemption to specifically authorize the transport of waste materials in combination packaging in the same transport vehicle with other Class/Division materials.
11185–M	DOT–E 11185	Medical Waste Solutions, Inc., Gary, IN.	49 CFR 173.197	To modify the exemption to more accurately describe the non-DOT specification bulk packaging used for the transportation of Division 6.2 materials.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11186–M	DOT–E 11186	Chart Industries, Inc. (Storage Systems Div.), Denver, CO.	49 CFR 173.318	To modify the exemption to authorize the addition of new vessel assemblies for the non-DOT specification vacuum insulated portable tanks, comparable to DOT Specification MC 338 cargo tank motor vehicle, for the transportation of Division 2.1 and 2.2 materials.
11194–M	DOT–E 11194	Carleton Technologies, Inc., Pressure Tech. Div., Glen Burnie, MD.	49 CFR 173.304(a), 175.3, 49 CFR 173.302(a).	To modify the exemption concerning the requalification of the non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders from a 3-year to a 5-year requalification interval for the transportation of various flammable and non-flammable gases.
11194–M	DOT–E 11194	Carleton Technologies, Inc., Pressure Tech. Div., Glen Burnie, MD.	49 CFR 173.304(a), 175.3, 49 CFR 173.302(a).	To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification full wrapped carbon fiber reinforced aluminum lined cylinders.
11202–M	DOT–E 11202	Newport News Shipbuilding & Dry Dock Co., Newport News, VA.	49 CFR 173, 49 CFR 172	To modify the exemption to allow for the transportation of Division 6.1 and additional Class 8, Class 9 and Division 5.1 materials to cross a public road, from one part of a plant to another.
11226–M	DOT–E 11226	E.R. Carpenter, L.P., Pasadena, TX.	49 CFR 174.67(a), (j)	To modify the exemption to allow for the transportation of Class 3 materials in DOT specification tank cars.
11226–M	DOT–E 11226	E.R. Carpenter, L.P., Pasadena, TX.	49 CFR 174.67(a),(j)	To modify the exemption to authorize tank cars to be unloaded using an alternative monitoring system.
11344–M	DOT–E 11344	E.I. DuPont de Nemours and Company, Inc., Wilmington, DE.	49 CFR 174.67(i), (j)	To modify the exemption to allow for the transportation of Division 4.3, Class 9 and additional Class 3, 8 and Division 6.1 materials in tank cars.
11344–M	DOT–E 11344	E.I. DuPont de Nemours and Company, Inc., Wilmington, DE.	49 CFR 174.67(i), (j)	To modify the exemption to authorize the transportation of additional Class 3 materials in DOT Specification tank cars.
11434–M	DOT–E 11434	Fisher Scientific Chemical Division, Fair Lawn, NJ.	49 CFR 174.64(j)	To modify the exemption to authorize the transportation of an additional Class 3 material in tank cars authorized to remain standing with unloading connections attached when no product is being transferred.
11440–M	DOT–E 11440	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.227(c)	To modify the exemption to authorize the use of plastic pallets for the loading of polyethylene drums or composite packagings transporting certain Division 6.1 materials.
11473–M	DOT–E 11473	Astaris, LLC, St. Louis, MO.	49 CFR 173.31(a), 179.100–1, 179.103–3, 179.103–4.	To modify the exemption to remove language for tank cars with a safety relief device having a start-to-discharge pressure of 44.1 percent of the tank test pressure.
11494–M	DOT–E 11494	Atlantic Research Corp., Automotive Produtcs Group, Knoxville, TN.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To modify the exemption to allow for the transportation of additional Division 2.2 materials in non-DOT specification cylinders for use as components of automotive vehicle safety systems.
11526–M	DOT–E 11526	BOC Gases, Murray Hill, NJ.	49 CFR 172.302(c),(2),(3),(4),(5), 173.34(15)(vi), 173.34(e)(1), (3), (4)(8).	To modify the exemption concerning the calibration cylinder specification testing requirements of 3A and 3AA cylinders.
11536–M	DOT–E 11536	Boeing Satellite Systems, Inc., Los Angeles, CA.	49 CFR 173.159, 173.302, 173.304, 173.62.	To modify the exemption to allow for the transportation of additional division 2.2 materials in non-DOT specification packaging.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11579–M	DOT–E 11579	Dyno Nobel, Inc., Salt Lake, UT.	49 CFR 177.848(e)(2)	To modify the exemption to authorize the addition of Division 1.1B, 1.4B, 1.1D and 5.1 materials to be transported on the same cargo unit with Division 1.5D explosives, without a common wall divider and the addition of truck designs for the transportation of these materials.
11579–M	DOT–E 11579	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 177.848(e)(2)	To modify the exemption to authorize the transportation of Division 1.1D and 1.4D explosives on the same motor vehicle with Division 1.5D explosives.
11620–M	DOT–E 11620	CCL Container, Don Mills, Ontario, CN.	49 CFR 173.306(3)(ii)	To modify the exemption to authorize an increase in the container and burst pressure; allow for the transportation of Division 2.1 materials in non-DOT specification cylinders.
11650–M	DOT–E 11650	Autoliv ASP, Inc. Ogden, UT.	49 CFR 178.65–9	To modify the exemption to authorize a design change of the non-DOT specification non-refillable cylinder utilizing a sidewall gas fill port with a maximum service pressure of 5000 PSIG.
11749–M	DOT–E 11749	Union Tank Car Company, E. Chicago, IN.	49 CFR 172.203(a), 172.302(c), 180.509(e).	To modify the exemption to change the availability/retention requirements of data documents used for alternative testing methods of DOT specification tank cars.
11761–M	DOT–E 11761	Hawkins, Inc. Minneapolis, MN.	49 CFR 172.302(c), 173.31(d)(1)(vi)	To modify the exemption to authorize the transportation of additional Class 8 materials in certain DOT Specification and AAR Specification tank cars with a modified inspection procedure.
11761–M	DOT–E 11761	The Mead Corporations, Dayton, OH.	49 CFR 172.302 (c), 173.31(d)(1)(vi)	To modify the exemption to authorize the transportation of additional Class 8 materials in certain DOT and AAR Specification tank cars with a modified inspection procedure.
11782–M	DOT–E 11782	Aeronex, Inc., San Diego, CA.	49 CFR 173.212	To modify the exemption to authorize rail freight and cargo vessel as additional modes of transportation for Division 4.2 materials in non-DOT specification cylinders.
11786–M	DOT–E 11786	Dow Corning Corporation, Midland, MI.	49 CFR 174.67(i), (j)	To modify the exemption to allow for the transportation of Division 2.1 and additional Class 8 materials in DOT Specification tank cars.
11798–M	DOT–E 11798	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.34(e)(15), 173.34(e)(15)(ii)	To modify the exemption to allow for an alternative testing requirement for DOT Specification 3A and 3AA cylinders for the transportation of certain Division 2.1 and 2.2 gases; to allow for an increase of the moisture limit to 25ppm.
11798–M	DOT–E 11798	Anderson Development Company, Adrian, MI.	49 CFR 173.34(e)(15), 173.34(e)(15)(ii)	To modify the exemption to allow for cargo aircraft only as an authorized mode of transportation for the transportation of Division 2.1 and 2.2 gases in DOT Specification 3A or 3AA cylinders; addition of a new provision to paragraph 8 of the exemption.
11826–M	DOT–E 11826	Spectra Gases, Inc., Branchburg, NJ.	49 CFR 173.302(a)(5)	To modify the exemption to authorize the transportation of additional Division 2.2 materials in DOT–3AL aluminum cylinders.
11916–M	DOT–E 11916	CP Industries, Inc., McKeesport, PA.	49 CFR 173.302(e)(2), 173.302(e)(4), 173.302(e)(5), 173.34(e)(1), (3)(4).	To modify the exemption to authorize the use of additional DOT Specification cylinders with an outside diameter equal to or larger than 18 inches; correct language in the exemption dealing with monitoring and reporting.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11924–M	DOT–E 11924	UF Strainrite, Lewiston, ME.	49 CFR 173.12(b)	To modify the exemption to authorize a UN 11HH2 intermediate bulk container as an outer packaging for lab pack applications transporting various classes of hazardous wastes.
12003–M	DOT–E 12003	Degussa Corporation, Parsippany, NJ.	49 CFR 172.102, T–15, T–37	To modify the exemption to authorize the inclusion of four additional DOT specification IM 101 steel portable tanks for the transportation of hydrogen peroxide, stablized, that exceeds the 72 percent maximum concentration.
12022–M	DOT–E 12022	Taylor-Wharton (Harsco Gas & Fluid Control Group), Harrisburg, PA.	49 CFR 173.302(c)(2), (c)(3), (c)(4), (c)(5), 173.34(e)(1), (e)(3), (e)(4), (e)(8), 173.34(e)(14), (e)(15)(vi).	To modify the exemption to include 3BN cylinders and alternative test equipment/procedures for use in transporting Division 2.1, 2.2 and 2.3 materials.
12068–M	DOT–E 12068	United States Sea Launch GP, L.L.C., Long Beach, CA.	49 CFR 173.56, 173.60	To authorize an additional lithium battery material to paragraph 6 for the launch vehicle.
12074–M	DOT–E 12074	Van Hool NV B–2500 Lier, Koningshooikt, BG.	49 CFR 178–245–1(a)	To modify the exemption to allow for minor editorial drawing changes/addition of Code Cases 2261 and 2265 for the manufacture, mark and sale of DOT Specification steel portable tanks designed, constructed and stamped in accordance with Division 2 of Section VIII of the ASME B&PV Code for the transport of Division 2.1 and 2.2 materials.
12074–M	DOT–E 12074	Van Hool NV B–2500 Lier, Koningshooikt, BE.	49 CFR 178–245–1(a)	To modify the exemption to update the filling requirements to include suitable liquid level gauging devices for the transportation of Division 2.1 and 2.2 materials in DOT Specification steel portable tanks.
12084–M	DOT–E 12084	Honeywell International, Inc., Morristown, NJ.	49 CFR 173.34(e)(11)	To modify the exemption to allow for the transportation of Division 2.1 and 2.3 materials in DOT Specification 4B, 4BA and 4BW cylinders that have alternativ2e retest requirements.
12102–M	DOT–E 12102	Onyx Environmental Services, L.L.C., Ledgewood, NJ.	49 CFR 173.56(i)	To modify the exemption to allow for the transportation of densitized Division 5.1 and additional Class 3 materials; cargo vessel as an additional mode of transportation; expanded transportation services.
12102–M	DOT–E 12102	Onyx Environmental Services, L.L.C., Ledgewood, NJ.	49 CFR 173.56(i)	Petition for reconsideration of the proper shipping name, domestic vs. international, for the transportation of certain Division 1.1D, unstable waste laboratory mixtures that have been densitized to remove their explosive characteristics, as Division 4.1 flammable solids.
12116–M	DOT–E 12116	Proserv (North Sea), Ltd., Aberdeen AB11 5RJ, Scotland, UK.	49 CFR 178.36	To modify the exemption to authorize a change to the maximum operating pressure and volume of non-DOT specification cylinders used for oil well sampling.
12122–M	DOT–E 12122	Atlantic Research Corp. Automotive Products Group, Knoxville, TN.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To modify the exemption to allow for a design change to use openings in the sidewall for filling the pressure vessel, used as a component of an automobile safety system.
12122–M	DOT–E 12122	Atlantic Research Corp., Automotive Products Group, Knoxville, TN.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To modify the exemption to allow for the transportation of additional Division 2.2 materials in non-DOT specification cylinders for use as components of automotive vehicle safety systems.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12124–M	DOT–E 12124	Albermarle Corporation, Baton Rouge, LA.	49 CFR 173.242, 178.245–1(c), 178.245–1(d)(4).	To modify the exemption to allow for the transportation of additional Division 4.3 materials in a non-DOT specification portable tank.
12130–M	DOT–E 12130	FIBA Technologies, Inc., Westboro, MA.	49 CFR 173.318, 176.30, 176.76(h), 178.338.	To modify the exemption to authorize a new portable tank design and the transportation of additional Division 2.2 materials in non–DOT specification insulated portable tanks.
12178–M	DOT–E 12178	STC Technologies, Inc., Bethlehem, PA.	49 CFR 173.301(e)(f), 173.304(a)(1), 173.304(a)(3).	To modify the exemption to expand the relief granted in paragraph 6 to include exportation.
12184–M	DOT–E 12184	Weldship Corporation, Bethlehem, PA.	49 CFR 173.302(c)(2)(3)(4), 173.34(e)(1), 173.34(e)(3), 173.34(e)(4), 173.34(e)(6).	To modify the exemption to authorize alternative testing procedures of DOT–3A and DOT–3AA cylinders.
12284–M	DOT–E 12284	American Traffic Safety Services Assn. (ATSSA), Fredericksburg, VA.	49 CFR 173.242	To modify the exemption to authorize an increase in the maximum capacity to 500 gallons of the non-DOT specification cargo tanks used for roadway striping.
12296–M	DOT–E 12296	Clean Earth Systems, Inc., Tampa, FL.	49 CFR 173.12(b)(2)(i)	To modify the exemption to authorize an inner polyethylene liner for the UN 11G fiberboard intermediate bulk container having a minimum thickness of six (6) mils for the transportation of various classes of hazardous materials.
12301–M	DOT–E 12301	Steptoe & Johnson LLP, Washington, DC.	49 CFR 173.193(b), 172.203(a), 172.301(c).	To modify the exemption to waive the marking requirements so that shipping papers and cylinders do not have to bear the DOT exemption number.
12334–M	DOT–E 12334	Autoclave Engineers, Erie, PA.	49 CFR 178.36	To modify the exemption to authorize the transportation of Division 2.2, Class 3, Division 6.1 and additional Division 2.1 materials in non-DOT specification cylinders.
12405–M	DOT–E 12405	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2), 173.304(b)	To modify the exemption to authorize 3T, 3AAX and 3AX cylinders as additional packagings for the transportation of Division 2.1, 2.2 and 2.3 materials; and changes to the operational controls concerning pressure and temperature monitoring.
12442–M	DOT–E 12442	Cryogenic Vessel Alternatives, La Porte, TX.	49 CFR 176.76(g)(1), 178.318	To modify the exemption to waive the impact test requirements for stainless steel portable tanks for materials used in a lading warmer than –425 degrees.
12515–M	DOT–E 12515	FIBA Technologies, Inc., Westboro, MA.	49 CFR 172.101, 178.338–10, 178.338–13, 178.338–2(c), 178.338–6(a), 178.338–9(b).	To modify the exemption to authorize, as an optional requirement, the installation of a manhole for non-DOT specification vacuum-insulated portable tanks in oxygen service.
12557–M	DOT–E 12557	Global Container Group, Inc., Baton Rouge, LA.	49 CFR 178.245	To reissue the exemption originally issued on an emergency basis authorizing the construction of certain DOT Specification 51 steel portable tanks designed in accordance with Section VIII, Division 1 of the ASME Code, except for design margin, for the transportation of certain Division 2.1 and 2.2 materials.
12561–M	DOT–E 12561	Rodia, Incorporated, Cranbury, NJ.	49 CFR 172.203(a), 173.31, 179.23	To modify the exemption to allow for the use of the Barber S–2–HD model truck for the transportation of Class 8 materials in DOT Specification 111S100W–2 tank cars.
12580–M	DOT–E 12580	Matheson Tri-Gas, East Rutherford, NJ.	49 CFR 173.301(j)	To reissue the exemption originally issued on an emergency basis for certain non-DOT specification foreign cylinders which are charged for export only transporting certain Division 4.3 materials.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12581–M	DOT–E 12581	Ball Aerospace & Technologies Corp., Boulder, CO.	49 CFR 173.302(a)(1), 173.304(a)(2), 173.34(d), 175.3, 177.801(a).	To reissue the exemption originally issued on an emergency basis for the transportation of helium in non-DOT specification packaging.
12582–M	DOT–E 12582	State of Michigan (Dept. of State Police), East Lansing, MI.	49 CFR 173.25, 175.85	To reissue the exemption originally issued on an emergency basis for the transportation of first aid/trauma kits containing 2.2 gases in a passenger-carrying aircraft.
12590–M	DOT–E 12590	USAirways, Inc., Pittsburgh, PA.	49 CFR 173.159	To modify the exemption originally issued on an emergency basis for the transportation of certain Class 8 materials in non-DOT specification specially designed containers and the transportation of an additional Class 8 material.
12595–M	DOT–E 12595	Marsulex, Inc., North York, Ontario, CN.	49 CFR 172.540	To reissue the exemption originally issued on an emergency basis for the transportation of sulfur dioxide in a tank car using Division 2.3 international placards.
12595–M	DOT–E 12595	Marsulex, Inc., Toledo, OH.	49 CFR 172.540	To modify the exemption to authorize rerouting a Division 2.3 residue tank car for reloading at a different site while the car is in transit without change of placard and the addition of a Division 2.3 material.
12606–M	DOT–E 12606	Toyota Motor Sales, U.S.A., Inc., Torrance, CA.	49 CFR 171.12(b)(19) and 172.203(a)	To reissue the exemption originally issued on an emergency basis for the one-way transportation of certain Class 9 materials by motor vehicle from port of entry to a distribution facility, within 60 miles, without ''EX'' number on the shipping papers.
12626–M	DOT–E 12626	SMI Companies, Franklin, LA.	49 CFR 173.243(c)	To modify the exemption to authorize the transportation of additional Class 8 materials in a non-DOT specification steel portable tank equipped with an external bottom discharge valve.
12628–M	DOT–E 12628	Arbel Fauvet Rail (AFR), 59500 Douai, FR.	49 CFR 178.245–1(b)	To reissue the exemption originally issued on an emergency basis authorizing the use of DOT Specification 51 tank containers that have been designed, constructed and ''U'' stamped in accordance with Section VIII, Division 1 of the ASME Code transporting Division 2.1 and 2.2 materials.
12633–M	DOT–E 12633	Isolair Helicopter Systems, Troutdale, OR.	49 CFR 173.202	To reissue the exemption originally issued on an emergency basis for the transportation of gasoline in a non-DOT specification, non-bulk package (drum) mounted in a heli-torch frame.
12637–M	DOT–E 12637	Island Gases Limited, Christiansted, St. Croix, U.S., VI.	49 CFR 173.320	To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 2.2 materials in non-DOT specification vacuum insulated portable tanks.
12643–M	DOT–E 12643	TRW Space and Electronics Group, Redondo Beach, CA.	49 CFR 173.302 and 175.3	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in a non-DOT specification refrigeration system described as a pulse tube cooler.
12652–M	DOT–E 12652	Eagle-Picher Technologies, LLC, Joplin, MO.	49 CFR 173.302(a), 173.34(d), 175.3	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.1 material in a non-DOT specification pressure vessel.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12663–M	DOT–E 12663	Skolnik Industries, Chicago, IL.	49 CFR 172,203(a), 172,301(c), 178.3(c), 178.503(a).	To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.
12664–M	DOT–E 12664	Myers Container Corporation, Hunting Park, CA.	49 CFR 172.203, 172.301, 178.3(c), 178.503(a).	To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.
12665–M	DOT–E 12665	Packaging Specialities, Inc., Medina, OH.	49 CFR 172,203(a), 172.301(c), 178.3(c), 178.503(a).	To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.
12688–M	DOT–E 12688	Brenntag West, Inc., Santa Fe Springs, CA.	49 CFR 172.203(a), 172.203(a), 173.158(b)(1)(i).	To modify the exemption originally issued on an emergency basis for the transportation in commerce of a Class 8 material in drums that do not meet the minimum thickness requirements.
12705–M	DOT–E 12705	Brenntag Mid-South, Inc., Henderson, KY.	49 CFR 172.203(a), 173.158(b)(1)(i)	To reissue the exemption originally issued on an emergency basis for the transportation of a Class 8 material in drums that do not meet the minimum thickness requirements.
12735–M	DOT–E 12735	Collbri Group Providence, RI.	49 CFR 172.102(c)(5), 172.301(c), 172.406(a)(1)(ii).	To modify the exemption to correct the name of the freight carrier.
12771–M	DOT–E 12771	Cytec Industries, Inc., West Paterson, NJ.	49 CFR 173.34(d)	To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 2.3 materials in DOT Specification 3AA2400 cylinders not fitted with a pressure relief device and to increase the cylinder pressure to a maximum of 840 psig at 70 degrees F.
12808–M	DOT–E 12808	Linco-Electromatic Measurement, Inc., Kilgore, TX.	49 CFR 173.120, 173.304, 173.315	To reissue the exemption originally issued on an emergency basis for the transportation of Class 3 materials in a non-DOT specification container described as a truck mounted mechanical displacement meter prover.
		New Exemptions		
11489–N	DOT–E 11489	Atlantic Research Corporation, Gainsville, VA.	49 CFR 172.320, 173.56(b)	To authorize the transportation of airbag inflators without required EX number or examination. (mode 1)
12142–N	DOT–E 12142	Aristech Chemical Corp., Pittsburgh, PA.	49 CFR 174.67(i)	To authorize rail cars to remain standing with unloading fittings attached without the physical presence of an unloader. (mode 3)
12248–N	DOT–E 12248	Ciba Specialty Chemicals Corp., High Point, NC.	49 CFR 171.12(b)(5), 173.242	To authorize the transportation in commerce of Corrosive solid, flammable, n.o.s., Class 8, in IM 101 portable tanks not presently authorized. (modes 1, 2, 3)
12290–N	DOT–E 12290	Savage Industries, Inc., Pottstown, PA.	49 CFR 174.67(a)2	To authorize an alternative blocking method of rail cars while transferring various classes of hazardous materials. (mode 2)
12293–N	DOT–E 12293	Intercontinental Packaging Corp., Tuckahoe, NY.	49 CFR 173.306(a)(3)(v), 178.33a–2 & 8	To authorize the manufacture, marking, and sale of non-DOT specification non-refillable metal and plastic aerosol containers filled with a propellant gas. (modes 1, 2, 3, 4)
12339–N	DOT–E 12339	BOC Gases, Murray Hill, NJ.	49 CFR 173.192(a)(3), 173.302(a)(5), 173.302(f), 173.304(a)(4), 173.304(d)(3)(i).	To authorize the transportation in commerce of various Division 2.1 and 2.3 gases in DOT Specification 3AL aluminum cylinders, overpacked in freight containers. (mode 3)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12368–N	DOT–E 12368	Occidental Chemical Corp., Dallas TX.	49 CFR 179.13	To authorize the transportation in commerce of DOT 111A100W1 two-compartment tank cars containing Chromium trioxide, anhydrous, Division 5.1, that exceed the gross weight limitation. (mode 2)
12422–N	DOT–E 12422	Connecticut Yankee Atomic Power Co., East Hampton, CT.	49 CFR 173.403, 173.427(b)(1)	To authorize the transportation in commerce of a specially designed device for use in transporting radioactive material, Class 8. (modes 1, 2)
12443–N	DOT–E 12443	ChemCentral/Charlotte, Charlotte, NC.	49 CFR 174.67(i) & (j)	To authorize rail cars containing Class 8 hazardous materials to remain attached to unloading connectors without the physical presence of an unloader. (mode 2)
12454–N	DOT–E 12454	Ethyl Corp., Richmond, VA.	49 CFR 180.509(1), 180.509(e)	To authorize an alternative testing method for DOT class 105 tank cars for use in transporting various classes of hazardous materials. (mode 2)
12469–N	DOT–E 12469	Department of Energy, Germantown, MD.	49 CFR 180.407	To authorize an alternative testing method for DOT-Specification MC 312 and MC 412 cargo tanks used in transporting radioactive materials, Class 7 and corrosive materials, Class 8. (mode 1)
12473–N	DOT–E 12473	Old Bridge Metals & Chemicals, Inc., Old Bridge, NJ.	49 CFR 173.28(b)	To authorize the refilling of UN authorized packaging by the original user of the product with waste material which is being returned to the original manufacturer for treatment without performing leakproofness test prior to refilling. (mode 1)
12475–N	DOT–E 12475	Chemetall GmbH Gesellschaft, Langlshiem, DE.	49 CFR 173.181, 173.28(b)(2)	To authorize the transportation in commerce of lithium alkyls, Division 4.2, in certain 1A1 drums, without undergoing a leakproofness test prior to each refilling when refilled with lithium alkys and certain other liquid hazardous materials. (mode 1)
12479–N	DOT–E 12479	Luxfer Gas Cylinders, Riverside, CA.	49 CFR 173.302(a)(1), 175.3	To authorize the manufacture, mark, sale and use of non-DOT specification fiberglass hoop wrapped cylinders for the transportation in commerce of certain compressed gases. (modes 1, 2, 3, 4, 5)
12495–N	DOT–E 12495	South Carolina Electric & Gas Co., Jenkinsville, SC.	49 CFR 172, 173, Parts 171	To authorize the transportation in commerce of radioactive material packages, Class 7, from one facility to another using state road that would be transported as essentially unregulated. (mode 1)
12497–N	DOT–E 12497	Henderson International Technologies, Inc., Richardson, TX.	49 CFR 173.302(a)(1), 173.314(c)	To authorize the manufacture, mark and sale of a specially design container frame mounted and manifolded to a motor vehicle in conformance with DOT Specification 107A for transportation in commerce of certain Division 2.2 gases. (mode 1)
12515–N	DOT–E 12515	FIBA Technologies, Inc., Westboro, MA.	49 CFR 172.101, 178.338–10, 178.338–13, 178.338–2(c), 178.338–6(a), 178.338–9(b).	To authorize the transportation in commerce of non-DOT specification portable tanks for use in transporting various Division 2.2 material. (modes 1, 2)
12516–N	DOT–E 12516	Poly-Coat Systems, Inc., Houston, TX.	49 CFR 107.503(b)(c), 172.102(c)(3)B15 & B23, 173.241; 173.242; 178.345–1; –2; –3; –4; –7; –14; –15; 178.347–1; –2; 178.348–1, 178.348–2, 180.405, 180.413(d).	To authorize the manufacture, marking and sale of non-DOT specification cargo tanks constructed of fiberglass reinforced plastic for use in transporting various classes of hazardous materials. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12531–N	DOT–E 12531	Worthington Cylinder Corporation, Columbus, OH.	49 CFR 173.302(a), 173.304(a), 173.304(d), 178.61(b), 178.61(f), 178.61(g), 178.61(i), 178.61(k).	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders designed in accordance with DOT 4BW specification for use in transporting various hazardous materials. (modes 1, 2, 3, 4)
12532–N	DOT–E 12532	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 173.302(a), 175.3	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders similar to DOT specification 39 cylinder for use in transporting helium, Division 2.2 (modes 1, 2, 4)
12536–N	DOT–E 12536	Department of Energy, Albuquerque, NM.	49 CFR 173.211	To authorize the transportation in commerce of a specially designed device consisting of a sealed stainless steel containment vessel overpacked in a steel transport container for an oxidizing solid, Division 5.1 (mode 1)
12538–N	DOT–E 12538	Champagne Specialties, Inc., Fairport, NY.	49 CFR 180.519	To authorize the repair and alteration of multi-tank car tanks that conform to alternative requirements for qualification and maintenance. (mode 1)
12547–N	DOT–E 12547	Rohm and Haas Company, Philadelphia, PA.	49 CFR 177.834(i)(3)	To authorize the loading and/or unloading of hazardous materials to/from cargo tank motor vehicles without the physical presence of an unloader. (mode 1)
12549–N	DOT–E 12549	Griro S.A., Romania	49 CFR 178.245–1(a)	To authorize the manufacture, marking, sale and use of DOT Specification 51 steel portable tanks permanently installed in an ISO frame that have been designed, constructed and stamped in accordance with Section VIII, Division 2 instead of Division 1 of the ASME Code. (modes 1, 2, 3)
12552–N	DOT–E 12552	Illbruck Sealant Systems B.V., The Netherlands.	49 CFR 173.306(a)(3)(v)	To authorize an alternative testing method for specially designed aerosol containers for use in transporting limited quantities of Division 2.1 material. (modes 1, 2, 3)
12562–N	DOT–E 12562	Tae Yang Industrial Co., Ltd., Cheonan-City, South, KR.	49 CFR 173.304(d)(3)(ii)	To authorize the transportation in commerce of Division 2.1 hazardous materials in nonrefillable non-DOT specification inside containers conforming to DOT Specification 2P except for size, testing requirements and markings. (modes 1, 2, 3, 4)
12563–N	DOT–E 12563	Department of Energy, Washington, DC.	49 CFR 173.211	To authorize the one-time transportation of a specially designed device consisting of ASME AS240 Type 316 stainless steel with wall thickness of 0.33 for use in transporting a Division 4.3 material. (mode 1)
12564–N	DOT–E 12564	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 173.302	To authorize the transportation in commerce of non-DOT specification pressure vessels similar to specification 39 for use in transporting helium, Division 2.2. (modes 1, 2, 4)
12573–N	DOT–E 12573	US Can Company, Elgin, IL.	49 CFR 173.304(e), 173.306(a)	To authorize the transportation in commerce of a non-refillable non-DOT specification container similar to a DOT Specification 2Q for use in transporting certain refrigerant gases, classed as non-flammable aerosols. (modes 1, 2, 3, 4)
12574–N	DOT–E 12574	Weldship Corporation, Bethlehem, PA.	49 CFR 172.302(c)(2), (3), (4), (5), Subpart F of Part 180.	To authorize an acoustic emmision test in lieu of hydrostatic retest and internal inspection of DOT 107A tubes used for transporting compressed gases. (modes 1, 2, 3)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12589–N	DOT–E 12589	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.163	To authorize the reuse of 3BN (nickel) cylinders that have been used for hydrogen fluoride service to tungsten hexafloride service, Division 2.3. (modes 1, 3)
12592–N	DOT–E 12592	Matson Navigation Co., San Francisco, CA.	49 CFR 176.905	To authorize the transportation in commerce of combustion-powered motor vehicles in freight containers in cargo vessel holds that are not ventilated. (mode 3)
12599–N	DOT–E 12599	Voltaix, Inc., North Branch, NJ.	49 CFR 173.301 (d) (2), 173.302	To authorize the transport of silicon tetrafluoride in DOT Specification 3AAX and 3AA manifolded cylinders. (mode 1)
12607–N	DOT–E 12607	FIBA Technologies Inc., Westboro, MA.	49 CFR (vi), 173.34(e)(1), (e)(3), (e)(4), (e)(8), (e)(14), (e)(15).	To authorize an alternative method of retest for DOT 3AL seamless cylinders manufactured from 6061 alloy for use in transporting Division 2.1, 2.2 and 2.3 materials. (modes 1, 2, 3, 4, 5)
12608–N	DOT–E 12608	Solvay Interox, Inc., Houston, TX.	49 CFR 172.102(c)(7)(ii)	To authorize the transportation in commerce of hydrogen peroxide aqueous solutions in concentrations exceeding 72 percent but not exceeding 92 percent in DOT specification IM 101 steel portable tanks. (modes 1, 3)
12609–N	DOT–E 12609	Department of Defense (DOD), Alexandria, VA.	49 CFR 171.14(a)(1), 172.301(c)	To authorize the transportation in commerce of non-bulk packagings containing Class 8 material that are no longer authorized for transportation. (mode 1)
12613–N	DOT–E 12613	Nova Chemical Co., Red Deer, Alberta, CN.	49 CFR 172.203(a), 173.31(c)(1), 179.13.	To authorize the transportation in commerce of a Class 3 material in DOT112J340 tank cars with a maximum gross weight on rail that exceed the maximum limit of 263,000 pounds. (mode 2)
12622–N	DOT–E 12622	Atlantic Research Corporation, Knoxville, TN.	49 CFR 172.200, 172.500	To authorize the transportation in commerce of Division 1.3C, 1.4C, and 2.2 airbags without the required shipping papers and placarding. (mode 1)
12626–N	DOT–E 12626	SMI Companies, Franklin, LA.	49 CFR 173.243(c)	To authorize the manufacture, mark, sale and use of non-DOT specification steel portable tanks equipped with external bottom discharge valves for use in transporting Class 8 material. (modes 1, 3)
12629–N	DOT–E 12629	Western Sales & Testing of Amarillo, Inc., Amarillo, TX.	49 CFR 173.34(e)	To authorize an alternative method of retest for DOT 3A, 3AA, 3AAX and 3T compressed gas cylinders for use in transporting liquefied or nonliquefied compressed gases, or mixtures as presently authorized, (modes 1, 2, 3)
12631–N	DOT–E 12631	Precision Medical, Northhampton, PA.	49 CFR 178.57(d)	To authorize the transportation in commerce of a portable cryogenic cylinder containing oxygen, Division 2.2. (mode 1)
12632–N	DOT–E 12632	SET Environmental Inc., Wheeling, IL.	49 CFR 173.197	Request for an emergency exemption to transport med waste in a bulk container for a one-time movement. (mode 1)
12633–N	DOT–E 12633	Isolair Helicopter Systems, Troutdale, OR.	49 CFR 173.202	Request for an emergency exemption for the use of a non-bulk package for the use in an integral component of a flame application system (heli-torch). (mode 1)
12644–N	DOT–E 12644	Strategic Composites, Haverford, PA.	49 CFR 173.302(a), 173.304(a)(1), 175.3.	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders for use in transporting certain flammable and nonflammable compressed gases. (modes 1, 2, 3, 4)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12645–N	DOT–E 12645	Draeger Safety, Inc., Pittsburgh, PA.	49 CFR 173.301, 173.34	To authorize the transportation in commerce of non-DOT specification cylinders manifolded with one pressure relief device to be used as part of a self contained breathing apparatus for transporting oxygen. (modes 1, 4)
12647–N	DOT–E 12647	Wisconsin Public Service Corporation (WPSC), Green Bay, WI.	49 CFR 173.403, 173.427(b)(1)	To authorize the transportation in commerce of two steam generator assemblies as surface contaminated objects that exceed the authorized quantity limitations. (mode 3)
12650–N	DOT–E 12650	Coleman Powermate, Inc., Kearney, NE.	49 CFR 173.34(d)	To authorize the transportation in commerce of 3AL cylinders equipped with spring-loaded pressure relief devices for use in transporting hydrogen absorbed in metal hydride. (modes 1, 2, 3, 4)
12652–N	DOT–E 12652	Eagle-Picher Technologies, LLC, Jopline, MO..	49 CFR 173.302(a), 173.34(d), 175.3	To authorize the transportation in commerce of certain non-DOT specification pressure vessels containing compressed hydrogen, which are a component of a nickel hydrogen battery. (modes 1, 2, 4)
12657–N	DOT–E 12657	Oshkosh Truck Corporation, Oshkosh, WI..	49 CFR 178.345–3(f)(3)(i)	To authorize the transportation in commerce of cargo tanks equipped with attachments that exceed the authorized spacing limits. (mode 1)
12668–N	DOT–E 12668	Tri-Wall, Butler, IN ..	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, mark, sale and use of certain UN 11G flexible intermediate bulk container for use as the outer packaging for lab pack applications in accordance with 49 CFR 173.12(b)(2)(i) as well as 40 CFR 173.240–243. (mode 1)
12669–N	DOT–E 12669	Aristech Chemical Corporation, Pittsburgh, PA..	49 CFR 177.834(i)(4)	To authorize an alternative attendance requirement of cargo tanks during loading and unloading of Class 9 material. (mode 1)
12670–N	DOT–E 12670	Taylor-Wharton, Theodore, AL..	49 CFR 178.57(1)(1)(2)(3), 178.57, (f)	To authorize the manufacture, mark, sale and use of DOT–4L specification cylinders using an alternative lot size at the time of manufacturing. (mode 1)
12671–N	DOT–E 12671	Carleton Technologies Inc., Orchard Park, NY..	49 CFR 173.302(a)(4), 175.3, 178.65	To authorize the transportation in commerce of non-DOT specification cylinders for use in transporting helium. (modes 1, 2, 4)
12679–N	DOT–E 12679	Applied Companies, Santa Clarita, CA..	49 CFR 173.302(a), 178.65	To authorize the transportation in commerce of non-DOT specification cylinders comparable to Specification 39 non-reusable for use in transporting oxygen. (mode
12682–N	DOT–E 12682	EP Container Corp., Santa Fe Springs, CA..	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, mark, sale and use of certain UN 11G Fiberboard Intermediate Bulk Containers (IBC), for use as the poison pack outer packaging when transporting certain hazardous materials. (mode 1)
12686–N	DOT–E 12686	Carleton Technologies Inc., Orchard Park, NY..	49 CFR 173.302(a), 175.3	To authorize the manufacture, marking, sale and use of a nonrefillable non-DOT specification cylinder conforming to DOT specification 39 cylinder for use in transporting Division 2.2 nonflammable compressed gas. (modes 1, 2, 4)
12691–N	DOT–E 12691	TITEQ Corporation, Palmdale, CA..	49 CFR 173.302(a)(2), 175.3, 178.35, 178.44.	To authorize the manufacture, mark, sale and use of non-DOT specification cylinder conforming to DOT Specification 3HT cylinder for use in transporting certain hazardous materials classed in Division 2.2. (modes 1, 2, 4)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12698–N	DOT–E 12698	Integrated Environmental Services, Inc., Atlanta, GA.	49 CFR 173.115(a)(b), 173.304(a), 173.34(d)(e).	To authorize the manufacture, mark, sale and use of non-DOT specification full open head steel/stainless steel salvage cylinders as an overpack in transporting damaged or leaking gas cylinders containing Class 2 material. (modes 1, 3, 4)
12702–N	DOT–E 12702	Los Crespos Cylinders, Anasco, PR.	49 CFR 172.203(a), 172.301(c), 173.34(1) subparagraphs 1, 2, and 3.	To authorize the repair and rebuild of DOT–4B series cylinders for use in transporting hazardous materials as presently authorized. (modes 1, 2, 3)
12708–N	DOT–E 12708	Ameristar Air Cargo, Inc., Dallas, TX.	49 CFR 173.62	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft. (mode 4)
12714–N	DOT–E 12714	Scientific Cylinder Corporation, Englewood, CO.	49 CFR 173.302(c)(2), (4) & (5), 173.34(c)(2), (e)(3), (e)(4).	To authorize the transportation in commerce of certain cylinders which have been alternatively ultrasonically retested for use in transporting Division 2.1, 2.2, and 2.3 materials. (modes 1, 2, 3, 4)
12719–N	DOT–E 12719	Bechtel Jacobs Company LLC, Oak Ridge, TN.	49 CFR 173.211, 173.244	To authorize the transportation in commerce of bulk and non-bulk aluminum containers used in transporting sodium, Division 4.3, (mode 1)
12720–N	DOT–E 12720	American Honda Motor Company, Torrance, CA.	49 CFR 176.76(a)(4)	To authorize the transportation in commerce of electrolyte batteries in specially designed packagings, overpacked in a motor vehicle not subject to the requirements of the HMR, without securing the overpack to the floor of the intermodal freight container or trailer. (modes 1, 2, 3, 4)
12726–N	DOT–E 12726	Air Transport Association, Washington, DC.	49 CFR 173.304(a)(1), 173.305, 173.309, 173.34(e), 175.3.	To authorize the transportation in commerce of fire extinguishers to be shipped with an alternative proper shipping name as specified in several exemptions. (modes 1, 2, 4, 5)
12727–N	DOT–E 12727	Tri-West Packaging, Corona, CA.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking and sale of certain UN 11HH2 intermediate bulk containers for use as the outer packaging for lab pack applications. (mode 1)
12728–N	DOT–E 12728	Eagle-Picher Technologies, LLC, Joplin, MO.	49 CFR 173.3, 173.302(a), 173.34(d)	To authorize the transportation in commerce of certain non-DOT specification pressure vessels containing compressed hydrogen, which are a component part of a nickel-hydrogen battery. (modes 1, 4)
12744–N	DOT–E 12744	Alcoa Inc. of Pittsburgh, Pittsburgh, PA.	49 CFR 171–180	To authorize the transportation in commerce of electric storage batteries containing electrolyte or corrosive battery fluid when transported in a motor vehicle containing no hazardous materials other than materials of trade (MOTs) as essentially unregulated. (mode 1)
12745–N	DOT–E 12745	BioLab Inc., Decatur, GA.	49 CFR 173.24(g)(4)	To authorize the transportation in commerce of Class 8 material in vented intermediate bulk containers (IBC). (modes 1, 2, 3)
12748–N	DOT–E 12748	Lockheed Martin Missiles & Space Co., Santa Cruz, CA.	49 CFR 178.601(a)	To authorize the transportation in commerce of alternative, non-POP tested containers for use in transporting small explosive articles for military and commercial spacecraft and missiles. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12749–N	DOT–E 12749	Questar, North Canton, OH.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of certain UN 11G fiberboard intermediate bulk containers (IBC) for use as the outer packaging for lab pack applications. (mode 1)
12750–N	DOT–E 12750	Questar, North Canton, OH.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of UN 13H4 Flexible Intermediate Bulk Containers (IBC) for use as outer packaging for lab pack application for use in transporting hazardous wastes. (mode 1)
12756–N	DOT–E 12756	Department of Energy Oak Ridge, TN.	49 CFR 173 & 178	To authorize the one-time transportation in commerce of certain explosive materials that exceed their shelf life, are no longer need or are obsolete in specially designed containers and trailers. (mode 1)
12762–N	DOT–E 12762	Pro-Virus Inc., Gaithersburg, MD.	49 CFR 172.203, 172.301(c), 172.303(a), 172.401(a)(1)(2).	To authorize the transportation in commerce of non-bulk pre-packed combination packagings containing various classes of hazardous materials between facilities to be transported as essentially unregulated without proper shipping papers. (mode 1)
12768–N	DOT–E 12768	BOC Gases, Murray Hill, NJ.	49 CFR 173.31(a), 179.13	To authorize the transportation in commerce of tank cars, containing carbon dioxide, refrigerated liquid, Division 2.2 with a maximum gross weight on rails of 286,000 pounds. (mode 2)
12779–N	DOT–E 12779	Nippon Sanso U.S.A., Inc., Parsippany, NJ.	49 CFR 173.318	To authorize the transportation in commerce of one non-DOT specification vacuum insulated portable tank for use in transporting helium, refrigerated liquid, Division 2.2 (modes 1, 3)
12782–N	DOT–E 12782	Air Liquide American Corporation, Houston, TX.	49 CFR 173.301(g)(1)	To authorize the transportation in commerce of non-DOT specification cylinders equipped with plastic protection caps for use in transporting Division 2.1 and 2.2 compressed gases. (mode 1)
12790–N	DOT–E 12790	Environmental Management, Inc. (EMI), Guthrie, OK.	49 CFR 173.201, 173.202, 173.203, 173.302, 173.304, 173.309, 173.34.	To authorize the transportation in commerce of non-DOT specification full open head, steel salvage cylinders for use in transporting damaged, leaking or improperly filled cylinders containing various hazardous materials. (mode 1)
12795–N	DOT–E 12795	Scientific Cylinder Corp., Englewood, CO.	49 CFR (e)(8), (e)(15)(vi) and (e)(19), 173.34(e)(1), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7).	To authorize the transportation in commerce of DOT–3A cylinders manufactured from 6061 alloy which are 100% ultrasonic wall thickness inspected in lieu of the internal visual test. (modes 1, 2, 3, 4)
12819–N	DOT–E 12819	BBI–Biotech Research Laboratories, Inc., Gaithersburg, MD.	49 CFR 173.196, 178.609	To authorize the transportation in commerce of certain infectious substances in specially designed packaging. (mode 1)
12825–N	DOT–E 12825	United States Marine Safety Association, Colorado Springs, CO.	49 CFR 173.301(i)	To authorize the transportation of foreign life rafts equipped with non-DOT specification cylinders. (mode 1)
12826–N	DOT–E 12826	Environmental Packaging Technologies, Inc., Atkinson, NH.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of certain UN 11G intermediate bulk containers (cubic yard boxes) for use as the outer packaging for paint and paint related material. (mode 1)
12827–N	DOT–E 12827	Department of Energy (DOE), Washington, DC.	49 CFR 172.101, 173.56	To authorize the transportation in commerce of limited quantities of forbidden explosives by exclusive use motor vehicle in specially designed bomb proof trailers. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12838–N	DOT–E 12838	City Machine & Welding, Inc., Amarillo, TX.	49 CFR 173.302, 173.34	To authorize the transportation in commerce of certain DOT Specification 3AA, 3AAX and 3T cylinders which have been alternatively ultrasonically retested. (modes 1, 2, 3)
EE 2709–M	DOT–E 2709	Copperhead Chemical, Company, Inc., Tamaqua, PA.	49 CFR 173.24(c), 173.54(e), 177.821, 177.834(l)(1), 177.835(m).	To authorize the modification of the exemption to permit an alternative pallet design for transporting the explosives in UN 6HA1 drums. (modes 1, 3)
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EE 8915–M	DOT–E 8915	Air Products and, Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d), 173.302(a)(3), 173.302(a)(5).	To modify the current exemption by adding the proper shipping name Compressed Gas, n.o.s., 2.2, UN1956 (contains chlorine) (modes 1, 3)
EE 10826–M	DOT–E 10826	Stericycle, Inc., Lake Forest, IL.	49 CFR 173.197, 259.30, CFR 172.101	To modify language in the exemption to make criteria consistent with other exemptions authorizing shipment of medical waste in bulk. (modes 1, 2)
EE 11323–M	DOT–E 11323	Renaissance Industries, Inc., Sharpsville, PA.	49 CFR 173.302(a)(4), 173.304(a)(1), 175.3, 178.65–14(b)(i), 178.65–5(a)(4), 178.65–6.	To renew and authorize an additional steel designation for the manufacture of certain cylinders similar to DOT specification 39. (modes 1, 2, 3, 4, 5)
EE 11328–M	DOT–E 11328	Alaska-Pacific Powder Company, Olympia, WA.	49 CFR 176.76(a)(8)	To modify the exemption to authorize the use of smaller size bags. (mode 3)
EE 11753–M	DOT–E 11753	Ashland Inc., Columbus, OH.	.....	To modify exemption to authorize certain DOT Specification drums as additional containers for shipment of Ammonia solutions in temperature controlled vehicles. (mode 1)
EE 12068–M	DOT–E 12068	United States Sea Launch GP, L.L.C., Long Beach, CA.	49 CFR 173.56, 173.60	To authorize dimethylhydrazine unsymmetrical as part of payload involving Sea Launch vehicle. (modes 1, 3, 4)
EE 12143–M	DOT–E 12143	Suburban Propane, Anchorage, AK.	49 CFR 172.101, 176.83(b)	To authorize an addition location Alaska for delivery of Propane to remote areas. (mode 5)
EE 12143–M	DOT–E 12143	Suburban Propane, Anchorage, AK.	49 CFR 172.101, 176.83(b)	To authorize an additional location in Alaska for delivery of Propane to remote areas. (mode 5)
EE 12183–M	DOT–E 12183	Connecticut Yankee Atomic Power Co., East Hampton, CT.	49 CFR 173.403, 173.427(b)(1), 173.427(f).	To modify exemption to provide for an alternate route for shipment of 4 stem generator subassemblies containing radioactive materials. (modes 1, 3)
EE 12474–M	DOT–E 12474	Dept of Defense (MTMC), Alexandria, VA.	49 CFR 171.12, 172.204, 173.301 (i) & (j).	Modified exemption to provide for an additional shipment of high pressure gas cylinders used for Japan Ground Self Defense exercises. (mode 1)
EE 12494–M	DOT–E 12494	American Reclamation Group LLC, Anchorage, AK.	49 CFR 172.101 (col. 9)	Modified exemption to clarify provisions relating to shipment of Division 2.1 and 2.3 materials by air. (mode 4)
EE 12528–M	DOT–E 12528	Permages, Lake Stevens, WA.	49 CFR 178.245–4(e), 450.3(a)(2)	Extended exemption to provide for an additional shipment of propane to remote areas in Alaska. (modes 1, 3)
EE 12557–N	DOT–E 12557	Global Container Group, Inc., Baton Rouge, LA.	49 CFR 178.245	Request for an emergency exemption to authorize the construction of a DOT type 51 portable tank with certain deviation from 49 CFR 178 and the 1998 edition of the ASME Code. (mode 1)
EE 12576–N	DOT–E 12576	Baron USA, Inc., Cookesville, TN.	49 CFR 178.337–1(b)	Request for an emergency exemption to permit a lower design pressure of a cargo tank. (mode 1)
EE 12590–N	DOT–E 12590	US Airways, Pittsburgh, PA.	49 CFR 173.159	To authorize the transportation in commerce of aircraft batteries in specially designed containers. (mode 1)
EE 12594–N	DOT–E 12594	Fire Spec Systems, Carmel, CA.	49 CFR 173.202	Request for an emergency exemption to use a non-DOT spec. container for the transportation of gasoline. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12606–N	DOT–E 12606	Toyota Motor Sales, Torrance, CA.	49 CFR 171.12(b)(19) and 172.203(a) ...	Request for an emergency exemption to permit the transportation in commerce of certain air bag modules and seat-belt pretensioners without the ''EX'' number appearing on the shipping paper. (mode 1)
EE 12606–M	DOT–E 12606	Toyota Motor Sales, Torrance, CA.	49 CFR 171.12(b)(19) and 172.203(a) ...	Request for extension of the expiration date of an emergency exemption to complete shipment of air bag modules and seat-belt pretensioners without the ''EX'' number appearing on the shipping paper. (mode 1)
EE 12615–N	DOT–E 12615	JCI Jones Chemicals, Inc., Charlotte, NC.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an emergency A kit to prevent leakage during transportation. (mode 1)
EE 12616–N	DOT–E 12616	DPC Enterprises, Houston, TX.	49 CFR 173.34(d)	Request for emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leakage during transportation. (mode 1)
EE 12617–N	DOT–E 12617	Honeywell, Morristown, NJ.	49 CFR 174.50	Request for emergency exemption to transport 9 multi-unit tank car tanks that no longer meet the minimum thickness requirements for tank specifications 106a500X and 110A500W. (mode 2)
EE 12618–N	DOT–E 12618	JCI Jones Chemicals, Torrance, CA.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for emergency exemption to transport a leaking tank car tank that has been fitted with an emergency B kit to prevent leakage. (mode 1)
EE 12619–N	DOT–E 12619	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.24(b)	Request for emergency exemption to transport a leaking ton container fitted with a B kit to prevent leakage. (mode 1)
EE 12620–N	DOT–E 12620	Celanese LTD, Dallas, TX.	49 CFR 172.102(c)(3) B–4 & B–14	To authorize the transportation in commerce of a MC 330 cargo tank containing 6.1, Zone B, Secondary hazard 3 material without bottom outlet valves. (mode 1)
EE 12621–N	DOT–E 12621	JCI Jones Chemicals, Inc., Jacksonville, FL.	49 CFR 173.34(d)	Request for emergency exemption for the one time transportation of a leaking ton cylinder that has been equipped with an A kit to prevent leakage during transportation. (mode 1)
EE 12628–N	DOT–E 12628	Arbel Fauvet Rail, 59500 Douai, France.	49 CFR 178.245–1(b)	Request for an emergency exemption for the use of DOT spec 51 tank containers that have been designed, constructed and stamped ''U'' in accordance with Section VIII Division 1 of the ASME Code Edition 1998. (mode 1)
EE 12628–M	DOT–E 12628	Arbel Fauvet Rail (AFR), Douai, France.	49 CFR 178.245–1(b)	To request a short extension of an emergency exemption authorizing use of a DOT Spect 51 tank container built in accordance with Section VIII of the ASME Code. (mode 1)
EE 12633–N	DOT–E 12633	Isolair Helicopter Systems, Troutdale, OR.	49 CFR 173.202	Request for an emergency exemption for the use of a non-bulk package for the use in an integral component of a flame application system (heli-torch). (mode 1)
EE 12635–N	DOT–E 12635	Allied Universal, Brunswick, GA.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the emergency transportation of a one-ton container (DOT specification 106A500X) equipped with a B kit for use in transporting sulfur dioxide. (mode 2)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12636–N	DOT–E 12636	HCI Worth Chemical Company, Chattanooga, TN.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a) 179.300–14.	Request for an emergency exemption to transport a leaking tank car tank fitted with an emergency B kit to prevent leakage during transportation. (mode 1)
EE 12637–N	DOT–E 12637	Island Gases Limited, Christiansted, St. Croix, U.S.V.I.	49 CFR 173.320	Request for emergency exemption to transport liquid oxygen and nitrogen in non-DOT specification tanks. (mode 3)
EE 12638–N	DOT–E 12638	Stolt Nielsen, Inc., Houston, TX.	49 CFR 173.32(C)	Request for an emergency exemption to use an IM portable tank that was inadvertently loaded despite the tank having passed the periodic retest date. The tank is loaded with a flammable liquid. (mode 1)
EE 12639–N	DOT–E 12639	Kuehne Chemical Co., South Kearney, NJ.	49 CFR 173.34	To transport leaking ton cylinder containing chlorine from Standish, ME to South Kearny, NJ for examination and/or repair. (mode 1)
EE 12640–N	DOT–E 12640	Apperson Chemicals Inc., Albany, GA.	49 CFR 173.34	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A-kit to prevent leakage. (mode 1)
EE 12641–N	DOT–E 12641	Bristol Bay Contractors, Inc., King Salmon, AL.	49 CFR 172.101, col. 9B	Request for an emergency exemption to transport propane by air in quantities that exceed the limitations specified in the HMR. (mode 4)
EE 12641–M	DOT–E 12641	Bristol Bay Contractors, Inc., King Salmon, AK.	49 CFR 172.101, col. 9B	To modify emergency exemption to provide for an additional carrier to transport DOT Specification portable tanks, containing propane, which exceeds quantity limitations authorized for shipment by air. (mode 4)
EE 12642–M	DOT–E 12642	JCI Jones Chemicals Inc., Jacksonville, FL.	49 CFR 173.34(d)	To return leaking chlorine cylinder (DOT3A480) equipped with an emergency A kit to prevent leakage during transportation. (mode 1)
EE 12643–N	DOT–E 12643	TRW Space and Electronics Group, Redondo Beach, CA.	49 CFR 173.302 and 175.3	Request for an emergency exemption to transport helium in a non-DOT specification container called a pulse tube cooler. (modes 1, 4, 5)
EE 12643–M	DOT–E 12643	TRW Space and Electronics Group, Redondo Beach, CA.	49 CFR 173.302 and 175.3	To modify referenced drawing in exemption authorizing shipment of helium in a non-DOT specification container. (modes 1, 2, 5)
EE 12653–N	DOT–E 12653	JCI Jones Chemicals, Jacksonville, FL.	49 CFR 173.24(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leakage. (mode 1)
EE 12654–N	DOT–E 12654	JCI Jones Chemicals, Inc., Charlotte, NC.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leakage. (mode 1)
EE 12655–N	DOT–E 12655	JCI Jones Chemicals, Milford, VA.	49 CFR 173.34	Request for an emergency exemption to transport a leaking cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12659–N	DOT–E 12659	Atofina Chemicals, Inc., Philadelphia, PA.	49 CFR 173.227	Request for an emergency exemption for the one-time shipment of ally methacylate in non-DOT
EE 12660–N	DOT–E 12660	BP Chemicals, Inc., Naperville, IL.	49 CFR 172.301(a), 172.322(a)(2), 172.400(a), 172.504(a).	To apply for one time transportation of two freight containers from Terminal Island, Los Angeles to Long Beach to have the drums properly marked and labelled. (mode 1)
EE 12662–N	DOT–E 12662	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172.302(c).	Request for a one-time shipment of regulated medical waste in an open-top bulk container. (mode 1)
EE 12662–M	DOT–E 12662	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172.302(c).	To authorize an additional bulk container for shipment of regulated medical waste. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12663–N	DOT–E 12663	Skolnik Industries, Chicago, IL.	49 CFR 172.203(a), 172.301(c), 178.3(c), 178.503(a).	Request for an emergency exemption to use steel drums that are not properly marked with the first line marks indicating the original performance of the drum and an indication of the nominal thickness of the metal used in fabrication. (modes 1, 2, 3, 4)
EE 12664–N	DOT–E 12664	Myers Container Corporation, Huntington Park, CA.	49 CFR 172.203, 172.301, 178.3(c), 178.503(a).	Request for an emergency exemption to manufacture, mark and sell, UN drums for the transportation of certain materials. The drums do not conform to the marking provisions in part 178. (modes 1, 2, 3, 4)
EE 12665–N	DOT–E 12665	Packaging Specialties, Inc., Medina, OH.	49 CFR 172.203(a), 172.301(c), 178.3(c), 178.503(a).	Request for an emergency exemption to manufacture, mark and sale UN drums that do not conform to the marking provisions of Part 178. (modes 1, 2, 3, 4)
EE 12666–N	DOT–E 12666	Gourmet Gas Plus, Boca Raton, FL.	49 CFR 172.400(a)(1)	Request for an emergency exemption to transport a bulk container, filled with compressed gas, that has the incorrect subsidiary hazard label. (mode 1)
EE 12667–N	DOT–E 12667	JCI Jones Chemicals, Inc., Jacksonville, FL.	49 CFR 173.34(d)	Request for an emergency exemption for the one time transportation of a leaking ton cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12673–N	DOT–E 12673	Coors Brewing Company, Golden, CO.	49 CFR 172.203, 172.301(c), 179.6, 180.513(a).	Request for an emergency exemption to authorize the use of certain DOT spec tank cars which have welded repairs that are not as specified in the HMR. (mode 2)
EE 12676–N	DOT–E 12676	Environmental Management, Inc., Guthrie, OK.	49 CFR 173.201, 173.202, 173,203, 173.302, 173.304, 173.309, 173.34.	To authorize the transportation in commerce of non-DOT specification full open head, steel salvage cylinder for use in transporting damaged or leaking cylinders containing certain hazardous materials. (modes 1, 3)
EE 12678–N	DOT–E 12678	Cominco American Inc., Spokane, WA.	49 CFR 173.315	Request for a one-time emergency exemption to remove one sulphur dioxide trailer from its present location to another location where it can be purged and prepared to be taken out of service. (mode 1)
EE 12681–N	DOT–E 12681	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for a one-time exemption to transport a leaking tank that is fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12683–N	DOT–E 12683	JCI Jones Chemicals, Inc., Beech Grove, IN.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for a one-time exemption to transport a leaking tank car tank that is fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12684–N	DOT–E 12684	JCI Jones Chemicals Inc., Caledonia, NY.	49 CFR 179.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for a one-time exemption to transport a leaking tank car tank that is fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12687–N	DOT–E 12687	JCI Jones Chemical Co., Merrimack, NH.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for a one-time exemption to transport a leaking tank car tank that is fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12688–N	DOT–E 12688	Brenntag West, Inc., Santa Fe Springs, CA.	49 CFR 172.203(a), 172.203(a), 173.158(b)(1)(i).	Request for an emergency exemption for the use of certain drums that do not meet the minimum thickness requirements for use in the transportation of nitric acid. (mode 1)
EE 12689–N	DOT–E 12689	JCI Jones Chemicals, Jacksonville, FL.	49 CFR 173.34	Request for an emergency exemption to transport a leaking ton container that has been equipped with an emergency A kit to prevent leaking during transport. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12693–N	DOT–E 12693	Community Blood Centers of South Florida, Lauderhill, FL.	49 CFR 173.416(a)	Request for an emergency exemption to relocate a blood product irradiator that has not been approved by the Nuclear Regulatory Commission as required by 49 CFR 173.416(a). (mode 1)
EE 12697–N	DOT–E 12697	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.34(d)	Request for emergency exemption to transport a leaking ton container that has been equipped with an emergency A kit to prevent leakage. (mode 1)
EE 12699–N	DOT–E 12699	Catlina Cylinders, Hampton, VA.	49 CFR 178.35(f), 178.65(i)	To allow marking of DOT 39 cylinders on bottom. (mode 1)
EE 12700–N	DOT–E 12700	Kuehne Chemical Co., South Kearny, NJ.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking cylinder that has been equipped with an A kit to prevent leakage. (mode 1)
EE 12704–N	DOT–E 12704	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking cylinder that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12705–N	DOT–E 12705	Brenntag Mid-South, Inc., Henderson, KY.	49 CFR 172.203(a), 173.158(b)(1)(i)	To allow drums with thickness <1.5 mm for transportation of nitric acid (mode 1)
EE 12707-–N	DOT–E 12707	DPC Enterprises, Houston, TX.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12709–N	DOT–E 12709	DPC Industries, Inc., Houston, TX.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12710–N	DOT–E 12710	JCI Jones Chemicals, Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to permit the transportation of leaking ton cylinder that has been fitted with an emergency A kit to prevent leakage during transportation. (mode 1)
EE 12711–N	DOT–E 12711	Crowley Marine Services, Kotzebue, AK.	49 CFR 172.101 column 9B	To transport 3,000 gallons of propane from Nome to Kotzebue, Alaska for residents in DOT spec 51 portable tanks on board cargo aircrafts. (mode 4)
EE 12711–M	DOT–E 12711	Crowley Maritime Services, Kotzebue, AK.	49 CFR 172.101 column 9B	To extend emergency exemption for 60 days to complete shipment of propane in DOT spec 51 portable tanks by cargo air. (mode 4)
EE 12712–N	DOT–E 12712	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172.302(c).	Request for an emergency exemption to transport co-mingled requested and solid med. waste in roll-off containers. (mode 1)
EE 12713–N	DOT–E 12713	Delta Air Lines, Inc., Atlanta, GA.	49 CFR 172.301(c), 173.219(b)(1)	To authorize the transportation of life saving appliances (emergency exit slides) containing a compressed gas cylinder that is filled in excess of its marked service pressure. (mode 1)
EE 12713–M	DOT–E 12713	Delta Air Lines, Atlanta, GA.	49 CFR 172.301(c), 173.219(b)(1)	To extend emergency exemption to authorize shipment of emergency exit slides containing a compressed gas cylinder that is filled in excess of its marked service pressure. (mode 1)
EE 12723–N	DOT–E 12723	Air Cruisers Company, Belmar, NJ.	49 CFR 173.219(b)(1), 173.302(a), 173.302(a).	To authorize the transportation in commerce of life saving appliances containing a compressed gas cylinder that is filled in excess of its marked service pressure. (mode 1)
EE 12723–M	DOT–E 12723	Air Cruisers Company, Belmar, NJ.	49 CFR 173.219(b)(1), 173.302(a), 173.302(a).	To extend emergency exemption to authorize the transportation of life saving appliances containing a compressed gas cylinder that is filled in excess of its marked service pressure. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12725–N	DOT–E 12725	Dow Chemical Company, Midland, MI.	49 CFR 173.32c(j)	Request for an emergency exemption to authorize the movement of an IMO 101 portable tank loaded with resin solution. The tank does not conform with the filling density requirement of the HMR. (mode 2)
EE 12732–N	DOT–E 12732	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12733–N	DOT–E 12733	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency B kit to prevent leakage during transportation. (mode 1)
EE 12734–N	DOT–E 12734	DuPont She Excellence Center, Wilmingtonn, DE.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking tank car tank that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12735–N	DOT–E 12735	Collbri Group, Providence, RI.	49 CFR 172.102(c)(5), 172.301(c), 172.406(a)(1)(ii).	To allow deviations from marking and labelling requirements. (mode 1)
EE 12736–N	DOT–E 12736	JCI Jones Chemicals Inc., Torrance, CA.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12737–N	DOT–E 12737	DXI Industries Inc., Houston, TX.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12738–N	DOT–E 12738	Harcros Chemicals, Kansas City, KS.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12739–N	DOT–E 12738	Alexander Chemical, LaPorte, IN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12740–N	DOT–E 12740	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172,302(c).	Request for an emergency exemption to permit the transport of co-mingled regulated and solid waste in bulk containers. (mode 1)
EE 12742–N	DOT–E 12742	JCI Jones Chemicals, Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A-kit to prevent leaking during transportation. (mode 1)
EE 12754–N	DOT–E 12754	J.J. Keller & Associates, Inc., Neenah, WI.	49 CFR 172.200–172.205	Request for an emergency exemption to offer packages of a non-hazardous material, represented as a hazardous material, for purposes of conducting compliance testing of American Airlines' hazmat handling procedures. (modes 1, 4, 5)
EE 12763–N	DOT–E 12763	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to authorize the transportation in commerce of a leaking ton container fitted with an A kit to prevent leakage. (mode 1)
EE 12764–N	DOT–E 12764	Our Lady of Mercy Medical Center, Bronx, NY.	49 CFR 173.416(a)	Request for an emergency exemption to transport a blood product irradiator in a non-DOT spec. container. (mode 1)
EE 12765–N	DOT–E 12765	Alexander Chemical Corporation, LaPorte, IN.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency B kit. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12766–N	DOT–E 12766	JCI Jones Chemicals Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit. (mode 1)
EE 12767–N	DOT–E 12767	Harcros Chemicals, Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12769–N	DOT–E 12769	Harcros Chemicals Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12771–N	DOT–E 12771	Cytec Industries, Inc., West Paterson, NJ.	49 CFR 173.34(d)	To continue the use of DOT specification cylinders without pressure devices for liquefied gas, toxic, n.o.s. (mode 1)
EE 12773–N	DOT–E 12773	Vopak Bunola, Bunola, PA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12774–N	DOT–E 12774	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12, 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking tank car tank that has been fitted with an emergency B kit to prevent leakage during transportation. (mode 1)
EE 12775–N	DOT–E 12775	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking tank car tank that has been fitted with an emergency B kit to prevent leakage during transportation. (mode 1)
EE 12777–N	DOT–E 12777	JCI Jones Chemicals, Inc., Jacksonville, FL.	49 CFR 173.34(d)	Request for an emergency exemption to permit the transportation of a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12787–N	DOT–E 12787	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption for a leaking ton container that has been fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12788–N	DOT–E 12788	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	For one time transportation of leaking container, applied Chlorine Institute B-kit, from Mobile, AL to Harcros facility in St. Gabriel, LA. (mode 1)
EE 12793–N	DOT–E 12793	Harcros Chemicals Inc., Kansas City, KS.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption for a leaking ton container that has been fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12796–N	DOT–E 12796	Monson Companies, South Portland, ME.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12803–N	DOT–E 12803	Hawkins, Inc., Minneapolis, MN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leakage. (mode 1)
EE 12804–N	DOT–E 12804	Air Products and Chemicals, Allentown, PA.	49 CFR 173.202	Request for an emergency exemption to transport a leaking UN1A1 drum containing silicn tetrachloride. (mode 1)
EE 12806–N	DOT–E 12806	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking tank car tank that has been fitted with a B kit to prevent leaking during transportation. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12807–N	DOT–E 12807	Clariant Corporation, Somerville, NJ.	49 CFR 178.813	Request for an emergency exemption to transport a class 3 material in an intermediate bulk container (IBC) that has not been leak-proof tested within the required amount of time. (mode 1)
EE 12807–M	DOT–E 12807	Clariant Corporation, Charlotte, NC.	49 CFR 178.813	Request for an emergency exemption to transport a class 3 material in an intermediate bulk container (IBC) that has not been leak-proof tested within the required amount of time. (mode 1)
EE 12808–N	DOT–E 12808	Linco-Electromatic Measurement, Inc., Kilgore, TX.	49 CFR 173.120, 173.304, 173.315	Request for an emergency exemption to transport hazardous materials in a non-DOT specification container. (mode 1)
EE 12809–N	DOT–E 12809	Harcros Chemicals Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12810–N	DOT–E 12810	Hawkins, Inc., Minneapolis, MN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12811–N	DOT–E 12811	JCI Jones Chemicals, Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12813–N	DOT–E 12813	Harcros Chemicals Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12814–N	DOT–E 12814	Kuehne Chemical Company Inc., South Kearney, NJ.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	For one-way transportation of leaking ICC 106A500X ton container containing chlorine, applied Chlorine Institute B-kit, from Freemansburg, PA to South Kearney, NJ. (mode 1)
EE 12817–N	DOT–E 12817	Phibro-Tech, Inc., Fort Lee, NJ.	49 CFR 172.301(c), 172.302(c), 173.28(b)(2).	To authorize the reuse of specification UN 1H1 non-removable head plastic drums, containing Class 8 materials, to EPA licensed treatment, storage or disposal facilities. (mode 1)
EE 12818–N	DOT–E 12818	HRD Aero Systems, Inc., Valencia, CA.	49 CFR 173.302, 173.307(i)	To authorize the transportation in commerce of certain non-DOT specification cylinders used as components (fire extinguishers) in aircraft of foreign manufacture. (modes 1, 2, 3, 4, 5)
EE 12822–N	DOT–E 12822	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12828–N	DOT–E 12828	Harcros Chemicals, Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12829–N	DOT–E 12829	State of New York—Dept. of the Environment, New York, NY.	49 CFR Parts 171 through 180	Request for an emergency exemption that authorizes the transportation of hazardous debris and infectious substances as a result of the terrorist attack on the World Trade Center. (mode 1)
EE 12830–N	DOT–E 12830	DPC Enterprises, Inc., Houston, TX.	49 CFR 173.34(d)	Request for an emergency exemption to authorize the transportation of a ton container of chlorine that has a leak and has been fitted with an A kit to prevent leaking during transportation. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12831–N	DOT–E 12831	Arlington County, VA, Arlington, VA.	49 CFR Parts 171 through 180	Request for an emergency exemption to transport hazardous materials from the Pentagon in Arlington, VA as a result of the terrorist attack. (mode 1)
EE 12832–N	DOT–E 12832	Federal Emergency Management Agency, Washington, DC.	49 CFR Parts 100–180	Request for an emergency exemption to ship emergency items in response to the terrorist attacks on Washington and New York. (modes 1, 5)
EE 12834–N	DOT–E 12834	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12835–N	DOT–E 12835	Alexander Chemical, LaPorte, IN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12837–N	DOT–E 12837	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12847–N	DOT–E 12847	JCI Jones Chemicals, Jacksonville, FL.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12849–N	DOT–E 12849	JCI Jones Chemicals, Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12850–N	DOT–E 12850	JCI Jones Chemical Company, Milford, VA.	49 CFR 173.24(b), 197.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking tank car tank containing chlorine, that has been fitted with an B kit to prevent leaking during transportation. (mode 1)
EE 12851–N	DOT–E 12851	JCI Jones Chemicals, Inc., Beech Grove, IN.	49 CFR 173.24(b), 197.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption for one-way transportation of a leaking container, containing sulfur dioxide, fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12852–N	DOT–E 12853	Alexander Chemical, Laporte, IN.	49 CFR 173.24(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12854–N	DOT–E 12854	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12855–N	DOT–E 12855	Krafton Polymers U.S. LLC, Belpre, OH.	49 CFR 173.102 Spec Prov IB6, IP2, IP4, T3, TP1, 173.240, 173.242.	Request for an emergency exemption to transport a flammable solid, organic (polymer) in 2 steel heat exchangers from Belpre, OH to Houston, TX for cleaning and decontamination. (mode 1)
EE 12856–N	DOT–E 12856	DPC Enterprises, Houston, TX.	49 CFR 173.34(d)	For one-time transportation of leaking container containing chlorine fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12857–N	DOT–E 12857	Harcros Chemicals, Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12861–N	DOT–E 12861	Micro-Med Industries, Inc., Jacksonville, FL.	49 CFR 173.196	Request for an emergency exemption to transport an infectious substance that is not packaged in compliance with the HMR. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12863–N	DOT–E 12863	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300√14.	Request for an emergency exemption to transport a leaking container containing S02, fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12864–N	DOT–E 12864	U.S. Environmental Protection Agency, Philadelphia, PA.	49 CFR 172.101 in that bulk packgings are not authorized.	Request for an emergency exemption to authorize the transportation of solid materials contaminated with or suspected to be contaminated with anthrax bacteria or spores in non-DOT specification bulk size outer packaging. (mode 1)
EE 12866–N	DOT–E 12866	Delta Airlines, Atlanta, GA.	49 CFR 172.301(c), 173.219(b)(1), 173.302(a), 175.3.	Request for an emergency exemption to continue use of cylinders containing a Division 2.2 material that have inadvertently been marked with a steel stamp other than low stress stamp required by HMR (modes 4, 5)
EE 12870–N	DOT–E 12870	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a tank car tank, containing chlorine, that has been fitted with an emergency B kit to prevent leaking during transportation. (mode 1)
EE 12875–N	DOT–E 12875	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172.302(c).	Request for an emergency exemption to transport regulated medical waste in non-spec/bulk packaging. (mode 1)
EE 12881–N	DOT–E 12881	U.S. Environmental Protection Agency, Philadelphia, PA.	49 CFR 173.197	Request for an emergency exemption to transport items contaminated with infectious substances (anthrax) in bulk packagings. (mode 1)
EE 12882–N	DOT–E 12882	Eagle-Picher, Joplin, MO.	49 CFR 173,3, 173.302(a), 173.34(d)	Request for an emergency exemption to transport batteries in non-DOT spec. packagings. (modes 1, 4)
EE 12883–N	DOT–E 12883	JCI Jones Chemicals, Warwick, NY.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12884–N	DOT–E 12884	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.34(d)	Request for emergency exemption to transport a leaking cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12885–N	DOT–E 12885	U.S. Department of Agriculture, Missoula, MT.	49 CFR 173.202(c)	Request for an emergency exemption to transport gasoline in a non DOT specification steel drum with a pump installed, mounted in a helitorch frame with residual amounts of fuel, by motor vehicle. (mode 1)
EE 12886–N	DOT–E 12886	The Society of the Plastics Industry, Inc., Washington, DC.	49 CFR 172.301(c), 172.402	Request to transport organic peroxides that also meet the definition of class 3, Division 4.1, or Class 8, packing group III without subsidiary hazard labels. (modes 1, 2, 3, 4, 5)
EE 12887–N	DOT–E 12887	DPC Industries, Inc., Houston, TX.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking container that has been fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12888–N	DOT–E 12888	JCI Jones Chemicals Inc., Caledonia, NY.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a ton container that has been fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12889–N	DOT–E 12889	U.S. Postal Service, New York, NY.	49 CFR 172.101 column 8(c)	Request for an emergency exemption to authorize the transportation for disposal of solid materials contaminated with or suspected to be contaminated with anthrax bacteria or spores, in non-DOT specification containers. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12890–N	DOT–E 12890	National Broadcasting Company, Inc., Burbank, CA.	49 CFR 172.101, Table Column 8(c)	Emergency request to transport small flexible non-sharp objects including paper products and PPE that have been contaminated with anthrax in 48 or 53 foot trailers. (mode 1)
EE 12891–N	DOT–E 12891	National Broadcasting Company, Inc., Burbank, CA.	49 CFR 172.101, Table Column 8(c)	Emergency request to transport anthrax contaminated objects such as office furniture and computers in 48 or 53 foot trailers. (mode 1)
EE 12895–N	DOT–E 12895	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking-tank car tank that has been fitted with a B kit to prevent leaking during transportation. (mode 1)

DENIALS

7032–X	Request by Polaroid Corporation Norwood, MA to authorize outside packages exceeding the 100 pounds limitation to be carried aboard cargo aircraft only for shipment of a certain Class 8 solid material denied May 9, 2001.
9831–X	Request by Western Zinc Corporation Los Angeles, CA to authorize the manufacture, mark and sale of vacuum insulated non-DOT specification portable tanks for transportation of helium, refrigerated liquid denied April 2, 2001.
11207–X	Request by Texas Eastern Transmission Corporation Houston, TX to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Trunkline Gas Company Houston, TX to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Panhandle Eastern Pipe Line Company Houston, TX to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–P	Request by Algonquin Energy, Inc. Houston, TX to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Rockland Electric Company Saddle River, NJ to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Pike Co. Light and Power Co. Milford, PA to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Orange and Rockland Utilities, Inc. Middletown, NY to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by OGE Energy Corp dba Oklahoma Gas & Electric Serv. Oklahoma City, OK to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11252–M	Request by CCL Container Don Mills, Ontario, CN to modify the exemption to authorize additional relief on the testing requirements of the non-DOT specification metal aerosol containers denied April 2, 2001.
11296–M	Request by Heritage Transport, LLC Indianapolis, IN to modify the exemption to authorize additional UN standard packaging at the Packing Group II performance level for use as overpacks for waste aerosol cans denied February 16, 2001.
11351–X	Request by City of Houston Houston, TX to authorize tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring is maintained denied March 20, 2001.
11516–M	Request by CRC Industries, Inc. Warminster, PA to modify the exemption to authorize the transportation of 1,1-Difluoroethane, R152A, reclassed as a Consumer Commodity, in certain DOT Specification 2Q containers; relief from the marking requirements for this material denied August 15, 2001.
11761–P	Request by Elf Atochem North America, Inc. Philadelphia, PA to authorize the transportation in commerce of Class 8 material in rail cars equipped with 165 psig and baffles with alternative rupture disc inspection procedure denied January 21, 2001.
11761–M	Request by Brenntag West, Inc. Santa Fe Springs, CA to modify the exemption to authorize relief from the inspection requirements of the underside rupture disk of the DOT and AAR Specification tank car tanks and the transportation of all Class 8 materials denied December 31, 2001.
12181–N	Request by Aristech Pittsburgh, PA to authorize rail cars to remain attached to connectors without the physical presence of an unloader denied May 24, 2001.
12307–N	Request by Kern County Dept. of Weights & Measures Bakersfield, CA to authorize the transportation of specially designed equipment used for meter proving purposes and transportation of various Class 3 petroleum products to offloading sites denied February 6, 2001.
12433–N	Request by The Lighter Company, Inc. Miami, FL to authorize the transportation and reclassification of lighters in limited quantities to be transported as ORM–D denied February 8, 2001.
12455–N	Request by United States Marine Safety Association Philadelphia, PA to authorize an alternative testing period for 3A, 3AA, and 3AL compressed gas cylinders installed in marine inflatable liferafts undergoing required annual service at a United States Coast Guard approved inflatable liferaft service facility denied February 5, 2001.
12518–N	Request by Air Products & Chemicals, Inc. Allentown, PA to authorize an alternative retesting method of DOT3A, 3AA and 3AL and foreign cylinders for use in transporting liquefied or nonliquefied compressed gases or mixtures denied May 4, 2001.
12535–N	Request by United States Department of Commerce Gaithersburg, MD to authorize the transportation in commerce of unirradiated fuel in carbon steel structures with an alternative distance separation within the transport vehicle denied March 23, 2001.

DENIALS—Continued

12535–P	Request by BWX Technologies Lynchburg, VA to authorize the transportation in commerce of unirradiated fuel in carbon steel structures to be transported with alternative distance separation within the transport vehicle denied March 23, 2001.
12566–N	Request by General Atomics San Diego, CA to authorize the transportation in commerce of specially designed device (cartridge) containing limited quantities of various hazardous materials classed in Division 2.1 and 4.1 denied September 12, 2001.
12591–N	Request by SGL Carbon, LLC Morgantown, NC to authorize rail cars to remain connected while standing without the physical presence of an unloader denied November 13, 2001.
12611–N	Request by Hodgdon Powder Co., Inc. Shawnee Mission, KS to authorize the transportation in commerce of smokeless powder for shipments of small arms in quantities that exceed the prescribed limit denied July 11, 2001.
12646–N	Request by Consani Engineering Elsie River, SA to authorize the transportation in commerce of IM101 and IM102 portable tanks for use in transporting certain classes of hazardous materials denied September 17, 2001.
12651–N	Request by I.W.I. Medical Waste Management, Inc. New Smyrna Beach, FL to authorize the transportation in commerce of solid regulated medical waste in non-DOT specification packaging consisting of a bulk outer packaging and a non-bulk inner packaging denied June 4, 2001.
12656–N	Request by Piper Impact, Inc. New Albany, MS to authorize the manufacture, marking, sale and use of DOT specification 3AL cylinders except that total weight and volumetric capacity records for each individual cylinder produced are not required in the inspector's report denied July 6, 2001.
12658–N	Request by Montgomery Manufacturing Company Kennedale, TX to authorize the transportation in commerce of certain hazardous materials with alternative information on shipping papers denied June 4, 2001.
12661–N	Request by United Parcel Service, Inc. (UPS) Atlanta, GA to authorize the transportation in commerce of certain hazardous materials that are not properly packaged, marked, labeled or classed in accordance with the 49 CFR denied June 4, 2001.
12672–N	Request by Safety-Kleen Corp. Columbia, SC to authorize the transportation in commerce of 30 gallon open-head plastic drums without performing leakproofness test prior to reuse denied July 23, 2001.
12672–N	Request by Safety-Kleen Corp. Columbia, SC to authorize the transportation in commerce of 30 gallon open-head plastic drums without performing leakproofness test prior to reuse denied December 11, 2001.
12692–N	Request by Radiopharmaceutical Shippers & Carriers Conference Washington, DC to authorized the use of new shipping names in the new version of ICAO Technical Instructions ahead of DOT rule-making denied July 31, 2001.
12703–N	Request by Aeronex, Inc. San Diego, CA to authorize the manufacture, mark, sale and use of non-DOT specification pressure vessels for use in transporting self heating solid, inorganic, n.o.s. material denied July 2, 2001.
12721–N	Request by General Electric Engine Services Cincinnati, OH to authorize the manufacture, mark, sale and use of non-DOT specification pressure vessels for use in transporting self heating solid, inorganic, n.o.s. material denied June 19, 2001.
12747–N	Request by Brenntag Southeast Inc. Durham, NC to authorize the transportation in commerce of oxidizing solid, n.o.s. in flexible intermediate bulk containers (IBC) shipped in accordance with IMDG regulations without required markings or placardings transported inside box trailers with required placarding denied November 6, 2001.
12752–N	Request by TISEC Inc. Madeira Beach, FL to authorize the transportation in commerce of certain cylinders which have been alternatively ultrasonically retested for use in transporting Division 2.1, 2.2 and 2.3 materials denied August 22, 2001.
12770–N	Request by Empire Airlines, Inc. Coeur d'Alene, ID to authorize an alternative loading method of hazardous materials on cargo aircraft denied September 11, 2001.
12789–N	Request by Scholle Corp. Acid Division Northlake, IL to authorize an alternative loading method of hazardous materials on cargo aircraft denied August 29, 2001.
12816–N	Request by Department of Defense (DOD) Alexandria, VA to authorize the transportation in commerce of radioactive material, Class 7 in specially designed packaging denied December 27, 2001.
12833–N	Request by CIS–US, Inc. Bedford, MA to authorize the transportation in commerce of radioactive material, Class 7 in specially designed packaging denied October 4, 2001.
12836–N	Request by Occidential Chemical Corporation Dallas, TX to authorize the transportation in commerce of radioactive material, Class 7 in specially designed packaging denied October 17, 2001.

[FR Doc. 02–5352 Filed 3–11–02; 8:45 am]

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Federal Register

Tuesday,

March 12, 2002

Part II

Department of Transportation

Research and Special Programs Administration

Actions on Exemption Applications; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, D.O.T.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given of the actions on exemption applications in January–December 2001. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain employees were issued.

Issued in Washington, DC, on February 27, 2002.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		Modification Exemptions		
4354–M	DOT–E 4354	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.226(b)	To modify the exemption to authorize the use of plastic pallets for the loading of polyethylene drums or composite packagings transporting certain Division 6.1 materials.
4661–M	DOT–E 4661	Chemetall Foote Corporation, Kings Mountain, NC.	49 CFR 173.34(e)(1)	To modify the exemption to allow for alternative retest procedures for 4BA240 and 4BW240 cylinders; to allow for the transportation of Division 4.3 materials.
5022–M	DOT–E 5022	Thiokol Propulsion Corp., Brigham City, UT.	49 CFR 174.101(L), 174.104(d), 174.112(a), 177.834(l)(1).	To modify the exemption to authorize the transportation of an additional Division 1.3C material in temperature controlled equipment.
6614–M	DOT–E 6614	HCI-Clearwater Chemical Corporation, Clearwater, FL.	49 CFR 173.202, 173.203	To modify the exemption to authorize the transportation of an additional Class 8 material in a non-DOT specification polyethylene bottle, packed inside a high density polyethylene box.
7823–M	DOT–E 7823	Honeywell International, Inc., Morristown, NJ.	49 CFR 173.246	To modify the exemption to authorize the transportation of certain Class 3 materials in a non-DOT specification cylinder.
7823–M	DOT–E 7823	Honeywell International, Inc., Morristown, NJ.	49 CFR 173.246	To modify the exemption to allow for the transportation of a Class 8 material in non-DOT specification welded stainless steel cylinders complying with DOT Specification 4BW cylinders with certain exceptions.
7954–M	DOT–E 7954	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d)(2), 173.302(a)(3)	To modify the exemption to change the proper shipping name and placard provisions for the transportation of certain compressed gases in manifolded DOT Specification cylinders.
8013–M	DOT–E 8013	Praxair, Inc., Danbury, CT.	49 CFR 173.302, 173.304, 175.3	To modify the exemption to allow for the use of DOT 4E240 specification cylinders having a capacity up to 2,642 cubic inches to be used exclusively for sampling purposes.
8451–M	DOT–E 8451	TRW Automotive, Queen Creek, AZ.	49 CFR 173.3, 173.52, 173.54, 173.60, 174.3, 175.3, 177.801.	To modify the exemption to waive the requirement to have a copy of the exemption accompany the shipment of not more than 25 grams of Division 1.1 materials.
8698–M	DOT–E 8698	Taylor-Wharton Gas Equipment (Div of Harsco Corp), Theodore, AL.	49 CFR 173.320, 176.76	To modify the exemption concerning the pressure relief valve, specified retest pressure and OWTT recordkeeping requirements of non-DOT specification portable tanks transporting certain Division 2.2 materials.
8757–M	DOT–E 8757	YZ Systems, Inc., Conroe, TX.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To modify the exemption to authorize a design change of the non-DOT specification stainless steel cylinder for shipment of compressed gases.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8760–M	DOT–E 8760	Barton Solvents, Inc., Des Moines, IA.	49 CFR 172.328, 172.334(b)	To modify the exemption to allow for the transportation of additional Class 3 materials in cargo tanks having six or more compartments.
8826–M	DOT–E 8826	Phoenix Air Group, Inc., Cartersville, GA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To modify the exemption to revise Flight Plan language in Section 7.h. of the exemption to apply to flights inside the United States only.
8865–M	DOT–E 8865	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3	To modify the exemption to update the packaging language of the non-DOT specification cylinders to include the reclassified pyrotechnic devices for the transportation of compressed gases.
8865–M	DOT–E 8865	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3	To modify the exemption to allow for the refilling of the gas storage system consisting of a non-DOT specification cylinder with pyrotechnic relief devices for the transportation of helium.
8915–M	DOT–E 8915	Air Liquide America Corporation, Allentown, PA.	49 CFR 173.301(d), 173.302(a)(3), 173.302(a)(5).	To modify the exemption to authorize the addition of certain Division 2.1 and 2.2 materials transported in certain manifolded DOT Specification cylinders.
8971–M	DOT–E 8971	Baker Atlas, Houston, TX.	49 CFR 172.101 Column 4, 173.246, 175.3.	To modify the exemption to authorize the use of additional design assemblies of the non-refillable, non-Dot specification steel cylinders for the transportation of certain Division 5.1 materials.
8995–M	DOT–E 8995	BASF Corporation, Mount Olive, NJ.	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To modify the exemption to allow for the transportation of an additional Division 2.2 material in non-DOT specification steel portable tanks.
9048–M	DOT–E 9048	Sulton Group-Div. of Daniel/Brooks Petroleum, Tulsa, OK.	49 CFR 173.119, 173.304, 173.315	To modify the exemption to authorize the use of an additional portable meter prover and an increase of the internal volume to 290 gallons for the transportation of Division 2.2 and Class 3 materials.
9347–M	DOT–E 9347	PGI International, Houston, TX.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To modify the exemption to change wording in the exemption to clarify the requirements for hydrostatic/pressure testing of the non-DOT specification stainless steel cylinders.
9421–M	DOT–E 9421	Taylor-Wharton (Harsco Corporation), Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To modify the exemption to eliminate the Fracture Toughness Test requirement and to authorize extending the initial requalification period from 5 years to 10 years of the non-DOT specification steel cylinders when used in specific non-corrosive, dry gas service.
9508–M	DOT–E 9508	Callery Chemical Company, Pittsburgh, PA.	49 CFR 173.202(a)(3), 173.34(e), 175.3	To modify the exemption to authorize periodic external inspection of DOT–4BW240 cylinders as an alternative to periodic hydrostatic testing and inspection for the transportation of certain Division 4.3 materials.
9525–M	DOT–E 9525	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 178.42, Part 173, Subparts D, E, H.	To modify the exemption to allow for the transportation of additional Class 3 materials in a non-DOT specification welded stainless steel cylinder.
9729–M	DOT–E 9729	Honeywell International, Inc., Morristown, NJ.	49 CFR 173.246(a)(1), 178.61–5	To modify the exemption to allow for the transportation of a Division 5.1 material in Type 304L stainless steel cylinders complying with the requirements of DOT Specification 4BW.
9758–M	DOT–E 9758	The Coleman Company, Inc., Wichita, KS.	49 CFR 173.304(d)(3)(ii), 178.33	To modify the exemption to authorize a design change of the non-refillable, non-DOT specification inside container for the transportation of certain Division 2.1 gases.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9884–M	DOT–E 9884	Mallinckrodt, Inc. (Puritan Bennett Corp), Indianapolis, IN.	49 CFR 173.316, 178.57–(8)(c), 178.57–2.	To modify the exemption to authorize a new pressure vessel design unit for the transportation of certain Division 2.2 materials.
9929–M	DOT–E 9929	Orbital Sciences Corporation, Germantown, MD.	49 CFR 172.101, 173.62	To modify the exemption to update the list of cargo air carriers and airports of departure for the transport of rocket motors having weights exceeding those specified in the regulations.
10066–M	DOT–E 10066	CONAX Florida Corporation, St. Petersburg, FL.	49 CFR 173.304, 178.36	To modify the exemption to update drawing configurations of the non-DOT specification cylinder pertaining to a self-inflating life raft for shipment of Division 2.2 and Class 9 materials.
10143–M	DOT–E 10143	Eurocom, Inc., Irving, TX.	49 CFR 173.306(a), 178.33a	To modify the exemption to authorize cargo and passenger-carrying aircraft as additional modes of transportation for Division 2.2 materials in a non-DOT specification container.
10389–M	DOT–E 10389	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 174.67(i)	To modify the exemption to authorize the transportation of Bromine, Class 8 (6.1) in tank cars to remain standing with unloading connections attached when no product is being transferred.
10441–M	DOT–E 10441	Pacific Northwest National Laboratory, Richland, WA.	49 CFR 173.12(b)(6), 177.848(b)	To modify the exemption to allow for the transportation of Class 3, 8, 9, Division 4.1, 4.2, 4.3, and 5.1 materials in lab-packs on the same vehicle with non-lab packed acidic materials.
10458–M	DOT–E 10458	Marsulex, Inc., North York, Ontario, CA.	49 CFR 174.67(j)	To modify the exemption to authorize the use of additional unloading facilities for the transportation of Class 8 and Division 2.3 materials in DOT Specification 111A100W2 tank car tanks.
10481–M	DOT–E 10481	M1 Engineering Limited, Bradford, West Yorkshire, UK.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 178.338.	To modify the exemption to authorize a design change of the non-DOT specification vacuum installed portable tank, in an ISO frame, for the transportation of certain refrigerated liquids.
10501–M	DOT–E 10501	Semi-Bulk Systems, Inc., Fenton, MO.	49 CFR 180.352(d)	To modify the exemption to update reference language concerning Flexible Intermediate Bulk Container reuse provisions and repair procedures.
10656–M	DOT–E 10656	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY.	49 CFR 172.203(d), Part 172, Subparts C, D, E, F, G.	To modify the exemption to revise approval provisions and documentation required for shipments of metal containing unknown amounts of unidentified radionuclides.
10672–M	DOT–E 10672	Burlington Packaging, Inc., Brooklyn, NY.	49 CFR 173.13	To modify the exemption to authorize alternative configuration combination packaging for liquid and solid hazardous materials without hazard labels or placards.
10688–M	DOT–E 10688	Alaska Air Taxi, Anchorage, AK.	49 CFR 175.310(c)	To modify the exemption to authorize alternative packaging for the non-DOT specification polyethylene containers with an increased container size to 6 gallons for the transportation of a Class 3 material; the addition of cargo aircraft only as an additional mode of transportation.
10695–M	DOT–E 10695	3M Company, St. Paul, MN.	49 CFR 172.101, 172.400(b), 172.504(e).	To modify the exemption to authorize various changes to the packaging and safety control measures for the transportation of ethylene oxide packaged in aluminum cartridges within a fiberboard box.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10751–M	DOT–E 10751	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 177.848	To modify the exemption to authorize the transportation of Class 1.4D, 1.4B, 1.1B and additional 1.1D explosives in the same motor vehicle with certain bulk combustible liquids and/or bulk Division 5.1 oxidizers.
10798–M	DOT–E 10798	Lyondell Chemical Co/EQUISTAR Chemicals, LP, Houston, TX.	49 CFR 174.67(i), (j)	To modify the exemption to allow for the transportation of additional Division 2.1 and Class 3 materials in DOT specification tank cars.
10869–M	DOT–E 10869	Norris Cylinder Company, Longview, TX.	49 CFR 173.301(b), 173.302(a)(5), 173.304(a), 173.34, 175.3, 178.37.	To modify the exemption to clarify the fracture toughness test requirements, for design qualification only, of non-DOT specification steel cylinders transporting certain compressed gases.
10915–M	DOT–E 10915	Luxfer Gas Cylinders (Composite Cylinder Div), Riverside, CA.	49 CFR 173.302(a)(1), 173.304(a)(d), 175.3.	To modify the exemption concerning the requalification and fiber damage criteria of the non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders for the transportation of various flammable and non-flammable gases.
10945–M	DOT–E 10945	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3 ..	To modify the exemption to allow for the transportation of additional Division 2.2 materials in non-DOT specification fiber reinforced plastic full composite cylinders.
10945–M	DOT–E 10945	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3 ..	To modify the exemption concerning the requalification of the non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders from a 3-year to a 5-year requalification interval for the transportation of various flammable and non-flammable gases.
10945–M	DOT–E 10945	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3 ..	To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification fully wrapped carbon fiber reinforced aluminum lined cylinders.
10977–M	DOT–E 10977	Federal Industries Corporation, Plymouth, NM.	49 CFR 173.402(a)(2), 172.504(a), 173.25(a), 173.3, 175.3, Table 1.	To modify the exemption to eliminate the requirement that the intermediate packaging be placed in a metal can for the transportation of limited quantities of solid hazardous materials in specially designed combination packaging without hazard labels or placards.
10985–M	DOT–E 10985	Georgia-Pacific Corporation, Atlanta, GA.	49 CFR 174.67(i), (j)	To modify the exemption to allow for the transportation of Division 2.1 materials in tank cars.
11044–M	DOT–E 11044	Chem-Tech, Ltd., Des Moines, IA.	49 CFR 173.334	To modify the exemption to authorize the use of additional cylinders without exceeding cylinder service pressure for the transportation of a reformulated organophosphate product.
11054–M	DOT–E 11054	Welker Engineering Company, Sugar Land, TX.	49 CFR 178.36 Subpart C	To modify the exemption to authorize an increase to the outside diameter of the non-DOT specification cylinder, conforming to 3A specification, for use in shipment of Division 2.1, 2.3 and Class 3 materials.
11153–M	DOT–E 11153	Pacific Northwest National Laboratory, Richland, WA.	49 CFR 177.848(d)	To modify the exemption to specifically authorize the transport of waste materials in combination packaging in the same transport vehicle with other Class/Division materials.
11185–M	DOT–E 11185	Medical Waste Solutions, Inc., Gary, IN.	49 CFR 173.197	To modify the exemption to more accurately describe the non-DOT specification bulk packaging used for the transportation of Division 6.2 materials.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11186–M	DOT–E 11186	Chart Industries, Inc. (Storage Systems Div.), Denver, CO.	49 CFR 173.318	To modify the exemption to authorize the addition of new vessel assemblies for the non-DOT specification vacuum insulated portable tanks, comparable to DOT Specification MC 338 cargo tank motor vehicle, for the transportation of Division 2.1 and 2.2 materials.
11194–M	DOT–E 11194	Carleton Technologies, Inc., Pressure Tech. Div., Glen Burnie, MD.	49 CFR 173.304(a), 175.3, 49 CFR 173.302(a).	To modify the exemption concerning the requalification of the non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders from a 3-year to a 5-year requalification interval for the transportation of various flammable and non-flammable gases.
11194–M	DOT–E 11194	Carleton Technologies, Inc., Pressure Tech. Div., Glen Burnie, MD.	49 CFR 173.304(a), 175.3, 49 CFR 173.302(a).	To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification full wrapped carbon fiber reinforced aluminum lined cylinders.
11202–M	DOT–E 11202	Newport News Shipbuilding & Dry Dock Co., Newport News, VA.	49 CFR 173, 49 CFR 172	To modify the exemption to allow for the transportation of Division 6.1 and additional Class 8, Class 9 and Division 5.1 materials to cross a public road, from one part of a plant to another.
11226–M	DOT–E 11226	E.R. Carpenter, L.P., Pasadena, TX.	49 CFR 174.67(a), (j)	To modify the exemption to allow for the transportation of Class 3 materials in DOT specification tank cars.
11226–M	DOT–E 11226	E.R. Carpenter, L.P., Pasadena, TX.	49 CFR 174.67(a),(j)	To modify the exemption to authorize tank cars to be unloaded using an alternative monitoring system.
11344–M	DOT–E 11344	E.I. DuPont de Nemours and Company, Inc., Wilmington, DE.	49 CFR 174.67(i), (j)	To modify the exemption to allow for the transportation of Division 4.3, Class 9 and additional Class 3, 8 and Division 6.1 materials in tank cars.
11344–M	DOT–E 11344	E.I. DuPont de Nemours and Company, Inc., Wilmington, DE.	49 CFR 174.67(i), (j)	To modify the exemption to authorize the transportation of additional Class 3 materials in DOT Specification tank cars.
11434–M	DOT–E 11434	Fisher Scientific Chemical Division, Fair Lawn, NJ.	49 CFR 174.64(j)	To modify the exemption to authorize the transportation of an additional Class 3 material in tank cars authorized to remain standing with unloading connections attached when no product is being transferred.
11440–M	DOT–E 11440	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.227(c)	To modify the exemption to authorize the use of plastic pallets for the loading of polyethylene drums or composite packagings transporting certain Division 6.1 materials.
11473–M	DOT–E 11473	Astaris, LLC, St. Louis, MO.	49 CFR 173.31(a), 179.100–1, 179.103–3, 179.103–4.	To modify the exemption to remove language for tank cars with a safety relief device having a start-to-discharge pressure of 44.1 percent of the tank test pressure.
11494–M	DOT–E 11494	Atlantic Research Corp., Automotive Produtcs Group, Knoxville, TN.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To modify the exemption to allow for the transportation of additional Division 2.2 materials in non-DOT specification cylinders for use as components of automotive vehicle safety systems.
11526–M	DOT–E 11526	BOC Gases, Murray Hill, NJ.	49 CFR 172.302(c),(2),(3),(4),(5), 173.34(15)(vi), 173.34(e)(1), (3), (4)(8).	To modify the exemption concerning the calibration cylinder specification testing requirements of 3A and 3AA cylinders.
11536–M	DOT–E 11536	Boeing Satellite Systems, Inc., Los Angeles, CA.	49 CFR 173.159, 173.302, 173.304, 173.62.	To modify the exemption to allow for the transportation of additional division 2.2 materials in non-DOT specification packaging.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11579–M	DOT–E 11579	Dyno Nobel, Inc., Salt Lake, UT.	49 CFR 177.848(e)(2)	To modify the exemption to authorize the addition of Division 1.1B, 1.4B, 1.1D and 5.1 materials to be transported on the same cargo unit with Division 1.5D explosives, without a common wall divider and the addition of truck designs for the transportation of these materials.
11579–M	DOT–E 11579	Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 177.848(e)(2)	To modify the exemption to authorize the transportation of Division 1.1D and 1.4D explosives on the same motor vehicle with Division 1.5D explosives.
11620–M	DOT–E 11620	CCL Container, Don Mills, Ontario, CN.	49 CFR 173.306(3)(ii)	To modify the exemption to authorize an increase in the container and burst pressure; allow for the transportation of Division 2.1 materials in non-DOT specification cylinders.
11650–M	DOT–E 11650	Autoliv ASP, Inc. Ogden, UT.	49 CFR 178.65–9	To modify the exemption to authorize a design change of the non-DOT specification non-refillable cylinder utilizing a sidewall gas fill port with a maximum service pressure of 5000 PSIG.
11749–M	DOT–E 11749	Union Tank Car Company, E. Chicago, IN.	49 CFR 172.203(a), 172.302(c), 180.509(e).	To modify the exemption to change the availability/retention requirements of data documents used for alternative testing methods of DOT specification tank cars.
11761–M	DOT–E 11761	Hawkins, Inc. Minneapolis, MN.	49 CFR 172.302(c), 173.31(d)(1)(vi)	To modify the exemption to authorize the transportation of additional Class 8 materials in certain DOT Specification and AAR Specification tank cars with a modified inspection procedure.
11761–M	DOT–E 11761	The Mead Corporations, Dayton, OH.	49 CFR 172.302 (c), 173.31(d)(1)(vi)	To modify the exemption to authorize the transportation of additional Class 8 materials in certain DOT and AAR Specification tank cars with a modified inspection procedure.
11782–M	DOT–E 11782	Aeronex, Inc., San Diego, CA.	49 CFR 173.212	To modify the exemption to authorize rail freight and cargo vessel as additional modes of transportation for Division 4.2 materials in non-DOT specification cylinders.
11786–M	DOT–E 11786	Dow Corning Corporation, Midland, MI.	49 CFR 174.67(i), (j)	To modify the exemption to allow for the transportation of Division 2.1 and additional Class 8 materials in DOT Specification tank cars.
11798–M	DOT–E 11798	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.34(e)(15), 173.34(e)(15)(ii)	To modify the exemption to allow for an alternative testing requirement for DOT Specification 3A and 3AA cylinders for the transportation of certain Division 2.1 and 2.2 gases; to allow for an increase of the moisture limit to 25ppm.
11798–M	DOT–E 11798	Anderson Development Company, Adrian, MI.	49 CFR 173.34(e)(15), 173.34(e)(15)(ii)	To modify the exemption to allow for cargo aircraft only as an authorized mode of transportation for the transportation of Division 2.1 and 2.2 gases in DOT Specification 3A or 3AA cylinders; addition of a new provision to paragraph 8 of the exemption.
11826–M	DOT–E 11826	Spectra Gases, Inc., Branchburg, NJ.	49 CFR 173.302(a)(5)	To modify the exemption to authorize the transportation of additional Division 2.2 materials in DOT–3AL aluminum cylinders.
11916–M	DOT–E 11916	CP Industries, Inc., McKeesport, PA.	49 CFR 173.302(e)(2), 173.302(e)(4), 173.302(e)(5), 173.34(e)(1), (3)(4).	To modify the exemption to authorize the use of additional DOT Specification cylinders with an outside diameter equal to or larger than 18 inches; correct language in the exemption dealing with monitoring and reporting.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11924–M	DOT–E 11924	UF Strainrite, Lewiston, ME.	49 CFR 173.12(b)	To modify the exemption to authorize a UN 11HH2 intermediate bulk container as an outer packaging for lab pack applications transporting various classes of hazardous wastes.
12003–M	DOT–E 12003	Degussa Corporation, Parsippany, NJ.	49 CFR 172.102, T–15, T–37	To modify the exemption to authorize the inclusion of four additional DOT specification IM 101 steel portable tanks for the transportation of hydrogen peroxide, stablized, that exceeds the 72 percent maximum concentration.
12022–M	DOT–E 12022	Taylor-Wharton (Harsco Gas & Fluid Control Group), Harrisburg, PA.	49 CFR 173.302(c)(2), (c)(3), (c)(4), (c)(5), 173.34(e)(1), (e)(3), (e)(4), (e)(8), 173.34(e)(14), (e)(15)(vi).	To modify the exemption to include 3BN cylinders and alternative test equipment/procedures for use in transporting Division 2.1, 2.2 and 2.3 materials.
12068–M	DOT–E 12068	United States Sea Launch GP, L.L.C., Long Beach, CA.	49 CFR 173.56, 173.60	To authorize an additional lithium battery material to paragraph 6 for the launch vehicle.
12074–M	DOT–E 12074	Van Hool NV B–2500 Lier, Koningshooikt, BG.	49 CFR 178–245–1(a)	To modify the exemption to allow for minor editorial drawing changes/addition of Code Cases 2261 and 2265 for the manufacture, mark and sale of DOT Specification steel portable tanks designed, constructed and stamped in accordance with Division 2 of Section VIII of the ASME B&PV Code for the transport of Division 2.1 and 2.2 materials.
12074–M	DOT–E 12074	Van Hool NV B–2500 Lier, Koningshooikt, BE.	49 CFR 178–245–1(a)	To modify the exemption to update the filling requirements to include suitable liquid level gauging devices for the transportation of Division 2.1 and 2.2 materials in DOT Specification steel portable tanks.
12084–M	DOT–E 12084	Honeywell International, Inc., Morristown, NJ.	49 CFR 173.34(e)(11)	To modify the exemption to allow for the transportation of Division 2.1 and 2.3 materials in DOT Specification 4B, 4BA and 4BW cylinders that have alternativ2e retest requirements.
12102–M	DOT–E 12102	Onyx Environmental Services, L.L.C., Ledgewood, NJ.	49 CFR 173.56(i)	To modify the exemption to allow for the transportation of densitized Division 5.1 and additional Class 3 materials; cargo vessel as an additional mode of transportation; expanded transportation services.
12102–M	DOT–E 12102	Onyx Environmental Services, L.L.C., Ledgewood, NJ.	49 CFR 173.56(i)	Petition for reconsideration of the proper shipping name, domestic vs. international, for the transportation of certain Division 1.1D, unstable waste laboratory mixtures that have been densitized to remove their explosive characteristics, as Division 4.1 flammable solids.
12116–M	DOT–E 12116	Proserv (North Sea), Ltd., Aberdeen AB11 5RJ, Scotland, UK.	49 CFR 178.36	To modify the exemption to authorize a change to the maximum operating pressure and volume of non-DOT specification cylinders used for oil well sampling.
12122–M	DOT–E 12122	Atlantic Research Corp. Automotive Products Group, Knoxville, TN.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To modify the exemption to allow for a design change to use openings in the sidewall for filling the pressure vessel, used as a component of an automobile safety system.
12122–M	DOT–E 12122	Atlantic Research Corp., Automotive Products Group, Knoxville, TN.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To modify the exemption to allow for the transportation of additional Division 2.2 materials in non-DOT specification cylinders for use as components of automotive vehicle safety systems.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12124–M	DOT–E 12124	Albermarle Corporation, Baton Rouge, LA.	49 CFR 173.242, 178.245–1(c), 178.245–1(d)(4).	To modify the exemption to allow for the transportation of additional Division 4.3 materials in a non-DOT specification portable tank.
12130–M	DOT–E 12130	FIBA Technologies, Inc., Westboro, MA.	49 CFR 173.318, 176.30, 176.76(h), 178.338.	To modify the exemption to authorize a new portable tank design and the transportation of additional Division 2.2 materials in non–DOT specification insulated portable tanks.
12178–M	DOT–E 12178	STC Technologies, Inc., Bethlehem, PA.	49 CFR 173.301(e)(f), 173.304(a)(1), 173.304(a)(3).	To modify the exemption to expand the relief granted in paragraph 6 to include exportation.
12184–M	DOT–E 12184	Weldship Corporation, Bethlehem, PA.	49 CFR 173.302(c)(2)(3)(4), 173.34(e)(1), 173.34(e)(3), 173.34(e)(4), 173.34(e)(6).	To modify the exemption to authorize alternative testing procedures of DOT–3A and DOT–3AA cylinders.
12284–M	DOT–E 12284	American Traffic Safety Services Assn. (ATSSA), Fredericksburg, VA.	49 CFR 173.242	To modify the exemption to authorize an increase in the maximum capacity to 500 gallons of the non-DOT specification cargo tanks used for roadway striping.
12296–M	DOT–E 12296	Clean Earth Systems, Inc., Tampa, FL.	49 CFR 173.12(b)(2)(i)	To modify the exemption to authorize an inner polyethylene liner for the UN 11G fiberboard intermediate bulk container having a minimum thickness of six (6) mils for the transportation of various classes of hazardous materials.
12301–M	DOT–E 12301	Steptoe & Johnson LLP, Washington, DC.	49 CFR 173.193(b), 172.203(a), 172.301(c).	To modify the exemption to waive the marking requirements so that shipping papers and cylinders do not have to bear the DOT exemption number.
12334–M	DOT–E 12334	Autoclave Engineers, Erie, PA.	49 CFR 178.36	To modify the exemption to authorize the transportation of Division 2.2, Class 3, Division 6.1 and additional Division 2.1 materials in non-DOT specification cylinders.
12405–M	DOT–E 12405	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2), 173.304(b)	To modify the exemption to authorize 3T, 3AAX and 3AX cylinders as additional packagings for the transportation of Division 2.1, 2.2 and 2.3 materials; and changes to the operational controls concerning pressure and temperature monitoring.
12442–M	DOT–E 12442	Cryogenic Vessel Alternatives, La Porte, TX.	49 CFR 176.76(g)(1), 178.318	To modify the exemption to waive the impact test requirements for stainless steel portable tanks for materials used in a lading warmer than –425 degrees.
12515–M	DOT–E 12515	FIBA Technologies, Inc., Westboro, MA.	49 CFR 172.101, 178.338–10, 178.338–13, 178.338–2(c), 178.338–6(a), 178.338–9(b).	To modify the exemption to authorize, as an optional requirement, the installation of a manhole for non-DOT specification vacuum-insulated portable tanks in oxygen service.
12557–M	DOT–E 12557	Global Container Group, Inc., Baton Rouge, LA.	49 CFR 178.245	To reissue the exemption originally issued on an emergency basis authorizing the construction of certain DOT Specification 51 steel portable tanks designed in accordance with Section VIII, Division 1 of the ASME Code, except for design margin, for the transportation of certain Division 2.1 and 2.2 materials.
12561–M	DOT–E 12561	Rodia, Incorporated, Cranbury, NJ.	49 CFR 172.203(a), 173.31, 179.23	To modify the exemption to allow for the use of the Barber S–2–HD model truck for the transportation of Class 8 materials in DOT Specification 111S100W–2 tank cars.
12580–M	DOT–E 12580	Matheson Tri-Gas, East Rutherford, NJ.	49 CFR 173.301(j)	To reissue the exemption originally issued on an emergency basis for certain non-DOT specification foreign cylinders which are charged for export only transporting certain Division 4.3 materials.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12581–M	DOT–E 12581	Ball Aerospace & Technologies Corp., Boulder, CO.	49 CFR 173.302(a)(1), 173.304(a)(2), 173.34(d), 175.3, 177.801(a).	To reissue the exemption originally issued on an emergency basis for the transportation of helium in non-DOT specification packaging.
12582–M	DOT–E 12582	State of Michigan (Dept. of State Police), East Lansing, MI.	49 CFR 173.25, 175.85	To reissue the exemption originally issued on an emergency basis for the transportation of first aid/trauma kits containing 2.2 gases in a passenger-carrying aircraft.
12590–M	DOT–E 12590	USAirways, Inc., Pittsburgh, PA.	49 CFR 173.159	To modify the exemption originally issued on an emergency basis for the transportation of certain Class 8 materials in non-DOT specification specially designed containers and the transportation of an additional Class 8 material.
12595–M	DOT–E 12595	Marsulex, Inc., North York, Ontario, CN.	49 CFR 172.540	To reissue the exemption originally issued on an emergency basis for the transportation of sulfur dioxide in a tank car using Division 2.3 international placards.
12595–M	DOT–E 12595	Marsulex, Inc., Toledo, OH.	49 CFR 172.540	To modify the exemption to authorize rerouting a Division 2.3 residue tank car for reloading at a different site while the car is in transit without change of placard and the addition of a Division 2.3 material.
12606–M	DOT–E 12606	Toyota Motor Sales, U.S.A., Inc., Torrance, CA.	49 CFR 171.12(b)(19) and 172.203(a)	To reissue the exemption originally issued on an emergency basis for the one-way transportation of certain Class 9 materials by motor vehicle from port of entry to a distribution facility, within 60 miles, without ''EX'' number on the shipping papers.
12626–M	DOT–E 12626	SMI Companies, Franklin, LA.	49 CFR 173.243(c)	To modify the exemption to authorize the transportation of additional Class 8 materials in a non-DOT specification steel portable tank equipped with an external bottom discharge valve.
12628–M	DOT–E 12628	Arbel Fauvet Rail (AFR), 59500 Douai, FR.	49 CFR 178.245–1(b)	To reissue the exemption originally issued on an emergency basis authorizing the use of DOT Specification 51 tank containers that have been designed, constructed and ''U'' stamped in accordance with Section VIII, Division 1 of the ASME Code transporting Division 2.1 and 2.2 materials.
12633–M	DOT–E 12633	Isolair Helicopter Systems, Troutdale, OR.	49 CFR 173.202	To reissue the exemption originally issued on an emergency basis for the transportation of gasoline in a non-DOT specification, non-bulk package (drum) mounted in a heli-torch frame.
12637–M	DOT–E 12637	Island Gases Limited, Christiansted, St. Croix, U.S., VI.	49 CFR 173.320	To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 2.2 materials in non-DOT specification vacuum insulated portable tanks.
12643–M	DOT–E 12643	TRW Space and Electronics Group, Redondo Beach, CA.	49 CFR 173.302 and 175.3	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in a non-DOT specification refrigeration system described as a pulse tube cooler.
12652–M	DOT–E 12652	Eagle-Picher Technologies, LLC, Joplin, MO.	49 CFR 173.302(a), 173.34(d), 175.3	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.1 material in a non-DOT specification pressure vessel.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12663–M	DOT–E 12663	Skolnik Industries, Chicago, IL.	49 CFR 172,203(a), 172,301(c), 178.3(c), 178.503(a).	To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.
12664–M	DOT–E 12664	Myers Container Corporation, Hunting Park, CA.	49 CFR 172.203, 172.301, 178.3(c), 178.503(a).	To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.
12665–M	DOT–E 12665	Packaging Specialities, Inc., Medina, OH.	49 CFR 172,203(a), 172.301(c), 178.3(c), 178.503(a).	To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.
12688–M	DOT–E 12688	Brenntag West, Inc., Santa Fe Springs, CA.	49 CFR 172.203(a), 172.203(a), 173.158(b)(1)(i).	To modify the exemption originally issued on an emergency basis for the transportation in commerce of a Class 8 material in drums that do not meet the minimum thickness requirements.
12705–M	DOT–E 12705	Brenntag Mid-South, Inc., Henderson, KY.	49 CFR 172.203(a), 173.158(b)(1)(i)	To reissue the exemption originally issued on an emergency basis for the transportation of a Class 8 material in drums that do not meet the minimum thickness requirements.
12735–M	DOT–E 12735	Collbri Group Providence, RI.	49 CFR 172.102(c)(5), 172.301(c), 172.406(a)(1)(ii).	To modify the exemption to correct the name of the freight carrier.
12771–M	DOT–E 12771	Cytec Industries, Inc., West Paterson, NJ.	49 CFR 173.34(d)	To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 2.3 materials in DOT Specification 3AA2400 cylinders not fitted with a pressure relief device and to increase the cylinder pressure to a maximum of 840 psig at 70 degrees F.
12808–M	DOT–E 12808	Linco-Electromatic Measurement, Inc., Kilgore, TX.	49 CFR 173.120, 173.304, 173.315	To reissue the exemption originally issued on an emergency basis for the transportation of Class 3 materials in a non-DOT specification container described as a truck mounted mechanical displacement meter prover.
		New Exemptions		
11489–N	DOT–E 11489	Atlantic Research Corporation, Gainsville, VA.	49 CFR 172.320, 173.56(b)	To authorize the transportation of airbag inflators without required EX number or examination. (mode 1)
12142–N	DOT–E 12142	Aristech Chemical Corp., Pittsburgh, PA.	49 CFR 174.67(i)	To authorize rail cars to remain standing with unloading fittings attached without the physical presence of an unloader. (mode 3)
12248–N	DOT–E 12248	Ciba Specialty Chemicals Corp., High Point, NC.	49 CFR 171.12(b)(5), 173.242	To authorize the transportation in commerce of Corrosive solid, flammable, n.o.s., Class 8, in IM 101 portable tanks not presently authorized. (modes 1, 2, 3)
12290–N	DOT–E 12290	Savage Industries, Inc., Pottstown, PA.	49 CFR 174.67(a)2	To authorize an alternative blocking method of rail cars while transferring various classes of hazardous materials. (mode 2)
12293–N	DOT–E 12293	Intercontinental Packaging Corp., Tuckahoe, NY.	49 CFR 173.306(a)(3)(v), 178.33a–2 & 8	To authorize the manufacture, marking, and sale of non-DOT specification non-refillable metal and plastic aerosol containers filled with a propellant gas. (modes 1, 2, 3, 4)
12339–N	DOT–E 12339	BOC Gases, Murray Hill, NJ.	49 CFR 173.192(a)(3), 173.302(a)(5), 173.302(f), 173.304(a)(4), 173.304(d)(3)(i).	To authorize the transportation in commerce of various Division 2.1 and 2.3 gases in DOT Specification 3AL aluminum cylinders, overpacked in freight containers. (mode 3)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12368–N	DOT–E 12368	Occidental Chemical Corp., Dallas TX.	49 CFR 179.13	To authorize the transportation in commerce of DOT 111A100W1 two-compartment tank cars containing Chromium trioxide, anhydrous, Division 5.1, that exceed the gross weight limitation. (mode 2)
12422–N	DOT–E 12422	Connecticut Yankee Atomic Power Co., East Hampton, CT.	49 CFR 173.403, 173.427(b)(1)	To authorize the transportation in commerce of a specially designed device for use in transporting radioactive material, Class 8. (modes 1, 2)
12443–N	DOT–E 12443	ChemCentral/Charlotte, Charlotte, NC.	49 CFR 174.67(i) & (j)	To authorize rail cars containing Class 8 hazardous materials to remain attached to unloading connectors without the physical presence of an unloader. (mode 2)
12454–N	DOT–E 12454	Ethyl Corp., Richmond, VA.	49 CFR 180.509(1), 180.509(e)	To authorize an alternative testing method for DOT class 105 tank cars for use in transporting various classes of hazardous materials. (mode 2)
12469–N	DOT–E 12469	Department of Energy, Germantown, MD.	49 CFR 180.407	To authorize an alternative testing method for DOT-Specification MC 312 and MC 412 cargo tanks used in transporting radioactive materials, Class 7 and corrosive materials, Class 8. (mode 1)
12473–N	DOT–E 12473	Old Bridge Metals & Chemicals, Inc., Old Bridge, NJ.	49 CFR 173.28(b)	To authorize the refilling of UN authorized packaging by the original user of the product with waste material which is being returned to the original manufacturer for treatment without performing leakproofness test prior to refilling. (mode 1)
12475–N	DOT–E 12475	Chemetall GmbH Gesellschaft, Langlshiem, DE.	49 CFR 173.181, 173.28(b)(2)	To authorize the transportation in commerce of lithium alkyls, Division 4.2, in certain 1A1 drums, without undergoing a leakproofness test prior to each refilling when refilled with lithium alkys and certain other liquid hazardous materials. (mode 1)
12479–N	DOT–E 12479	Luxfer Gas Cylinders, Riverside, CA.	49 CFR 173.302(a)(1), 175.3	To authorize the manufacture, mark, sale and use of non-DOT specification fiberglass hoop wrapped cylinders for the transportation in commerce of certain compressed gases. (modes 1, 2, 3, 4, 5)
12495–N	DOT–E 12495	South Carolina Electric & Gas Co., Jenkinsville, SC.	49 CFR 172, 173, Parts 171	To authorize the transportation in commerce of radioactive material packages, Class 7, from one facility to another using state road that would be transported as essentially unregulated. (mode 1)
12497–N	DOT–E 12497	Henderson International Technologies, Inc., Richardson, TX.	49 CFR 173.302(a)(1), 173.314(c)	To authorize the manufacture, mark and sale of a specially design container frame mounted and manifolded to a motor vehicle in conformance with DOT Specification 107A for transportation in commerce of certain Division 2.2 gases. (mode 1)
12515–N	DOT–E 12515	FIBA Technologies, Inc., Westboro, MA.	49 CFR 172.101, 178.338–10, 178.338–13, 178.338–2(c), 178.338–6(a), 178.338–9(b).	To authorize the transportation in commerce of non-DOT specification portable tanks for use in transporting various Division 2.2 material. (modes 1, 2)
12516–N	DOT–E 12516	Poly-Coat Systems, Inc., Houston, TX.	49 CFR 107.503(b)(c), 172.102(c)(3)B15 & B23, 173.241; 173.242; 178.345–1; –2; –3; –4; –7; –14; –15; 178.347–1; –2; 178.348–1, 178.348–2, 180.405, 180.413(d).	To authorize the manufacture, marking and sale of non-DOT specification cargo tanks constructed of fiberglass reinforced plastic for use in transporting various classes of hazardous materials. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12531–N	DOT–E 12531	Worthington Cylinder Corporation, Columbus, OH.	49 CFR 173.302(a), 173.304(a), 173.304(d), 178.61(b), 178.61(f), 178.61(g), 178.61(i), 178.61(k).	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders designed in accordance with DOT 4BW specification for use in transporting various hazardous materials. (modes 1, 2, 3, 4)
12532–N	DOT–E 12532	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 173.302(a), 175.3	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders similar to DOT specification 39 cylinder for use in transporting helium, Division 2.2 (modes 1, 2, 4)
12536–N	DOT–E 12536	Department of Energy, Albuquerque, NM.	49 CFR 173.211	To authorize the transportation in commerce of a specially designed device consisting of a sealed stainless steel containment vessel overpacked in a steel transport container for an oxidizing solid, Division 5.1 (mode 1)
12538–N	DOT–E 12538	Champagne Specialties, Inc., Fairport, NY.	49 CFR 180.519	To authorize the repair and alteration of multi-tank car tanks that conform to alternative requirements for qualification and maintenance. (mode 1)
12547–N	DOT–E 12547	Rohm and Haas Company, Philadelphia, PA.	49 CFR 177.834(i)(3)	To authorize the loading and/or unloading of hazardous materials to/from cargo tank motor vehicles without the physical presence of an unloader. (mode 1)
12549–N	DOT–E 12549	Griro S.A., Romania	49 CFR 178.245–1(a)	To authorize the manufacture, marking, sale and use of DOT Specification 51 steel portable tanks permanently installed in an ISO frame that have been designed, constructed and stamped in accordance with Section VIII, Division 2 instead of Division 1 of the ASME Code. (modes 1, 2, 3)
12552–N	DOT–E 12552	Illbruck Sealant Systems B.V., The Netherlands.	49 CFR 173.306(a)(3)(v)	To authorize an alternative testing method for specially designed aerosol containers for use in transporting limited quantities of Division 2.1 material. (modes 1, 2, 3)
12562–N	DOT–E 12562	Tae Yang Industrial Co., Ltd., Cheonan-City, South, KR.	49 CFR 173.304(d)(3)(ii)	To authorize the transportation in commerce of Division 2.1 hazardous materials in nonrefillable non-DOT specification inside containers conforming to DOT Specification 2P except for size, testing requirements and markings. (modes 1, 2, 3, 4)
12563–N	DOT–E 12563	Department of Energy, Washington, DC.	49 CFR 173.211	To authorize the one-time transportation of a specially designed device consisting of ASME AS240 Type 316 stainless steel with wall thickness of 0.33 for use in transporting a Division 4.3 material. (mode 1)
12564–N	DOT–E 12564	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 173.302	To authorize the transportation in commerce of non-DOT specification pressure vessels similar to specification 39 for use in transporting helium, Division 2.2. (modes 1, 2, 4)
12573–N	DOT–E 12573	US Can Company, Elgin, IL.	49 CFR 173.304(e), 173.306(a)	To authorize the transportation in commerce of a non-refillable non-DOT specification container similar to a DOT Specification 2Q for use in transporting certain refrigerant gases, classed as non-flammable aerosols. (modes 1, 2, 3, 4)
12574–N	DOT–E 12574	Weldship Corporation, Bethlehem, PA.	49 CFR 172.302(c)(2), (3), (4), (5), Subpart F of Part 180.	To authorize an acoustic emmision test in lieu of hydrostatic retest and internal inspection of DOT 107A tubes used for transporting compressed gases. (modes 1, 2, 3)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12589–N	DOT–E 12589	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.163	To authorize the reuse of 3BN (nickel) cylinders that have been used for hydrogen fluoride service to tungsten hexafloride service, Division 2.3. (modes 1, 3)
12592–N	DOT–E 12592	Matson Navigation Co., San Francisco, CA.	49 CFR 176.905	To authorize the transportation in commerce of combustion-powered motor vehicles in freight containers in cargo vessel holds that are not ventilated. (mode 3)
12599–N	DOT–E 12599	Voltaix, Inc., North Branch, NJ.	49 CFR 173.301 (d) (2), 173.302	To authorize the transport of silicon tetrafluoride in DOT Specification 3AAX and 3AA manifolded cylinders. (mode 1)
12607–N	DOT–E 12607	FIBA Technologies Inc., Westboro, MA.	49 CFR (vi), 173.34(e)(1), (e)(3), (e)(4), (e)(8), (e)(14), (e)(15).	To authorize an alternative method of retest for DOT 3AL seamless cylinders manufactured from 6061 alloy for use in transporting Division 2.1, 2.2 and 2.3 materials. (modes 1, 2, 3, 4, 5)
12608–N	DOT–E 12608	Solvay Interox, Inc., Houston, TX.	49 CFR 172.102(c)(7)(ii)	To authorize the transportation in commerce of hydrogen peroxide aqueous solutions in concentrations exceeding 72 percent but not exceeding 92 percent in DOT specification IM 101 steel portable tanks. (modes 1, 3)
12609–N	DOT–E 12609	Department of Defense (DOD), Alexandria, VA.	49 CFR 171.14(a)(1), 172.301(c)	To authorize the transportation in commerce of non-bulk packagings containing Class 8 material that are no longer authorized for transportation. (mode 1)
12613–N	DOT–E 12613	Nova Chemical Co., Red Deer, Alberta, CN.	49 CFR 172.203(a), 173.31(c)(1), 179.13.	To authorize the transportation in commerce of a Class 3 material in DOT112J340 tank cars with a maximum gross weight on rail that exceed the maximum limit of 263,000 pounds. (mode 2)
12622–N	DOT–E 12622	Atlantic Research Corporation, Knoxville, TN.	49 CFR 172.200, 172.500	To authorize the transportation in commerce of Division 1.3C, 1.4C, and 2.2 airbags without the required shipping papers and placarding. (mode 1)
12626–N	DOT–E 12626	SMI Companies, Franklin, LA.	49 CFR 173.243(c)	To authorize the manufacture, mark, sale and use of non-DOT specification steel portable tanks equipped with external bottom discharge valves for use in transporting Class 8 material. (modes 1, 3)
12629–N	DOT–E 12629	Western Sales & Testing of Amarillo, Inc., Amarillo, TX.	49 CFR 173.34(e)	To authorize an alternative method of retest for DOT 3A, 3AA, 3AAX and 3T compressed gas cylinders for use in transporting liquefied or nonliquefied compressed gases, or mixtures as presently authorized, (modes 1, 2, 3)
12631–N	DOT–E 12631	Precision Medical, Northhampton, PA.	49 CFR 178.57(d)	To authorize the transportation in commerce of a portable cryogenic cylinder containing oxygen, Division 2.2. (mode 1)
12632–N	DOT–E 12632	SET Environmental Inc., Wheeling, IL.	49 CFR 173.197	Request for an emergency exemption to transport med waste in a bulk container for a one-time movement. (mode 1)
12633–N	DOT–E 12633	Isolair Helicopter Systems, Troutdale, OR.	49 CFR 173.202	Request for an emergency exemption for the use of a non-bulk package for the use in an integral component of a flame application system (heli-torch). (mode 1)
12644–N	DOT–E 12644	Strategic Composites, Haverford, PA.	49 CFR 173.302(a), 173.304(a)(1), 175.3.	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders for use in transporting certain flammable and nonflammable compressed gases. (modes 1, 2, 3, 4)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12645–N	DOT–E 12645	Draeger Safety, Inc., Pittsburgh, PA.	49 CFR 173.301, 173.34	To authorize the transportation in commerce of non-DOT specification cylinders manifolded with one pressure relief device to be used as part of a self contained breathing apparatus for transporting oxygen. (modes 1, 4)
12647–N	DOT–E 12647	Wisconsin Public Service Corporation (WPSC), Green Bay, WI.	49 CFR 173.403, 173.427(b)(1)	To authorize the transportation in commerce of two steam generator assemblies as surface contaminated objects that exceed the authorized quantity limitations. (mode 3)
12650–N	DOT–E 12650	Coleman Powermate, Inc., Kearney, NE.	49 CFR 173.34(d)	To authorize the transportation in commerce of 3AL cylinders equipped with spring-loaded pressure relief devices for use in transporting hydrogen absorbed in metal hydride. (modes 1, 2, 3, 4)
12652–N	DOT–E 12652	Eagle-Picher Technologies, LLC, Jopline, MO..	49 CFR 173.302(a), 173.34(d), 175.3	To authorize the transportation in commerce of certain non-DOT specification pressure vessels containing compressed hydrogen, which are a component of a nickel hydrogen battery. (modes 1, 2, 4)
12657–N	DOT–E 12657	Oshkosh Truck Corporation, Oshkosh, WI..	49 CFR 178.345–3(f)(3)(i)	To authorize the transportation in commerce of cargo tanks equipped with attachments that exceed the authorized spacing limits. (mode 1)
12668–N	DOT–E 12668	Tri-Wall, Butler, IN ..	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, mark, sale and use of certain UN 11G flexible intermediate bulk container for use as the outer packaging for lab pack applications in accordance with 49 CFR 173.12(b)(2)(i) as well as 40 CFR 173.240–243. (mode 1)
12669–N	DOT–E 12669	Aristech Chemical Corporation, Pittsburgh, PA..	49 CFR 177.834(i)(4)	To authorize an alternative attendance requirement of cargo tanks during loading and unloading of Class 9 material. (mode 1)
12670–N	DOT–E 12670	Taylor-Wharton, Theodore, AL..	49 CFR 178.57(1)(1)(2)(3), 178.57, (f)	To authorize the manufacture, mark, sale and use of DOT–4L specification cylinders using an alternative lot size at the time of manufacturing. (mode 1)
12671–N	DOT–E 12671	Carleton Technologies Inc., Orchard Park, NY..	49 CFR 173.302(a)(4), 175.3, 178.65	To authorize the transportation in commerce of non-DOT specification cylinders for use in transporting helium. (modes 1, 2, 4)
12679–N	DOT–E 12679	Applied Companies, Santa Clarita, CA..	49 CFR 173.302(a), 178.65	To authorize the transportation in commerce of non-DOT specification cylinders comparable to Specification 39 non-reusable for use in transporting oxygen. (mode
12682–N	DOT–E 12682	EP Container Corp., Santa Fe Springs, CA..	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, mark, sale and use of certain UN 11G Fiberboard Intermediate Bulk Containers (IBC), for use as the poison pack outer packaging when transporting certain hazardous materials. (mode 1)
12686–N	DOT–E 12686	Carleton Technologies Inc., Orchard Park, NY..	49 CFR 173.302(a), 175.3	To authorize the manufacture, marking, sale and use of a nonrefillable non-DOT specification cylinder conforming to DOT specification 39 cylinder for use in transporting Division 2.2 nonflammable compressed gas. (modes 1, 2, 4)
12691–N	DOT–E 12691	TITEQ Corporation, Palmdale, CA..	49 CFR 173.302(a)(2), 175.3, 178.35, 178.44.	To authorize the manufacture, mark, sale and use of non-DOT specification cylinder conforming to DOT Specification 3HT cylinder for use in transporting certain hazardous materials classed in Division 2.2. (modes 1, 2, 4)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12698–N	DOT–E 12698	Integrated Environmental Services, Inc., Atlanta, GA.	49 CFR 173.115(a)(b), 173.304(a), 173.34(d)(e).	To authorize the manufacture, mark, sale and use of non-DOT specification full open head steel/stainless steel salvage cylinders as an overpack in transporting damaged or leaking gas cylinders containing Class 2 material. (modes 1, 3, 4)
12702–N	DOT–E 12702	Los Crespos Cylinders, Anasco, PR.	49 CFR 172.203(a), 172.301(c), 173.34(1) subparagraphs 1, 2, and 3.	To authorize the repair and rebuild of DOT–4B series cylinders for use in transporting hazardous materials as presently authorized. (modes 1, 2, 3)
12708–N	DOT–E 12708	Ameristar Air Cargo, Inc., Dallas, TX.	49 CFR 173.62	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft. (mode 4)
12714–N	DOT–E 12714	Scientific Cylinder Corporation, Englewood, CO.	49 CFR 173.302(c)(2), (4) & (5), 173.34(c)(2), (e)(3), (e)(4).	To authorize the transportation in commerce of certain cylinders which have been alternatively ultrasonically retested for use in transporting Division 2.1, 2.2, and 2.3 materials. (modes 1, 2, 3, 4)
12719–N	DOT–E 12719	Bechtel Jacobs Company LLC, Oak Ridge, TN.	49 CFR 173.211, 173.244	To authorize the transportation in commerce of bulk and non-bulk aluminum containers used in transporting sodium, Division 4.3, (mode 1)
12720–N	DOT–E 12720	American Honda Motor Company, Torrance, CA.	49 CFR 176.76(a)(4)	To authorize the transportation in commerce of electrolyte batteries in specially designed packagings, overpacked in a motor vehicle not subject to the requirements of the HMR, without securing the overpack to the floor of the intermodal freight container or trailer. (modes 1, 2, 3, 4)
12726–N	DOT–E 12726	Air Transport Association, Washington, DC.	49 CFR 173.304(a)(1), 173.305, 173.309, 173.34(e), 175.3.	To authorize the transportation in commerce of fire extinguishers to be shipped with an alternative proper shipping name as specified in several exemptions. (modes 1, 2, 4, 5)
12727–N	DOT–E 12727	Tri-West Packaging, Corona, CA.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking and sale of certain UN 11HH2 intermediate bulk containers for use as the outer packaging for lab pack applications. (mode 1)
12728–N	DOT–E 12728	Eagle-Picher Technologies, LLC, Joplin, MO.	49 CFR 173.3, 173.302(a), 173.34(d)	To authorize the transportation in commerce of certain non-DOT specification pressure vessels containing compressed hydrogen, which are a component part of a nickel-hydrogen battery. (modes 1, 4)
12744–N	DOT–E 12744	Alcoa Inc. of Pittsburgh, Pittsburgh, PA.	49 CFR 171–180	To authorize the transportation in commerce of electric storage batteries containing electrolyte or corrosive battery fluid when transported in a motor vehicle containing no hazardous materials other than materials of trade (MOTs) as essentially unregulated. (mode 1)
12745–N	DOT–E 12745	BioLab Inc., Decatur, GA.	49 CFR 173.24(g)(4)	To authorize the transportation in commerce of Class 8 material in vented intermediate bulk containers (IBC). (modes 1, 2, 3)
12748–N	DOT–E 12748	Lockheed Martin Missiles & Space Co., Santa Cruz, CA.	49 CFR 178.601(a)	To authorize the transportation in commerce of alternative, non-POP tested containers for use in transporting small explosive articles for military and commercial spacecraft and missiles. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12749–N	DOT–E 12749	Questar, North Canton, OH.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of certain UN 11G fiberboard intermediate bulk containers (IBC) for use as the outer packaging for lab pack applications. (mode 1)
12750–N	DOT–E 12750	Questar, North Canton, OH.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of UN 13H4 Flexible Intermediate Bulk Containers (IBC) for use as outer packaging for lab pack application for use in transporting hazardous wastes. (mode 1)
12756–N	DOT–E 12756	Department of Energy Oak Ridge, TN.	49 CFR 173 & 178	To authorize the one-time transportation in commerce of certain explosive materials that exceed their shelf life, are no longer need or are obsolete in specially designed containers and trailers. (mode 1)
12762–N	DOT–E 12762	Pro-Virus Inc., Gaithersburg, MD.	49 CFR 172.203, 172.301(c), 172.303(a), 172.401(a)(1)(2).	To authorize the transportation in commerce of non-bulk pre-packed combination packagings containing various classes of hazardous materials between facilities to be transported as essentially unregulated without proper shipping papers. (mode 1)
12768–N	DOT–E 12768	BOC Gases, Murray Hill, NJ.	49 CFR 173.31(a), 179.13	To authorize the transportation in commerce of tank cars, containing carbon dioxide, refrigerated liquid, Division 2.2 with a maximum gross weight on rails of 286,000 pounds. (mode 2)
12779–N	DOT–E 12779	Nippon Sanso U.S.A., Inc., Parsippany, NJ.	49 CFR 173.318	To authorize the transportation in commerce of one non-DOT specification vacuum insulated portable tank for use in transporting helium, refrigerated liquid, Division 2.2 (modes 1, 3)
12782–N	DOT–E 12782	Air Liquide American Corporation, Houston, TX.	49 CFR 173.301(g)(1)	To authorize the transportation in commerce of non-DOT specification cylinders equipped with plastic protection caps for use in transporting Division 2.1 and 2.2 compressed gases. (mode 1)
12790–N	DOT–E 12790	Environmental Management, Inc. (EMI), Guthrie, OK.	49 CFR 173.201, 173.202, 173.203, 173.302, 173.304, 173.309, 173.34.	To authorize the transportation in commerce of non-DOT specification full open head, steel salvage cylinders for use in transporting damaged, leaking or improperly filled cylinders containing various hazardous materials. (mode 1)
12795–N	DOT–E 12795	Scientific Cylinder Corp., Englewood, CO.	49 CFR (e)(8), (e)(15)(vi) and (e)(19), 173.34(e)(1), (e)(3), (e)(4), (e)(5), (e)(6), (e)(7).	To authorize the transportation in commerce of DOT–3A cylinders manufactured from 6061 alloy which are 100% ultrasonic wall thickness inspected in lieu of the internal visual test. (modes 1, 2, 3, 4)
12819–N	DOT–E 12819	BBI–Biotech Research Laboratories, Inc., Gaithersburg, MD.	49 CFR 173.196, 178.609	To authorize the transportation in commerce of certain infectious substances in specially designed packaging. (mode 1)
12825–N	DOT–E 12825	United States Marine Safety Association, Colorado Springs, CO.	49 CFR 173.301(i)	To authorize the transportation of foreign life rafts equipped with non-DOT specification cylinders. (mode 1)
12826–N	DOT–E 12826	Environmental Packaging Technologies, Inc., Atkinson, NH.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of certain UN 11G intermediate bulk containers (cubic yard boxes) for use as the outer packaging for paint and paint related material. (mode 1)
12827–N	DOT–E 12827	Department of Energy (DOE), Washington, DC.	49 CFR 172.101, 173.56	To authorize the transportation in commerce of limited quantities of forbidden explosives by exclusive use motor vehicle in specially designed bomb proof trailers. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12838–N	DOT–E 12838	City Machine & Welding, Inc., Amarillo, TX.	49 CFR 173.302, 173.34	To authorize the transportation in commerce of certain DOT Specification 3AA, 3AAX and 3T cylinders which have been alternatively ultrasonically retested. (modes 1, 2, 3)
EE 2709–M	DOT–E 2709	Copperhead Chemical, Company, Inc., Tamaqua, PA.	49 CFR 173.24(c), 173.54(e), 177.821, 177.834(l)(1), 177.835(m).	To authorize the modification of the exemption to permit an alternative pallet design for transporting the explosives in UN 6HA1 drums. (modes 1, 3)
			Emergency Exemptions	
EE 8915–M	DOT–E 8915	Air Products and, Chemicals, Inc., Allentown, PA.	49 CFR 173.301(d), 173.302(a)(3), 173.302(a)(5).	To modify the current exemption by adding the proper shipping name Compressed Gas, n.o.s., 2.2, UN1956 (contains chlorine) (modes 1, 3)
EE 10826–M	DOT–E 10826	Stericycle, Inc., Lake Forest, IL.	49 CFR 173.197, 259.30, CFR 172.101	To modify language in the exemption to make criteria consistent with other exemptions authorizing shipment of medical waste in bulk. (modes 1, 2)
EE 11323–M	DOT–E 11323	Renaissance Industries, Inc., Sharpsville, PA.	49 CFR 173.302(a)(4), 173.304(a)(1), 175.3, 178.65–14(b)(i), 178.65–5(a)(4), 178.65–6.	To renew and authorize an additional steel designation for the manufacture of certain cylinders similar to DOT specification 39. (modes 1, 2, 3, 4, 5)
EE 11328–M	DOT–E 11328	Alaska-Pacific Powder Company, Olympia, WA.	49 CFR 176.76(a)(8)	To modify the exemption to authorize the use of smaller size bags. (mode 3)
EE 11753–M	DOT–E 11753	Ashland Inc., Columbus, OH.	.....	To modify exemption to authorize certain DOT Specification drums as additional containers for shipment of Ammonia solutions in temperature controlled vehicles. (mode 1)
EE 12068–M	DOT–E 12068	United States Sea Launch GP, L.L.C., Long Beach, CA.	49 CFR 173.56, 173.60	To authorize dimethylhydrazine unsymmetrical as part of payload involving Sea Launch vehicle. (modes 1, 3, 4)
EE 12143–M	DOT–E 12143	Suburban Propane, Anchorage, AK.	49 CFR 172.101, 176.83(b)	To authorize an addition location Alaska for delivery of Propane to remote areas. (mode 5)
EE 12143–M	DOT–E 12143	Suburban Propane, Anchorage, AK.	49 CFR 172.101, 176.83(b)	To authorize an additional location in Alaska for delivery of Propane to remote areas. (mode 5)
EE 12183–M	DOT–E 12183	Connecticut Yankee Atomic Power Co., East Hampton, CT.	49 CFR 173.403, 173.427(b)(1), 173.427(f).	To modify exemption to provide for an alternate route for shipment of 4 stem generator subassemblies containing radioactive materials. (modes 1, 3)
EE 12474–M	DOT–E 12474	Dept of Defense (MTMC), Alexandria, VA.	49 CFR 171.12, 172.204, 173.301 (i) & (j).	Modified exemption to provide for an additional shipment of high pressure gas cylinders used for Japan Ground Self Defense exercises. (mode 1)
EE 12494–M	DOT–E 12494	American Reclamation Group LLC, Anchorage, AK.	49 CFR 172.101 (col. 9)	Modified exemption to clarify provisions relating to shipment of Division 2.1 and 2.3 materials by air. (mode 4)
EE 12528–M	DOT–E 12528	Permages, Lake Stevens, WA.	49 CFR 178.245–4(e), 450.3(a)(2)	Extended exemption to provide for an additional shipment of propane to remote areas in Alaska. (modes 1, 3)
EE 12557–N	DOT–E 12557	Global Container Group, Inc., Baton Rouge, LA.	49 CFR 178.245	Request for an emergency exemption to authorize the construction of a DOT type 51 portable tank with certain deviation from 49 CFR 178 and the 1998 edition of the ASME Code. (mode 1)
EE 12576–N	DOT–E 12576	Baron USA, Inc., Cookesville, TN.	49 CFR 178.337–1(b)	Request for an emergency exemption to permit a lower design pressure of a cargo tank. (mode 1)
EE 12590–N	DOT–E 12590	US Airways, Pittsburgh, PA.	49 CFR 173.159	To authorize the transportation in commerce of aircraft batteries in specially designed containers. (mode 1)
EE 12594–N	DOT–E 12594	Fire Spec Systems, Carmel, CA.	49 CFR 173.202	Request for an emergency exemption to use a non-DOT spec. container for the transportation of gasoline. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12606–N	DOT–E 12606	Toyota Motor Sales, Torrance, CA.	49 CFR 171.12(b)(19) and 172.203(a) ...	Request for an emergency exemption to permit the transportation in commerce of certain air bag modules and seat-belt pretensioners without the ''EX'' number appearing on the shipping paper. (mode 1)
EE 12606–M	DOT–E 12606	Toyota Motor Sales, Torrance, CA.	49 CFR 171.12(b)(19) and 172.203(a) ...	Request for extension of the expiration date of an emergency exemption to complete shipment of air bag modules and seat-belt pretensioners without the ''EX'' number appearing on the shipping paper. (mode 1)
EE 12615–N	DOT–E 12615	JCI Jones Chemicals, Inc., Charlotte, NC.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an emergency A kit to prevent leakage during transportation. (mode 1)
EE 12616–N	DOT–E 12616	DPC Enterprises, Houston, TX.	49 CFR 173.34(d)	Request for emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leakage during transportation. (mode 1)
EE 12617–N	DOT–E 12617	Honeywell, Morristown, NJ.	49 CFR 174.50	Request for emergency exemption to transport 9 multi-unit tank car tanks that no longer meet the minimum thickness requirements for tank specifications 106a500X and 110A500W. (mode 2)
EE 12618–N	DOT–E 12618	JCI Jones Chemicals, Torrance, CA.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for emergency exemption to transport a leaking tank car tank that has been fitted with an emergency B kit to prevent leakage. (mode 1)
EE 12619–N	DOT–E 12619	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.24(b)	Request for emergency exemption to transport a leaking ton container fitted with a B kit to prevent leakage. (mode 1)
EE 12620–N	DOT–E 12620	Celanese LTD, Dallas, TX.	49 CFR 172.102(c)(3) B–4 & B–14	To authorize the transportation in commerce of a MC 330 cargo tank containing 6.1, Zone B, Secondary hazard 3 material without bottom outlet valves. (mode 1)
EE 12621–N	DOT–E 12621	JCI Jones Chemicals, Inc., Jacksonville, FL.	49 CFR 173.34(d)	Request for emergency exemption for the one time transportation of a leaking ton cylinder that has been equipped with an A kit to prevent leakage during transportation. (mode 1)
EE 12628–N	DOT–E 12628	Arbel Fauvet Rail, 59500 Douai, France.	49 CFR 178.245–1(b)	Request for an emergency exemption for the use of DOT spec 51 tank containers that have been designed, constructed and stamped ''U'' in accordance with Section VIII Division 1 of the ASME Code Edition 1998. (mode 1)
EE 12628–M	DOT–E 12628	Arbel Fauvet Rail (AFR), Douai, France.	49 CFR 178.245–1(b)	To request a short extension of an emergency exemption authorizing use of a DOT Spect 51 tank container built in accordance with Section VIII of the ASME Code. (mode 1)
EE 12633–N	DOT–E 12633	Isolair Helicopter Systems, Troutdale, OR.	49 CFR 173.202	Request for an emergency exemption for the use of a non-bulk package for the use in an integral component of a flame application system (heli-torch). (mode 1)
EE 12635–N	DOT–E 12635	Allied Universal, Brunswick, GA.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the emergency transportation of a one-ton container (DOT specification 106A500X) equipped with a B kit for use in transporting sulfur dioxide. (mode 2)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12636–N	DOT–E 12636	HCI Worth Chemical Company, Chattanooga, TN.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a) 179.300–14.	Request for an emergency exemption to transport a leaking tank car tank fitted with an emergency B kit to prevent leakage during transportation. (mode 1)
EE 12637–N	DOT–E 12637	Island Gases Limited, Christiansted, St. Croix, U.S.V.I.	49 CFR 173.320	Request for emergency exemption to transport liquid oxygen and nitrogen in non-DOT specification tanks. (mode 3)
EE 12638–N	DOT–E 12638	Stolt Nielsen, Inc., Houston, TX.	49 CFR 173.32(C)	Request for an emergency exemption to use an IM portable tank that was inadvertently loaded despite the tank having passed the periodic retest date. The tank is loaded with a flammable liquid. (mode 1)
EE 12639–N	DOT–E 12639	Kuehne Chemical Co., South Kearney, NJ.	49 CFR 173.34	To transport leaking ton cylinder containing chlorine from Standish, ME to South Kearny, NJ for examination and/or repair. (mode 1)
EE 12640–N	DOT–E 12640	Apperson Chemicals Inc., Albany, GA.	49 CFR 173.34	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A-kit to prevent leakage. (mode 1)
EE 12641–N	DOT–E 12641	Bristol Bay Contractors, Inc., King Salmon, AL.	49 CFR 172.101, col. 9B	Request for an emergency exemption to transport propane by air in quantities that exceed the limitations specified in the HMR. (mode 4)
EE 12641–M	DOT–E 12641	Bristol Bay Contractors, Inc., King Salmon, AK.	49 CFR 172.101, col. 9B	To modify emergency exemption to provide for an additional carrier to transport DOT Specification portable tanks, containing propane, which exceeds quantity limitations authorized for shipment by air. (mode 4)
EE 12642–M	DOT–E 12642	JCI Jones Chemicals Inc., Jacksonville, FL.	49 CFR 173.34(d)	To return leaking chlorine cylinder (DOT3A480) equipped with an emergency A kit to prevent leakage during transportation. (mode 1)
EE 12643–N	DOT–E 12643	TRW Space and Electronics Group, Redondo Beach, CA.	49 CFR 173.302 and 175.3	Request for an emergency exemption to transport helium in a non-DOT specification container called a pulse tube cooler. (modes 1, 4, 5)
EE 12643–M	DOT–E 12643	TRW Space and Electronics Group, Redondo Beach, CA.	49 CFR 173.302 and 175.3	To modify referenced drawing in exemption authorizing shipment of helium in a non-DOT specification container. (modes 1, 2, 5)
EE 12653–N	DOT–E 12653	JCI Jones Chemicals, Jacksonville, FL.	49 CFR 173.24(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leakage. (mode 1)
EE 12654–N	DOT–E 12654	JCI Jones Chemicals, Inc., Charlotte, NC.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leakage. (mode 1)
EE 12655–N	DOT–E 12655	JCI Jones Chemicals, Milford, VA.	49 CFR 173.34	Request for an emergency exemption to transport a leaking cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12659–N	DOT–E 12659	Atofina Chemicals, Inc., Philadelphia, PA.	49 CFR 173.227	Request for an emergency exemption for the one-time shipment of ally methacylate in non-DOT
EE 12660–N	DOT–E 12660	BP Chemicals, Inc., Naperville, IL.	49 CFR 172.301(a), 172.322(a)(2), 172.400(a), 172.504(a).	To apply for one time transportation of two freight containers from Terminal Island, Los Angeles to Long Beach to have the drums properly marked and labelled. (mode 1)
EE 12662–N	DOT–E 12662	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172.302(c).	Request for a one-time shipment of regulated medical waste in an open-top bulk container. (mode 1)
EE 12662–M	DOT–E 12662	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172.302(c).	To authorize an additional bulk container for shipment of regulated medical waste. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12663–N	DOT–E 12663	Skolnik Industries, Chicago, IL.	49 CFR 172.203(a), 172.301(c), 178.3(c), 178.503(a).	Request for an emergency exemption to use steel drums that are not properly marked with the first line marks indicating the original performance of the drum and an indication of the nominal thickness of the metal used in fabrication. (modes 1, 2, 3, 4)
EE 12664–N	DOT–E 12664	Myers Container Corporation, Huntington Park, CA.	49 CFR 172.203, 172.301, 178.3(c), 178.503(a).	Request for an emergency exemption to manufacture, mark and sell, UN drums for the transportation of certain materials. The drums do not conform to the marking provisions in part 178. (modes 1, 2, 3, 4)
EE 12665–N	DOT–E 12665	Packaging Specialties, Inc., Medina, OH.	49 CFR 172.203(a), 172.301(c), 178.3(c), 178.503(a).	Request for an emergency exemption to manufacture, mark and sale UN drums that do not conform to the marking provisions of Part 178. (modes 1, 2, 3, 4)
EE 12666–N	DOT–E 12666	Gourmet Gas Plus, Boca Raton, FL.	49 CFR 172.400(a)(1)	Request for an emergency exemption to transport a bulk container, filled with compressed gas, that has the incorrect subsidiary hazard label. (mode 1)
EE 12667–N	DOT–E 12667	JCI Jones Chemicals, Inc., Jacksonville, FL.	49 CFR 173.34(d)	Request for an emergency exemption for the one time transportation of a leaking ton cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12673–N	DOT–E 12673	Coors Brewing Company, Golden, CO.	49 CFR 172.203, 172.301(c), 179.6, 180.513(a).	Request for an emergency exemption to authorize the use of certain DOT spec tank cars which have welded repairs that are not as specified in the HMR. (mode 2)
EE 12676–N	DOT–E 12676	Environmental Management, Inc., Guthrie, OK.	49 CFR 173.201, 173.202, 173,203, 173.302, 173.304, 173.309, 173.34.	To authorize the transportation in commerce of non-DOT specification full open head, steel salvage cylinder for use in transporting damaged or leaking cylinders containing certain hazardous materials. (modes 1, 3)
EE 12678–N	DOT–E 12678	Cominco American Inc., Spokane, WA.	49 CFR 173.315	Request for a one-time emergency exemption to remove one sulphur dioxide trailer from its present location to another location where it can be purged and prepared to be taken out of service. (mode 1)
EE 12681–N	DOT–E 12681	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for a one-time exemption to transport a leaking tank that is fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12683–N	DOT–E 12683	JCI Jones Chemicals, Inc., Beech Grove, IN.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for a one-time exemption to transport a leaking tank car tank that is fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12684–N	DOT–E 12684	JCI Jones Chemicals Inc., Caledonia, NY.	49 CFR 179.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for a one-time exemption to transport a leaking tank car tank that is fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12687–N	DOT–E 12687	JCI Jones Chemical Co., Merrimack, NH.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for a one-time exemption to transport a leaking tank car tank that is fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12688–N	DOT–E 12688	Brenntag West, Inc., Santa Fe Springs, CA.	49 CFR 172.203(a), 172.203(a), 173.158(b)(1)(i).	Request for an emergency exemption for the use of certain drums that do not meet the minimum thickness requirements for use in the transportation of nitric acid. (mode 1)
EE 12689–N	DOT–E 12689	JCI Jones Chemicals, Jacksonville, FL.	49 CFR 173.34	Request for an emergency exemption to transport a leaking ton container that has been equipped with an emergency A kit to prevent leaking during transport. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12693–N	DOT–E 12693	Community Blood Centers of South Florida, Lauderhill, FL.	49 CFR 173.416(a)	Request for an emergency exemption to relocate a blood product irradiator that has not been approved by the Nuclear Regulatory Commission as required by 49 CFR 173.416(a). (mode 1)
EE 12697–N	DOT–E 12697	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.34(d)	Request for emergency exemption to transport a leaking ton container that has been equipped with an emergency A kit to prevent leakage. (mode 1)
EE 12699–N	DOT–E 12699	Catlina Cylinders, Hampton, VA.	49 CFR 178.35(f), 178.65(i)	To allow marking of DOT 39 cylinders on bottom. (mode 1)
EE 12700–N	DOT–E 12700	Kuehne Chemical Co., South Kearny, NJ.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking cylinder that has been equipped with an A kit to prevent leakage. (mode 1)
EE 12704–N	DOT–E 12704	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking cylinder that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12705–N	DOT–E 12705	Brenntag Mid-South, Inc., Henderson, KY.	49 CFR 172.203(a), 173.158(b)(1)(i)	To allow drums with thickness <1.5 mm for transportation of nitric acid (mode 1)
EE 12707-–N	DOT–E 12707	DPC Enterprises, Houston, TX.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12709–N	DOT–E 12709	DPC Industries, Inc., Houston, TX.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12710–N	DOT–E 12710	JCI Jones Chemicals, Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to permit the transportation of leaking ton cylinder that has been fitted with an emergency A kit to prevent leakage during transportation. (mode 1)
EE 12711–N	DOT–E 12711	Crowley Marine Services, Kotzebue, AK.	49 CFR 172.101 column 9B	To transport 3,000 gallons of propane from Nome to Kotzebue, Alaska for residents in DOT spec 51 portable tanks on board cargo aircrafts. (mode 4)
EE 12711–M	DOT–E 12711	Crowley Maritime Services, Kotzebue, AK.	49 CFR 172.101 column 9B	To extend emergency exemption for 60 days to complete shipment of propane in DOT spec 51 portable tanks by cargo air. (mode 4)
EE 12712–N	DOT–E 12712	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172.302(c).	Request for an emergency exemption to transport co-mingled requested and solid med. waste in roll-off containers. (mode 1)
EE 12713–N	DOT–E 12713	Delta Air Lines, Inc., Atlanta, GA.	49 CFR 172.301(c), 173.219(b)(1)	To authorize the transportation of life saving appliances (emergency exit slides) containing a compressed gas cylinder that is filled in excess of its marked service pressure. (mode 1)
EE 12713–M	DOT–E 12713	Delta Air Lines, Atlanta, GA.	49 CFR 172.301(c), 173.219(b)(1)	To extend emergency exemption to authorize shipment of emergency exit slides containing a compressed gas cylinder that is filled in excess of its marked service pressure. (mode 1)
EE 12723–N	DOT–E 12723	Air Cruisers Company, Belmar, NJ.	49 CFR 173.219(b)(1), 173.302(a), 173.302(a).	To authorize the transportation in commerce of life saving appliances containing a compressed gas cylinder that is filled in excess of its marked service pressure. (mode 1)
EE 12723–M	DOT–E 12723	Air Cruisers Company, Belmar, NJ.	49 CFR 173.219(b)(1), 173.302(a), 173.302(a).	To extend emergency exemption to authorize the transportation of life saving appliances containing a compressed gas cylinder that is filled in excess of its marked service pressure. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12725–N	DOT–E 12725	Dow Chemical Company, Midland, MI.	49 CFR 173.32c(j)	Request for an emergency exemption to authorize the movement of an IMO 101 portable tank loaded with resin solution. The tank does not conform with the filling density requirement of the HMR. (mode 2)
EE 12732–N	DOT–E 12732	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12733–N	DOT–E 12733	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency B kit to prevent leakage during transportation. (mode 1)
EE 12734–N	DOT–E 12734	DuPont She Excellence Center, Wilmingtonn, DE.	49 CFR 173.24(b)	Request for an emergency exemption to transport a leaking tank car tank that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12735–N	DOT–E 12735	Collbri Group, Providence, RI.	49 CFR 172.102(c)(5), 172.301(c), 172.406(a)(1)(ii).	To allow deviations from marking and labelling requirements. (mode 1)
EE 12736–N	DOT–E 12736	JCI Jones Chemicals Inc., Torrance, CA.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12737–N	DOT–E 12737	DXI Industries Inc., Houston, TX.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12738–N	DOT–E 12738	Harcros Chemicals, Kansas City, KS.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12739–N	DOT–E 12738	Alexander Chemical, LaPorte, IN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12740–N	DOT–E 12740	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172,302(c).	Request for an emergency exemption to permit the transport of co-mingled regulated and solid waste in bulk containers. (mode 1)
EE 12742–N	DOT–E 12742	JCI Jones Chemicals, Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A-kit to prevent leaking during transportation. (mode 1)
EE 12754–N	DOT–E 12754	J.J. Keller & Associates, Inc., Neenah, WI.	49 CFR 172.200–172.205	Request for an emergency exemption to offer packages of a non-hazardous material, represented as a hazardous material, for purposes of conducting compliance testing of American Airlines' hazmat handling procedures. (modes 1, 4, 5)
EE 12763–N	DOT–E 12763	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to authorize the transportation in commerce of a leaking ton container fitted with an A kit to prevent leakage. (mode 1)
EE 12764–N	DOT–E 12764	Our Lady of Mercy Medical Center, Bronx, NY.	49 CFR 173.416(a)	Request for an emergency exemption to transport a blood product irradiator in a non-DOT spec. container. (mode 1)
EE 12765–N	DOT–E 12765	Alexander Chemical Corporation, LaPorte, IN.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency B kit. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12766–N	DOT–E 12766	JCI Jones Chemicals Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit. (mode 1)
EE 12767–N	DOT–E 12767	Harcros Chemicals, Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12769–N	DOT–E 12769	Harcros Chemicals Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12771–N	DOT–E 12771	Cytec Industries, Inc., West Paterson, NJ.	49 CFR 173.34(d)	To continue the use of DOT specification cylinders without pressure devices for liquefied gas, toxic, n.o.s. (mode 1)
EE 12773–N	DOT–E 12773	Vopak Bunola, Bunola, PA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12774–N	DOT–E 12774	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12, 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking tank car tank that has been fitted with an emergency B kit to prevent leakage during transportation. (mode 1)
EE 12775–N	DOT–E 12775	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking tank car tank that has been fitted with an emergency B kit to prevent leakage during transportation. (mode 1)
EE 12777–N	DOT–E 12777	JCI Jones Chemicals, Inc., Jacksonville, FL.	49 CFR 173.34(d)	Request for an emergency exemption to permit the transportation of a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12787–N	DOT–E 12787	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption for a leaking ton container that has been fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12788–N	DOT–E 12788	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	For one time transportation of leaking container, applied Chlorine Institute B-kit, from Mobile, AL to Harcros facility in St. Gabriel, LA. (mode 1)
EE 12793–N	DOT–E 12793	Harcros Chemicals Inc., Kansas City, KS.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption for a leaking ton container that has been fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12796–N	DOT–E 12796	Monson Companies, South Portland, ME.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12803–N	DOT–E 12803	Hawkins, Inc., Minneapolis, MN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leakage. (mode 1)
EE 12804–N	DOT–E 12804	Air Products and Chemicals, Allentown, PA.	49 CFR 173.202	Request for an emergency exemption to transport a leaking UN1A1 drum containing silicn tetrachloride. (mode 1)
EE 12806–N	DOT–E 12806	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking tank car tank that has been fitted with a B kit to prevent leaking during transportation. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12807–N	DOT–E 12807	Clariant Corporation, Somerville, NJ.	49 CFR 178.813	Request for an emergency exemption to transport a class 3 material in an intermediate bulk container (IBC) that has not been leak-proof tested within the required amount of time. (mode 1)
EE 12807–M	DOT–E 12807	Clariant Corporation, Charlotte, NC.	49 CFR 178.813	Request for an emergency exemption to transport a class 3 material in an intermediate bulk container (IBC) that has not been leak-proof tested within the required amount of time. (mode 1)
EE 12808–N	DOT–E 12808	Linco-Electromatic Measurement, Inc., Kilgore, TX.	49 CFR 173.120, 173.304, 173.315	Request for an emergency exemption to transport hazardous materials in a non-DOT specification container. (mode 1)
EE 12809–N	DOT–E 12809	Harcros Chemicals Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12810–N	DOT–E 12810	Hawkins, Inc., Minneapolis, MN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12811–N	DOT–E 12811	JCI Jones Chemicals, Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12813–N	DOT–E 12813	Harcros Chemicals Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12814–N	DOT–E 12814	Kuehne Chemical Company Inc., South Kearney, NJ.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	For one-way transportation of leaking ICC 106A500X ton container containing chlorine, applied Chlorine Institute B-kit, from Freemansburg, PA to South Kearney, NJ. (mode 1)
EE 12817–N	DOT–E 12817	Phibro-Tech, Inc., Fort Lee, NJ.	49 CFR 172.301(c), 172.302(c), 173.28(b)(2).	To authorize the reuse of specification UN 1H1 non-removable head plastic drums, containing Class 8 materials, to EPA licensed treatment, storage or disposal facilities. (mode 1)
EE 12818–N	DOT–E 12818	HRD Aero Systems, Inc., Valencia, CA.	49 CFR 173.302, 173.307(i)	To authorize the transportation in commerce of certain non-DOT specification cylinders used as components (fire extinguishers) in aircraft of foreign manufacture. (modes 1, 2, 3, 4, 5)
EE 12822–N	DOT–E 12822	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12828–N	DOT–E 12828	Harcros Chemicals, Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1)
EE 12829–N	DOT–E 12829	State of New York—Dept. of the Environment, New York, NY.	49 CFR Parts 171 through 180	Request for an emergency exemption that authorizes the transportation of hazardous debris and infectious substances as a result of the terrorist attack on the World Trade Center. (mode 1)
EE 12830–N	DOT–E 12830	DPC Enterprises, Inc., Houston, TX.	49 CFR 173.34(d)	Request for an emergency exemption to authorize the transportation of a ton container of chlorine that has a leak and has been fitted with an A kit to prevent leaking during transportation. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12831–N	DOT–E 12831	Arlington County, VA, Arlington, VA.	49 CFR Parts 171 through 180	Request for an emergency exemption to transport hazardous materials from the Pentagon in Arlington, VA as a result of the terrorist attack. (mode 1)
EE 12832–N	DOT–E 12832	Federal Emergency Management Agency, Washington, DC.	49 CFR Parts 100–180	Request for an emergency exemption to ship emergency items in response to the terrorist attacks on Washington and New York. (modes 1, 5)
EE 12834–N	DOT–E 12834	Harcros Chemicals, Inc., Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12835–N	DOT–E 12835	Alexander Chemical, LaPorte, IN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12837–N	DOT–E 12837	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12847–N	DOT–E 12847	JCI Jones Chemicals, Jacksonville, FL.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12849–N	DOT–E 12849	JCI Jones Chemicals, Inc., Milford, VA.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12850–N	DOT–E 12850	JCI Jones Chemical Company, Milford, VA.	49 CFR 173.24(b), 197.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking tank car tank containing chlorine, that has been fitted with an B kit to prevent leaking during transportation. (mode 1)
EE 12851–N	DOT–E 12851	JCI Jones Chemicals, Inc., Beech Grove, IN.	49 CFR 173.24(b), 197.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption for one-way transportation of a leaking container, containing sulfur dioxide, fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12852–N	DOT–E 12853	Alexander Chemical, Laporte, IN.	49 CFR 173.24(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12854–N	DOT–E 12854	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leaking during transportation. (mode 1)
EE 12855–N	DOT–E 12855	Krafton Polymers U.S. LLC, Belpre, OH.	49 CFR 173.102 Spec Prov IB6, IP2, IP4, T3, TP1, 173.240, 173.242.	Request for an emergency exemption to transport a flammable solid, organic (polymer) in 2 steel heat exchangers from Belpre, OH to Houston, TX for cleaning and decontamination. (mode 1)
EE 12856–N	DOT–E 12856	DPC Enterprises, Houston, TX.	49 CFR 173.34(d)	For one-time transportation of leaking container containing chlorine fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12857–N	DOT–E 12857	Harcros Chemicals, Kansas City, KS.	49 CFR 173.34(d)	Request for an emergency exemption to transport a leaking ton cylinder, containing chlorine, that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12861–N	DOT–E 12861	Micro-Med Industries, Inc., Jacksonville, FL.	49 CFR 173.196	Request for an emergency exemption to transport an infectious substance that is not packaged in compliance with the HMR. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12863–N	DOT–E 12863	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300√14.	Request for an emergency exemption to transport a leaking container containing S02, fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12864–N	DOT–E 12864	U.S. Environmental Protection Agency, Philadelphia, PA.	49 CFR 172.101 in that bulk packgings are not authorized.	Request for an emergency exemption to authorize the transportation of solid materials contaminated with or suspected to be contaminated with anthrax bacteria or spores in non-DOT specification bulk size outer packaging. (mode 1)
EE 12866–N	DOT–E 12866	Delta Airlines, Atlanta, GA.	49 CFR 172.301(c), 173.219(b)(1), 173.302(a), 175.3.	Request for an emergency exemption to continue use of cylinders containing a Division 2.2 material that have inadvertently been marked with a steel stamp other than low stress stamp required by HMR (modes 4, 5)
EE 12870–N	DOT–E 12870	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a tank car tank, containing chlorine, that has been fitted with an emergency B kit to prevent leaking during transportation. (mode 1)
EE 12875–N	DOT–E 12875	T.J. Egan Waste Systems, Bloomfield, NJ.	49 CFR 172.101 column 8(c), 172.302(c).	Request for an emergency exemption to transport regulated medical waste in non-spec/bulk packaging. (mode 1)
EE 12881–N	DOT–E 12881	U.S. Environmental Protection Agency, Philadelphia, PA.	49 CFR 173.197	Request for an emergency exemption to transport items contaminated with infectious substances (anthrax) in bulk packagings. (mode 1)
EE 12882–N	DOT–E 12882	Eagle-Picher, Joplin, MO.	49 CFR 173,3, 173.302(a), 173.34(d)	Request for an emergency exemption to transport batteries in non-DOT spec. packagings. (modes 1, 4)
EE 12883–N	DOT–E 12883	JCI Jones Chemicals, Warwick, NY.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 12884–N	DOT–E 12884	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.34(d)	Request for emergency exemption to transport a leaking cylinder that has been fitted with an A kit to prevent leakage during transportation. (mode 1)
EE 12885–N	DOT–E 12885	U.S. Department of Agriculture, Missoula, MT.	49 CFR 173.202(c)	Request for an emergency exemption to transport gasoline in a non DOT specification steel drum with a pump installed, mounted in a helitorch frame with residual amounts of fuel, by motor vehicle. (mode 1)
EE 12886–N	DOT–E 12886	The Society of the Plastics Industry, Inc., Washington, DC.	49 CFR 172.301(c), 172.402	Request to transport organic peroxides that also meet the definition of class 3, Division 4.1, or Class 8, packing group III without subsidiary hazard labels. (modes 1, 2, 3, 4, 5)
EE 12887–N	DOT–E 12887	DPC Industries, Inc., Houston, TX.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking container that has been fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12888–N	DOT–E 12888	JCI Jones Chemicals Inc., Caledonia, NY.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a ton container that has been fitted with a B kit to prevent leakage during transportation. (mode 1)
EE 12889–N	DOT–E 12889	U.S. Postal Service, New York, NY.	49 CFR 172.101 column 8(c)	Request for an emergency exemption to authorize the transportation for disposal of solid materials contaminated with or suspected to be contaminated with anthrax bacteria or spores, in non-DOT specification containers. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12890–N	DOT–E 12890	National Broadcasting Company, Inc., Burbank, CA.	49 CFR 172.101, Table Column 8(c)	Emergency request to transport small flexible non-sharp objects including paper products and PPE that have been contaminated with anthrax in 48 or 53 foot trailers. (mode 1)
EE 12891–N	DOT–E 12891	National Broadcasting Company, Inc., Burbank, CA.	49 CFR 172.101, Table Column 8(c)	Emergency request to transport anthrax contaminated objects such as office furniture and computers in 48 or 53 foot trailers. (mode 1)
EE 12895–N	DOT–E 12895	Allied Universal Corp., Miami, FL.	49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14.	Request for an emergency exemption to transport a leaking-tank car tank that has been fitted with a B kit to prevent leaking during transportation. (mode 1)

DENIALS

7032–X	Request by Polaroid Corporation Norwood, MA to authorize outside packages exceeding the 100 pounds limitation to be carried aboard cargo aircraft only for shipment of a certain Class 8 solid material denied May 9, 2001.
9831–X	Request by Western Zinc Corporation Los Angeles, CA to authorize the manufacture, mark and sale of vacuum insulated non-DOT specification portable tanks for transportation of helium, refrigerated liquid denied April 2, 2001.
11207–X	Request by Texas Eastern Transmission Corporation Houston, TX to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Trunkline Gas Company Houston, TX to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Panhandle Eastern Pipe Line Company Houston, TX to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–P	Request by Algonquin Energy, Inc. Houston, TX to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Rockland Electric Company Saddle River, NJ to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Pike Co. Light and Power Co. Milford, PA to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by Orange and Rockland Utilities, Inc. Middletown, NY to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11207–X	Request by OGE Energy Corp dba Oklahoma Gas & Electric Serv. Oklahoma City, OK to authorize the transportation of certain Class 3 liquids in packaging with a capacity not greater than 5 gallons on service vehicles denied March 9, 2001.
11252–M	Request by CCL Container Don Mills, Ontario, CN to modify the exemption to authorize additional relief on the testing requirements of the non-DOT specification metal aerosol containers denied April 2, 2001.
11296–M	Request by Heritage Transport, LLC Indianapolis, IN to modify the exemption to authorize additional UN standard packaging at the Packing Group II performance level for use as overpacks for waste aerosol cans denied February 16, 2001.
11351–X	Request by City of Houston Houston, TX to authorize tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring is maintained denied March 20, 2001.
11516–M	Request by CRC Industries, Inc. Warminster, PA to modify the exemption to authorize the transportation of 1,1-Difluoroethane, R152A, reclassed as a Consumer Commodity, in certain DOT Specification 2Q containers; relief from the marking requirements for this material denied August 15, 2001.
11761–P	Request by Elf Atochem North America, Inc. Philadelphia, PA to authorize the transportation in commerce of Class 8 material in rail cars equipped with 165 psig and baffles with alternative rupture disc inspection procedure denied January 21, 2001.
11761–M	Request by Brenntag West, Inc. Santa Fe Springs, CA to modify the exemption to authorize relief from the inspection requirements of the underside rupture disk of the DOT and AAR Specification tank car tanks and the transportation of all Class 8 materials denied December 31, 2001.
12181–N	Request by Aristech Pittsburgh, PA to authorize rail cars to remain attached to connectors without the physical presence of an unloader denied May 24, 2001.
12307–N	Request by Kern County Dept. of Weights & Measures Bakersfield, CA to authorize the transportation of specially designed equipment used for meter proving purposes and transportation of various Class 3 petroleum products to offloading sites denied February 6, 2001.
12433–N	Request by The Lighter Company, Inc. Miami, FL to authorize the transportation and reclassification of lighters in limited quantities to be transported as ORM–D denied February 8, 2001.
12455–N	Request by United States Marine Safety Association Philadelphia, PA to authorize an alternative testing period for 3A, 3AA, and 3AL compressed gas cylinders installed in marine inflatable liferafts undergoing required annual service at a United States Coast Guard approved inflatable liferaft service facility denied February 5, 2001.
12518–N	Request by Air Products & Chemicals, Inc. Allentown, PA to authorize an alternative retesting method of DOT3A, 3AA and 3AL and foreign cylinders for use in transporting liquefied or nonliquefied compressed gases or mixtures denied May 4, 2001.
12535–N	Request by United States Department of Commerce Gaithersburg, MD to authorize the transportation in commerce of unirradiated fuel in carbon steel structures with an alternative distance separation within the transport vehicle denied March 23, 2001.

DENIALS—Continued

12535–P	Request by BWX Technologies Lynchburg, VA to authorize the transportation in commerce of unirradiated fuel in carbon steel structures to be transported with alternative distance separation within the transport vehicle denied March 23, 2001.
12566–N	Request by General Atomics San Diego, CA to authorize the transportation in commerce of specially designed device (cartridge) containing limited quantities of various hazardous materials classed in Division 2.1 and 4.1 denied September 12, 2001.
12591–N	Request by SGL Carbon, LLC Morgantown, NC to authorize rail cars to remain connected while standing without the physical presence of an unloader denied November 13, 2001.
12611–N	Request by Hodgdon Powder Co., Inc. Shawnee Mission, KS to authorize the transportation in commerce of smokeless powder for shipments of small arms in quantities that exceed the prescribed limit denied July 11, 2001.
12646–N	Request by Consani Engineering Elsie River, SA to authorize the transportation in commerce of IM101 and IM102 portable tanks for use in transporting certain classes of hazardous materials denied September 17, 2001.
12651–N	Request by I.W.I. Medical Waste Management, Inc. New Smyrna Beach, FL to authorize the transportation in commerce of solid regulated medical waste in non-DOT specification packaging consisting of a bulk outer packaging and a non-bulk inner packaging denied June 4, 2001.
12656–N	Request by Piper Impact, Inc. New Albany, MS to authorize the manufacture, marking, sale and use of DOT specification 3AL cylinders except that total weight and volumetric capacity records for each individual cylinder produced are not required in the inspector's report denied July 6, 2001.
12658–N	Request by Montgomery Manufacturing Company Kennedale, TX to authorize the transportation in commerce of certain hazardous materials with alternative information on shipping papers denied June 4, 2001.
12661–N	Request by United Parcel Service, Inc. (UPS) Atlanta, GA to authorize the transportation in commerce of certain hazardous materials that are not properly packaged, marked, labeled or classed in accordance with the 49 CFR denied June 4, 2001.
12672–N	Request by Safety-Kleen Corp. Columbia, SC to authorize the transportation in commerce of 30 gallon open-head plastic drums without performing leakproofness test prior to reuse denied July 23, 2001.
12672–N	Request by Safety-Kleen Corp. Columbia, SC to authorize the transportation in commerce of 30 gallon open-head plastic drums without performing leakproofness test prior to reuse denied December 11, 2001.
12692–N	Request by Radiopharmaceutical Shippers & Carriers Conference Washington, DC to authorized the use of new shipping names in the new version of ICAO Technical Instructions ahead of DOT rule-making denied July 31, 2001.
12703–N	Request by Aeronex, Inc. San Diego, CA to authorize the manufacture, mark, sale and use of non-DOT specification pressure vessels for use in transporting self heating solid, inorganic, n.o.s. material denied July 2, 2001.
12721–N	Request by General Electric Engine Services Cincinnati, OH to authorize the manufacture, mark, sale and use of non-DOT specification pressure vessels for use in transporting self heating solid, inorganic, n.o.s. material denied June 19, 2001.
12747–N	Request by Brenntag Southeast Inc. Durham, NC to authorize the transportation in commerce of oxidizing solid, n.o.s. in flexible intermediate bulk containers (IBC) shipped in accordance with IMDG regulations without required markings or placardings transported inside box trailers with required placarding denied November 6, 2001.
12752–N	Request by TISEC Inc. Madeira Beach, FL to authorize the transportation in commerce of certain cylinders which have been alternatively ultrasonically retested for use in transporting Division 2.1, 2.2 and 2.3 materials denied August 22, 2001.
12770–N	Request by Empire Airlines, Inc. Coeur d'Alene, ID to authorize an alternative loading method of hazardous materials on cargo aircraft denied September 11, 2001.
12789–N	Request by Scholle Corp. Acid Division Northlake, IL to authorize an alternative loading method of hazardous materials on cargo aircraft denied August 29, 2001.
12816–N	Request by Department of Defense (DOD) Alexandria, VA to authorize the transportation in commerce of radioactive material, Class 7 in specially designed packaging denied December 27, 2001.
12833–N	Request by CIS–US, Inc. Bedford, MA to authorize the transportation in commerce of radioactive material, Class 7 in specially designed packaging denied October 4, 2001.
12836–N	Request by Occidential Chemical Corporation Dallas, TX to authorize the transportation in commerce of radioactive material, Class 7 in specially designed packaging denied October 17, 2001.

[FR Doc. 02–5352 Filed 3–11–02; 8:45 am]

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Federal Register

Tuesday,
March 12, 2002

Part III

Department of Education

Intent To Repay to the Black Hills Special Services Cooperative Funds Recovered as a Result of a Final Audit Determination; Notice

DEPARTMENT OF EDUCATION

Intent To Repay to the Black Hills Special Services Cooperative Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the Secretary of Education (Secretary) intends to repay to the Black Hills Special Services Cooperative (Black Hills), both directly and through the South Dakota Department of Education and Cultural Affairs (DECA), under a grantback arrangement, an amount which represents nearly 75 percent of the amount of funds recovered by the Department of Education (Department) as a result of final audit determinations for findings covering fiscal years 1996–1999. This notice describes Black Hills' plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: We must receive your comments on or before April 11, 2002.

ADDRESSES: Address all comments about the proposed grantback to Cheryl Hannah, U.S. Department of Education, 400 Maryland Avenue SW., room 4W211, Washington, DC, 20202–4300. If you prefer to send your comments through the internet, use the following address: *Cheryl.Hannah@ed.gov*

FOR FURTHER INFORMATION CONTACT: Cheryl Hannah. Telephone: (202) 401–1816.

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 the document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $106,088 from Black Hills as a result of the resolution of audit findings reached in an April 18, 2000, Agreement (the Agreement) between Black Hills and the Department covering federal fiscal years ending September 30, 1996, 1997, 1998 and 1999 (Audit Control Numbers 08–96–78277, 08–97–88143, 08–98–98122, 08–99–08185). Staff from the Department, Black Hills, the South Dakota Department of Legislative Audit, the South Dakota Department of Education and Cultural Affairs, and the South Dakota Department of Human Services engaged in the cooperative audit resolution of the findings contained in the audits referenced above under the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI) in an effort to address the root causes of the problems and to avoid recurrence of these findings in the future. Cited in the audit reports and relevant to this grantback request are grants awarded under the Technology Innovation Challenge Grant Program (CFDA 84.303), the Assistive Technology Act—State Grants for Assistive Technology Program (CFDA 84.224), and the State Systems for Transition Services for Youth with Disabilities Program (CFDA 84.158A).

Technology Innovation Challenge Grant

Claims against Black Hills included in the Agreement involved the ''Technology in Education Challenge Grant for Rural Education'' (TECRAM) (CFDA 84.303), a program to integrate technology with the curriculum in six community-based systemic reform efforts across the State of South Dakota. The claims involved rental costs under related party leases that exceeded the amounts allowed per OMB Circular A–87, and associated indirect costs.

Assistive Technology Act—State Grants for Assistive Technology Program

Included within the Agreement are claims against Black Hills under the Assistive Technology Act—State Grants for Assistive Technology Program (CFDA 84.224), which is designed to address issues raised by States, individuals, Protection and Advocacy providers, and other relevant organizations; collect data that will provide information about assistive technology devices and services that can be used for determining policy; and provide information on increased access to assistive technology devices, assistive technology services and other disability-related resources. The claims involved disallowed rental costs and associated indirect costs. Specifically, rental costs were charged to grants based on fair market value, which exceeded the amounts allowed due to limitations for less-than-arms-length transactions, and rental costs under related party leases exceeded the amounts allowed per Office of Management and Budget (OMB) Circular A–87.

State Systems for Transition Services for Youth With Disabilities

Also included within the Agreement were claims against Black Hills for a State Systems for Transition Services for Youth with Disabilities Grant (CFDA 84.158A), which is designed to develop, implement, and improve systems to provide transition services for youth with disabilities from ages 14 through the age they exit school. The claims involved unsupported general management costs that were charged as direct costs to a Federal grant.

Based on the Agreement, Black Hills submitted a payment of $106,088 to the Department in September 2000 in full settlement of the Department's claims reached in the Agreement.

On January 8, 2000, Black Hills requested a grantback of $79,318, which represents nearly 75 percent of these recovered funds.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that, whenever the Secretary has recovered funds under an applicable program because the recipient made an expenditure of funds that was not allowable, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the grantee affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback requested by Black Hills if the Secretary determines that—

(a) The practices and procedures of Black Hills that resulted in the findings have been corrected, and Black Hills is in compliance with the requirements of the applicable programs;

(b) Black Hills has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by misexpenditures that resulted in the recovery; and

(c) Use of funds to be awarded under the grantback arrangement in accordance with Black Hills' plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, Black Hills has applied for a grantback totaling $79,318, which is nearly 75 percent of the principal amount of the recovered funds and has submitted a

plan outlining the activities that will be supported by the grantback funds.

Specifically, Black Hills plans to utilize the grantback of funds recovered under the Technology Innovation Challenge Grant to pay costs associated with continued support to local district partners and the collaborative development team. These efforts were intended to assist in capturing the results and discoveries of project activities, the effects of technology integration on teaching and learning, and the creation of formats useful for replication. In addition, staff time was utilized to organize and facilitate the dissemination and training event. Although the project period for this grant has ended, a grantback award is appropriate because one underlying purpose of grants under this program is to support sustainable activities related to the innovative use of technology in education. The funds will be expended within six months of receipt.

Under the Assistive Technology Act—State Grants for Assistive Technology Program, Black Hills plans to use the grantback funds to pay costs related to expanded direct services to consumers, families, employers, and schools primarily in the northeast part of South Dakota. Additional personnel were assigned to the northeast part of the State for a six-month period to resolve a backlog of consumer referrals and requests for technical assistance and training. The funds will be expended within six months of receipt.

Under the State Systems for Transition Services for Youth with Disabilities Grant, Black Hills will use the grantback, which it will receive through DECA, to pay costs related to providing technical assistance and support in the development and implementation of transition services funds for students with disabilities aged 16 to 21 years served by local school districts in the Black Hills area. The funds will be expended within six months of receipt.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by Black Hills. Based upon that review, the Secretary has determined that the conditions under section 459(a) of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 459(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

The Secretary also concludes that this grantback award will support the provision of services to the intended beneficiaries of the programs under which these grant awards were originally made. These beneficiaries may not have received the full benefit of the services intended by these programs due to the problems that gave rise to the audit recovery described in Section A of this notice. Thus, this grantback award will advance and support the policy goals of the statutory provisions that authorized the initial grant awards.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary publish in the **Federal Register** a notice of intent to do so and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Black Hills Special Services Cooperative, directly and through DECA, under a grantback arrangement. The grantback award will be in the amount of $79,318, which is nearly 75 percent—the maximum percentage authorized by statute—of the principal amount recovered as a result of the Agreement.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

Black Hills agrees to comply with the following terms and conditions under which payments under a grantback arrangement will be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

(2) The plan that Black Hills submitted and any amendments to the plan that are approved in advance by the Secretary; and

(3) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by September 30, 2003, in accordance with section 459(c) of GEPA.

(c) Black Hills must, no later than December 31, 2003, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and any amendments that have been approved in advance by the Secretary; and

(2) Describes the results and effectiveness of the project for which the funds were spent.

(d) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(e) Before funds will be repaid pursuant to this notice, Black Hills must repay to the Department any debts that become overdue or enter into a repayment agreement for those debts.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Numbers: 84.303, Technology Innovation Challenge Grant; 84.224, Assistive Technology Act Technical Assistance Program; 84.158A, State Systems for Transition Services for Youth with Disabilities.)

Dated: March 6, 2002.

Mark Carney,

Deputy Chief Financial Officer.

Grover J. Whitehurst,

Assistant Secretary, Office of Educational Research and Improvement.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5919 Filed 3–11–02; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Tuesday,
March 12, 2002

Part III

Department of Education

Intent To Repay to the Black Hills Special Services Cooperative Funds Recovered as a Result of a Final Audit Determination; Notice

DEPARTMENT OF EDUCATION

Intent To Repay to the Black Hills Special Services Cooperative Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the Secretary of Education (Secretary) intends to repay to the Black Hills Special Services Cooperative (Black Hills), both directly and through the South Dakota Department of Education and Cultural Affairs (DECA), under a grantback arrangement, an amount which represents nearly 75 percent of the amount of funds recovered by the Department of Education (Department) as a result of final audit determinations for findings covering fiscal years 1996–1999. This notice describes Black Hills' plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: We must receive your comments on or before April 11, 2002.

ADDRESSES: Address all comments about the proposed grantback to Cheryl Hannah, U.S. Department of Education, 400 Maryland Avenue SW., room 4W211, Washington, DC, 20202–4300. If you prefer to send your comments through the internet, use the following address: *Cheryl.Hannah@ed.gov*

FOR FURTHER INFORMATION CONTACT: Cheryl Hannah. Telephone: (202) 401–1816.

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 the document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $106,088 from Black Hills as a result of the resolution of audit findings reached in an April 18, 2000, Agreement (the Agreement) between Black Hills and the Department covering federal fiscal years ending September 30, 1996, 1997, 1998 and 1999 (Audit Control Numbers 08–96–78277, 08–97–88143, 08–98–98122, 08–99–08185). Staff from the Department, Black Hills, the South Dakota Department of Legislative Audit, the South Dakota Department of Education and Cultural Affairs, and the South Dakota Department of Human Services engaged in the cooperative audit resolution of the findings contained in the audits referenced above under the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI) in an effort to address the root causes of the problems and to avoid recurrence of these findings in the future. Cited in the audit reports and relevant to this grantback request are grants awarded under the Technology Innovation Challenge Grant Program (CFDA 84.303), the Assistive Technology Act—State Grants for Assistive Technology Program (CFDA 84.224), and the State Systems for Transition Services for Youth with Disabilities Program (CFDA 84.158A).

Technology Innovation Challenge Grant

Claims against Black Hills included in the Agreement involved the ''Technology in Education Challenge Grant for Rural Education'' (TECRAM) (CFDA 84.303), a program to integrate technology with the curriculum in six community-based systemic reform efforts across the State of South Dakota. The claims involved rental costs under related party leases that exceeded the amounts allowed per OMB Circular A–87, and associated indirect costs.

Assistive Technology Act—State Grants for Assistive Technology Program

Included within the Agreement are claims against Black Hills under the Assistive Technology Act—State Grants for Assistive Technology Program (CFDA 84.224), which is designed to address issues raised by States, individuals, Protection and Advocacy providers, and other relevant organizations; collect data that will provide information about assistive technology devices and services that can be used for determining policy; and provide information on increased access to assistive technology devices, assistive technology services and other disability-related resources. The claims involved disallowed rental costs and associated indirect costs. Specifically, rental costs were charged to grants based on fair market value, which exceeded the amounts allowed due to limitations for less-than-arms-length transactions, and rental costs under related party leases exceeded the amounts allowed per Office of Management and Budget (OMB) Circular A–87.

State Systems for Transition Services for Youth With Disabilities

Also included within the Agreement were claims against Black Hills for a State Systems for Transition Services for Youth with Disabilities Grant (CFDA 84.158A), which is designed to develop, implement, and improve systems to provide transition services for youth with disabilities from ages 14 through the age they exit school. The claims involved unsupported general management costs that were charged as direct costs to a Federal grant.

Based on the Agreement, Black Hills submitted a payment of $106,088 to the Department in September 2000 in full settlement of the Department's claims reached in the Agreement.

On January 8, 2000, Black Hills requested a grantback of $79,318, which represents nearly 75 percent of these recovered funds.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that, whenever the Secretary has recovered funds under an applicable program because the recipient made an expenditure of funds that was not allowable, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the grantee affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback requested by Black Hills if the Secretary determines that—

(a) The practices and procedures of Black Hills that resulted in the findings have been corrected, and Black Hills is in compliance with the requirements of the applicable programs;

(b) Black Hills has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by misexpenditures that resulted in the recovery; and

(c) Use of funds to be awarded under the grantback arrangement in accordance with Black Hills' plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, Black Hills has applied for a grantback totaling $79,318, which is nearly 75 percent of the principal amount of the recovered funds and has submitted a

plan outlining the activities that will be supported by the grantback funds.

Specifically, Black Hills plans to utilize the grantback of funds recovered under the Technology Innovation Challenge Grant to pay costs associated with continued support to local district partners and the collaborative development team. These efforts were intended to assist in capturing the results and discoveries of project activities, the effects of technology integration on teaching and learning, and the creation of formats useful for replication. In addition, staff time was utilized to organize and facilitate the dissemination and training event. Although the project period for this grant has ended, a grantback award is appropriate because one underlying purpose of grants under this program is to support sustainable activities related to the innovative use of technology in education. The funds will be expended within six months of receipt.

Under the Assistive Technology Act—State Grants for Assistive Technology Program, Black Hills plans to use the grantback funds to pay costs related to expanded direct services to consumers, families, employers, and schools primarily in the northeast part of South Dakota. Additional personnel were assigned to the northeast part of the State for a six-month period to resolve a backlog of consumer referrals and requests for technical assistance and training. The funds will be expended within six months of receipt.

Under the State Systems for Transition Services for Youth with Disabilities Grant, Black Hills will use the grantback, which it will receive through DECA, to pay costs related to providing technical assistance and support in the development and implementation of transition services funds for students with disabilities aged 16 to 21 years served by local school districts in the Black Hills area. The funds will be expended within six months of receipt.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by Black Hills. Based upon that review, the Secretary has determined that the conditions under section 459(a) of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 459(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

The Secretary also concludes that this grantback award will support the provision of services to the intended beneficiaries of the programs under which these grant awards were originally made. These beneficiaries may not have received the full benefit of the services intended by these programs due to the problems that gave rise to the audit recovery described in Section A of this notice. Thus, this grantback award will advance and support the policy goals of the statutory provisions that authorized the initial grant awards.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

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F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

Black Hills agrees to comply with the following terms and conditions under which payments under a grantback arrangement will be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

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(3) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by September 30, 2003, in accordance with section 459(c) of GEPA.

(c) Black Hills must, no later than December 31, 2003, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and any amendments that have been approved in advance by the Secretary; and

(2) Describes the results and effectiveness of the project for which the funds were spent.

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(Catalog of Federal Domestic Assistance Numbers: 84.303, Technology Innovation Challenge Grant; 84.224, Assistive Technology Act Technical Assistance Program; 84.158A, State Systems for Transition Services for Youth with Disabilities.)

Dated: March 6, 2002.

Mark Carney,

Deputy Chief Financial Officer.

Grover J. Whitehurst,

Assistant Secretary, Office of Educational Research and Improvement.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5919 Filed 3–11–02; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Tuesday,
March 12, 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 priorities.

SUMMARY: We propose funding priorities under the Rehabilitation Engineering Research Center (RERC) program for up to five Rehabilitation Engineering Research Centers under the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Years 2002–2004. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before April 11, 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.*

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 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.**

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 effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: The proposed priorities support President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site:

http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.

The proposed priorities are also in concert with NIDRR's Long-Range Plan, which can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/#LRP.*

Rehabilitation Engineering Research Centers Program

We may make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. Each RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (2) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Priorities

Background

Technology plays a vital role in the lives of millions of disabled and older Americans. Advances in assistive technology and adoption of principles of universal design have significantly improved the quality of life for these individuals. Individuals with significant disabilities regularly use products developed as the result of rehabilitation and biomedical research to achieve and maintain maximum physical function, live independently, study and learn, and attain gainful employment. The range of engineering research has broadened to encompass not only assistive technology but also technology at the systems level (i.e., the built environment, information and communication technologies, transportation, etc.) and technology that interfaces between the individual and systems technology and is basic to community integration.

The NIDRR RERC program has been a major force in the development of technology to enhance independent function for individuals with disabilities. The RERCs are recognized as national centers of excellence in their respective areas and collectively represent the largest federally supported program responsible for advancing rehabilitation engineering research. For example, the RERC program was an early pioneer in the development of augmentative communication and has been at the forefront of prosthetics and orthotics research for both children and adults. A recently established RERC is responsible for designing prosthetics for land mine survivors from developing countries using indigenous materials and fabrication capabilities. The RERC on Telerehabilitation is developing methods for the efficient delivery of rehabilitation services in rural settings and to reduce the cost of long-term care. RERCs have played a major role in the development of voluntary standards that industry uses when developing wheelchairs, wheelchair restraint systems, information technologies, and the World Wide Web. The RERC on Low Vision and Blindness helped develop talking sign technologies that are currently being utilized in major cities in both the United States and Japan to help blind and visually impaired individuals navigate city streets and subways. RERCs have been a driving force in the development of universal design principles that can be applied to the built environment, information technology and telecommunications, transportation, and consumer products. The clinical use of electromyography, gait analysis, and functional electrical stimulation has been made possible due to earlier research supported by the RERC program.

Significant financial investments in basic biomedical science and technology are paying off with new opportunities to further enhance the lives of people with disabilities. Recent advances in biomaterials research, composite technologies, information and telecommunication technologies, nanotechnologies, micro-electro mechanical systems (MEMS), sensor technologies, tissue engineering, and the neurosciences also provide a wealth of opportunities for individuals with disabilities and should be incorporated into research focused on disability and rehabilitation. In recognition of this need, the President's ''New Freedom Initiative'' has identified the RERC program as one worthy of expansion and the Administration has significantly increased the RERC budget for fiscal year 2002 (New Freedom Initiative, 2001).

NIDRR intends to fund up to five new RERCs in fiscal year 2002. Applicants must select from the following priority topic areas: (a) Spinal Cord Injury; (b) Recreational Technologies and Exercise Physiology Benefiting Persons with Disabilities; (c) Applied Biomaterials; (d) Measurement and Monitoring of Functional Performance; (e) Accessible Medical Instrumentation; (f) Universal Interface Technologies; (g) Work Place Accommodations; (h) Accessible Airline Transportation; and (i) Rehabilitation Robotics and Telemanipulation Systems. NIDRR is particularly interested in applications that address topic areas (a) and (b). Applicants are allowed to submit more than one proposal as long as each proposal addresses only one RERC topic area.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RERC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals and objectives of the proposed RERC and a description of its research and development activities at a sufficient level of detail to allow potential reviewers to be selected; (3) a list of proposed RERC staff including the Center Director and key personnel; and (4) a list of individuals whose selection as a reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

The signed, original LOI must be received by NIDRR no later than four weeks after the Notice of Final Funding Priorities for this competition is published in the **Federal Register**. Submission of a LOI is a prerequisite for eligibility to submit an application. With prior approval, an email or facsimile copy of a LOI will be accepted, but the signed original must be sent to: William Peterson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact William Peterson at (202) 205–9192 or by e-mail at: william.peterson@ed.gov.

Proposed Priorities

The Assistant Secretary proposes to fund up to five RERCs that will focus on innovative technological solutions, new knowledge, and concepts to promote the health, safety, independence, active engagement in daily activities and quality of life of persons with disabilities. Each RERC must:

(1) Contribute substantially to the technical and scientific knowledge-base relevant to its respective subject area;

(2) Research, develop, and evaluate innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its respective subject area;

(3) Identify, implement, and evaluate, in collaboration with the industry, professional associations, and institutions of higher education, innovative approaches to expand research capacity in its respective field of study;

(4) Monitor trends and evolving product concepts that represent and signify future directions for technologies in its respective area of research;

(5) Provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect its respective area of research.

In addition to the activities proposed by the applicant to carry out these purposes, each RERC must:

• Develop and implement in the first year of the grant, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to disability organizations, persons with disabilities, technology service providers, businesses, manufacturers, and appropriate journals;

• Develop and implement in the first year of the grant, in consultation with the NIDRR-funded RERC on Technology Transfer, a plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace;

• Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle; and

• Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer.

Each RERC must focus on one of the following priority topic areas:

(a) *Spinal Cord Injury:* This center must conduct research and develop applications that address problems in the treatment, rehabilitation, employment, and reintegration into society of persons with spinal cord injury. This center will be expected to work collaboratively with the NIDRR-funded Model Spinal Cord Injury Centers program;

(b) *Recreational Technologies and Exercise Physiology Benefiting Persons With Disabilities:* This center must research and develop technologies that will enhance recreational opportunities for people with disabilities and develop methods to enhance the physical performance and endurance of people with disabilities;

(c) *Applied Biomaterials:* This center must facilitate the application of advances in materials and tissue engineering for medical rehabilitation applications such as prosthetics and orthotics, implants, reconstructive surgery, and burns. It will bring together leaders in biomedical research, medical practitioners, and consumers to promote the design, development, and utilization of state-of-the-art methodologies and products for rehabilitation and disability applications;

(d) *Measurement and Monitoring of Functional Performance:* This center must research and develop technologies and methods that effectively assess the outcomes of rehabilitation therapies by combining measurements of physiological performance with measures of functional performance;

(e) *Accessible Medical Instrumentation:* This center must research, develop, and evaluate methods and technologies to increase the usability and accessibility of diagnostic, therapeutic, and procedural healthcare equipment (i.e., equipment used during medical examinations, treatment, etc.) for people with disabilities. This includes developing methods and technologies that are useable and accessible for patients and health care providers with disabilities;

(f) *Universal Interface Technologies:* This center must develop universal interface technologies that will allow for easy integration of multiple technologies used by individuals with disabilities (e.g., augmentative communication devices, powered mobility devices, environmental control systems, telecommunication systems, and information technologies, including multimedia systems). This includes effective speech to text systems, eye and head control systems, and methods to enhance the utility of graphical devices for the visually impaired;

(g) *Work Place Accommodations:* This center must identify, design, and develop devices and systems to enhance the productivity of people with disabilities in the workplace. It must emphasize the application of universal design concepts to improve the utility of workplace tools and devices for all workers;

(h) *Accessible Airline Transportation:* This center must research and develop methods, systems, and devices that will promote and enhance the ability of people with disabilities to safely and efficiently embark/disembark, travel comfortably, and use restroom facilities on commercial passenger airliners; and

(i) *Rehabilitation Robotics and Telemanipulation Systems:* This center must explore the use of human-scale robots and telemanipulation (the integration of human-control with a manipulator) systems that will address the unique needs of people with disabilities and rehabilitation.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number: 84.133E, Rehabilitation Engineering Research Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: March 6, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5920 Filed 3–11–02; 8:45 am]

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Federal Register

Tuesday,
March 12, 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 priorities.

SUMMARY: We propose funding priorities under the Rehabilitation Engineering Research Center (RERC) program for up to five Rehabilitation Engineering Research Centers under the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Years 2002–2004. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before April 11, 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.*

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 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.**

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 effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: The proposed priorities support President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site:

http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.

The proposed priorities are also in concert with NIDRR's Long-Range Plan, which can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/#LRP.*

Rehabilitation Engineering Research Centers Program

We may make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. Each RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (2) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Priorities

Background

Technology plays a vital role in the lives of millions of disabled and older Americans. Advances in assistive technology and adoption of principles of universal design have significantly improved the quality of life for these individuals. Individuals with significant disabilities regularly use products developed as the result of rehabilitation and biomedical research to achieve and maintain maximum physical function, live independently, study and learn, and attain gainful employment. The range of engineering research has broadened to encompass not only assistive technology but also technology at the systems level (i.e., the built environment, information and communication technologies, transportation, etc.) and technology that interfaces between the individual and systems technology and is basic to community integration.

The NIDRR RERC program has been a major force in the development of technology to enhance independent function for individuals with disabilities. The RERCs are recognized as national centers of excellence in their respective areas and collectively represent the largest federally supported program responsible for advancing rehabilitation engineering research. For example, the RERC program was an early pioneer in the development of augmentative communication and has been at the forefront of prosthetics and orthotics research for both children and adults. A recently established RERC is responsible for designing prosthetics for land mine survivors from developing countries using indigenous materials and fabrication capabilities. The RERC on Telerehabilitation is developing methods for the efficient delivery of rehabilitation services in rural settings and to reduce the cost of long-term care. RERCs have played a major role in the development of voluntary standards that industry uses when developing wheelchairs, wheelchair restraint systems, information technologies, and the World Wide Web. The RERC on Low Vision and Blindness helped develop talking sign technologies that are currently being utilized in major cities in both the United States and Japan to help blind and visually impaired individuals navigate city streets and subways. RERCs have been a driving force in the development of universal design principles that can be applied to the built environment, information technology and telecommunications, transportation, and consumer products. The clinical use of electromyography, gait analysis, and functional electrical stimulation has been made possible due to earlier research supported by the RERC program.

Significant financial investments in basic biomedical science and technology are paying off with new opportunities to further enhance the lives of people with disabilities. Recent advances in biomaterials research, composite technologies, information and telecommunication technologies, nanotechnologies, micro-electro mechanical systems (MEMS), sensor technologies, tissue engineering, and the neurosciences also provide a wealth of opportunities for individuals with disabilities and should be incorporated into research focused on disability and rehabilitation. In recognition of this need, the President's ''New Freedom Initiative'' has identified the RERC program as one worthy of expansion and the Administration has significantly increased the RERC budget for fiscal year 2002 (New Freedom Initiative, 2001).

NIDRR intends to fund up to five new RERCs in fiscal year 2002. Applicants must select from the following priority topic areas: (a) Spinal Cord Injury; (b) Recreational Technologies and Exercise Physiology Benefiting Persons with Disabilities; (c) Applied Biomaterials; (d) Measurement and Monitoring of Functional Performance; (e) Accessible Medical Instrumentation; (f) Universal Interface Technologies; (g) Work Place Accommodations; (h) Accessible Airline Transportation; and (i) Rehabilitation Robotics and Telemanipulation Systems. NIDRR is particularly interested in applications that address topic areas (a) and (b). Applicants are allowed to submit more than one proposal as long as each proposal addresses only one RERC topic area.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RERC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals and objectives of the proposed RERC and a description of its research and development activities at a sufficient level of detail to allow potential reviewers to be selected; (3) a list of proposed RERC staff including the Center Director and key personnel; and (4) a list of individuals whose selection as a reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

The signed, original LOI must be received by NIDRR no later than four weeks after the Notice of Final Funding Priorities for this competition is published in the **Federal Register**. Submission of a LOI is a prerequisite for eligibility to submit an application. With prior approval, an email or facsimile copy of a LOI will be accepted, but the signed original must be sent to: William Peterson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact William Peterson at (202) 205–9192 or by e-mail at: william.peterson@ed.gov.

Proposed Priorities

The Assistant Secretary proposes to fund up to five RERCs that will focus on innovative technological solutions, new knowledge, and concepts to promote the health, safety, independence, active engagement in daily activities and quality of life of persons with disabilities. Each RERC must:

(1) Contribute substantially to the technical and scientific knowledge-base relevant to its respective subject area;

(2) Research, develop, and evaluate innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its respective subject area;

(3) Identify, implement, and evaluate, in collaboration with the industry, professional associations, and institutions of higher education, innovative approaches to expand research capacity in its respective field of study;

(4) Monitor trends and evolving product concepts that represent and signify future directions for technologies in its respective area of research;

(5) Provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect its respective area of research.

In addition to the activities proposed by the applicant to carry out these purposes, each RERC must:

• Develop and implement in the first year of the grant, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to disability organizations, persons with disabilities, technology service providers, businesses, manufacturers, and appropriate journals;

• Develop and implement in the first year of the grant, in consultation with the NIDRR-funded RERC on Technology Transfer, a plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace;

• Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle; and

• Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer.

Each RERC must focus on one of the following priority topic areas:

(a) *Spinal Cord Injury:* This center must conduct research and develop applications that address problems in the treatment, rehabilitation, employment, and reintegration into society of persons with spinal cord injury. This center will be expected to work collaboratively with the NIDRR-funded Model Spinal Cord Injury Centers program;

(b) *Recreational Technologies and Exercise Physiology Benefiting Persons With Disabilities:* This center must research and develop technologies that will enhance recreational opportunities for people with disabilities and develop methods to enhance the physical performance and endurance of people with disabilities;

(c) *Applied Biomaterials:* This center must facilitate the application of advances in materials and tissue engineering for medical rehabilitation applications such as prosthetics and orthotics, implants, reconstructive surgery, and burns. It will bring together leaders in biomedical research, medical practitioners, and consumers to promote the design, development, and utilization of state-of-the-art methodologies and products for rehabilitation and disability applications;

(d) *Measurement and Monitoring of Functional Performance:* This center must research and develop technologies and methods that effectively assess the outcomes of rehabilitation therapies by combining measurements of physiological performance with measures of functional performance;

(e) *Accessible Medical Instrumentation:* This center must research, develop, and evaluate methods and technologies to increase the usability and accessibility of diagnostic, therapeutic, and procedural healthcare equipment (i.e., equipment used during medical examinations, treatment, etc.) for people with disabilities. This includes developing methods and technologies that are useable and accessible for patients and health care providers with disabilities;

(f) *Universal Interface Technologies:* This center must develop universal interface technologies that will allow for easy integration of multiple technologies used by individuals with disabilities (e.g., augmentative communication devices, powered mobility devices, environmental control systems, telecommunication systems, and information technologies, including multimedia systems). This includes effective speech to text systems, eye and head control systems, and methods to enhance the utility of graphical devices for the visually impaired;

(g) *Work Place Accommodations:* This center must identify, design, and develop devices and systems to enhance the productivity of people with disabilities in the workplace. It must emphasize the application of universal design concepts to improve the utility of workplace tools and devices for all workers;

(h) *Accessible Airline Transportation:* This center must research and develop methods, systems, and devices that will promote and enhance the ability of people with disabilities to safely and efficiently embark/disembark, travel comfortably, and use restroom facilities on commercial passenger airliners; and

(i) *Rehabilitation Robotics and Telemanipulation Systems:* This center must explore the use of human-scale robots and telemanipulation (the integration of human-control with a manipulator) systems that will address the unique needs of people with disabilities and rehabilitation.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is 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.*

(Catalog of Federal Domestic Assistance Number: 84.133E, Rehabilitation Engineering Research Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: March 6, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–5920 Filed 3–11–02; 8:45 am]

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Federal Register

Tuesday,
March 12, 2002

Part V

Department of Housing and Urban Development

24 CFR Part 2002
Implementation of the Freedom of Information Act; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 2002

[Docket No. FR–4716–P–01]

RIN 2508–AA12

Implementation of the Freedom of Information Act

AGENCY: Office of Inspector General (OIG), HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends The Office of Inspector General's Freedom of Information Act (FOIA) (5 U.S.C. 552) regulation, and implements the statutory requirements of the Electronic Freedom of Information Act (EFOIA) (Pub. L. 104–231).

DATES: *Comment due date:* May 13, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10278, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

HUD's regulations at 24 CFR part 15 contain the policies and procedures governing public access to HUD records under the FOIA. The Inspector General Act of 1978 (5 U.S.C. App. 3) was enacted to ''create independent and objective units'' to perform various investigative and monitoring functions within Executive agencies of the Federal Government, including HUD. In furtherance of the goals of independence and objectivity, in 1984 the Inspector General implemented 24 CFR part 2002, which explains the procedures for requesting information from the OIG under the FOIA. Part 2002 is generally similar to HUD's FOIA regulations at 24 CFR part 15, except that OIG officials, as opposed to HUD officials, make determinations concerning the release of OIG records. Congress amended the FOIA in 1996 with the passage of the EFOIA. In this proposed rule, the OIG would amend its FOIA regulations to implement the EFOIA. Accordingly, the proposed amendments provide for an electronic reading room, modify the FOIA timeframes, and establish multiple ''tracks'' for processing requests.

Findings and Certifications

Environmental Review

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this issuance is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This proposed rule contains no anti-competitive discriminatory aspects with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. Rather, this rule would amend OIG's FOIA regulation and implement the statutory requirements of EFOIA.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 2002

Freedom of Information.

Accordingly, 24 CFR chapter XII, Part 2002, is proposed to be amended as follows:

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

1. The authority citation for Part 2002 is revised to read as follows:

Authority: 5 U.S.C. 552; Electronic Freedom of Information Act (Pub. L. 104–231); Freedom of Information Reform Act of 1986 (Pub. L. 99–579); 5 U.S.C. App. 3 (Inspector General Act of 1978); 42 U.S.C. 3535(d); Delegation of Authority, Jan. 9, 1981 (46 FR, 2389).

2. Section 2002.1 is revised to read as follows:

§ 2002.1 Scope of the part and applicability of other HUD regulations.

(a) *General.* This part contains the regulations of the Office of Inspector General, which implements the Freedom of Information Act (5 U.S.C. 552). It informs the public how to request records and information from the Office of Inspector General and explains the procedure to use if a request is denied. Requests for documents made by subpoena or other order are governed by procedures contained in part 2004 of this chapter. In addition to the regulations in this part, the following provisions of part 15 of this title covering the production or disclosure of material or information apply (except as limited in paragraph (b) of this section) to the production or disclosure of material in the possession of the Office of Inspector General:

§ 15.2 What definitions apply to this part?

§ 15.3 What exemptions are authorized by 5 U.S.C. 552?

§ 15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

§ 15.110 What fees will HUD charge?

(b) *Limited applicability of § 15.110 of this title.* For purposes of this part, paragraphs (d) through (k) of § 15.110 of this title are not applicable.

(c) *Use of the term ''HUD''.* For purposes of this part, and when the words ''HUD'' or ''Department'' are used in this part or §§ 15.2(b), 15.3, 15.108 and 15.110 of this title, the term means the Office of the Inspector General.

(d) *Request for declassification and release of classified material.* Section 15.107 of this title contains provisions for requesting declassification and release of declassified material.

3. Section 2002.3 is revised to read as follows:

§ 2002.3 OIG's overall policy concerning discloseable records and requests for OIG records.

(a) The Office of Inspector General will fully and responsibly disclose its identifiable records and information consistent with competing public interests, such as national security, personal privacy, grand jury and investigative secrecy, complainant confidentiality, agency deliberative process, as are recognized by FOIA and other federal statutes.

(b) A request for Office of Inspector General records may be made in person during normal business hours at any office where Office of Inspector General employees are permanently stationed. Although oral requests may be honored, a requester may be asked to submit the request in writing. A written request shall be addressed to: The Office of Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Suite 8260, Washington, DC 20410.

(c) Each request must reasonably describe the desired record including the name, subject matter, and number or date, where possible, so that the record may be identified and located. The request should also include the name, address and telephone number of the requester, and the format in which the requester would like the desired record to be reproduced. In order to enable the Office of Inspector General to comply with the time limitations set forth in § 2002.17, both the envelope containing a written request and the letter itself should clearly indicate that the subject is a Freedom of Information Act request.

(d) The request must be accompanied by the fee or an offer to pay the fee as determined in § 15.110 of this title.

(e) Copies of available records will be made as promptly as possible. Copying service will be limited to not more than 10 copies of any single page. Records that are published or available for sale need not be reproduced.

(f) To the extent that records are readily reproducible, the Office of Inspector General will send records in the form requested, including electronic format.

4. Section 2002.7 is revised to read as follows:

§ 2002.7 OIG processing of requests.

(a) *Multitracking.* (1) The Office of Inspector General places each request in one of two tracks. The Office of Inspector General places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors the Office of Inspector General will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from more than one organizational unit. Within each track, the Office of Inspector General processes requests in the order in which they are received.

(2) For requests that have been sent to the wrong office, the Office of Inspector General will assign the request within each track using the earlier of either:

(i) The date on which the request was referred to the appropriate office; or,

(ii) The end of the ten (10) working day period in which the request should have been referred to the appropriate office.

(b) *Expedited processing.* The Office of Inspector General may take your request or appeal out of normal order if the Office of Inspector General determines that you have a compelling need for the records or in other cases as determined by the Office of Inspector General. If the Office of Inspector General grants your request for expedited processing, the Office of Inspector General will give your request priority and will process it as soon as practicable. The Office of Inspector General will consider a compelling need to exist if:

(1) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or,

(2) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

5. Section 2002.9 is revised to read as follows:

§ 2002.9 Where to review records.

(a) You may inspect and copy hardcopy records that section 552(a)(2) of FOIA requires the Office of Inspector General make available to the public in reading rooms. At the Headquarters and DC Offices, this would be at HUD's Library, Suite 8141, 451 Seventh St., SW, Washington, DC 20410, and should be coordinated through Counsel's Office to the Inspector General, Suite 8260. Local offices may coordinate for local requests.

(b) For records created on or after November 1, 1996, this information is available to you through the Office of Inspector General's Internet website at *http://www.hud.gov/oig/oigindex.html.*

6. In § 2002.11, paragraph (a) is revised to read as follows:

§ 2002.11 Review of records, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for the time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 15.110 of this title.

* * * * *

7. In § 2002.15, paragraph (b) is revised to read as follows:

§ 2002.15 Advance Payments.

* * * * *

(b) When HUD acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after HUD has received fee payments described in paragraph (a) of this section.

8. In § 2002.17, paragraph (a) is revised to read as follows:

§ 2002.17 Time limitations.

(a) Upon receipt of a request for records, the appropriate Assistant Inspector General or an appointed designee will determine within twenty

(20) working days whether to grant the request. The Assistant Inspector General or designee will notify the requestor immediately in writing of the determination and the right of the person to request a review by the Inspector General of an adverse determination.

* * * * *

9. Sections 2002.5, 2002.13, 2002.19, 2002.21, 2002.23 and 2002.25 shall remain as they currently exist.

Dated: February 4, 2002.

David C. Williams,

Acting Inspector General.

[FR Doc. 02–5874 Filed 3–11–02; 8:45 am]

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Federal Register

Tuesday,
March 12, 2002

Part V

Department of Housing and Urban Development

24 CFR Part 2002
Implementation of the Freedom of Information Act; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 2002

[Docket No. FR–4716–P–01]

RIN 2508–AA12

Implementation of the Freedom of Information Act

AGENCY: Office of Inspector General (OIG), HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends The Office of Inspector General's Freedom of Information Act (FOIA) (5 U.S.C. 552) regulation, and implements the statutory requirements of the Electronic Freedom of Information Act (EFOIA) (Pub. L. 104–231).

DATES: *Comment due date:* May 13, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10278, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

HUD's regulations at 24 CFR part 15 contain the policies and procedures governing public access to HUD records under the FOIA. The Inspector General Act of 1978 (5 U.S.C. App. 3) was enacted to ''create independent and objective units'' to perform various investigative and monitoring functions within Executive agencies of the Federal Government, including HUD. In furtherance of the goals of independence and objectivity, in 1984 the Inspector General implemented 24 CFR part 2002, which explains the procedures for requesting information from the OIG under the FOIA. Part 2002 is generally similar to HUD's FOIA regulations at 24 CFR part 15, except that OIG officials, as opposed to HUD officials, make determinations concerning the release of OIG records. Congress amended the FOIA in 1996 with the passage of the EFOIA. In this proposed rule, the OIG would amend its FOIA regulations to implement the EFOIA. Accordingly, the proposed amendments provide for an electronic reading room, modify the FOIA timeframes, and establish multiple ''tracks'' for processing requests.

Findings and Certifications

Environmental Review

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this issuance is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This proposed rule contains no anti-competitive discriminatory aspects with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. Rather, this rule would amend OIG's FOIA regulation and implement the statutory requirements of EFOIA.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 2002

Freedom of Information.

Accordingly, 24 CFR chapter XII, Part 2002, is proposed to be amended as follows:

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

1. The authority citation for Part 2002 is revised to read as follows:

Authority: 5 U.S.C. 552; Electronic Freedom of Information Act (Pub. L. 104–231); Freedom of Information Reform Act of 1986 (Pub. L. 99–579); 5 U.S.C. App. 3 (Inspector General Act of 1978); 42 U.S.C. 3535(d); Delegation of Authority, Jan. 9, 1981 (46 FR, 2389).

2. Section 2002.1 is revised to read as follows:

§ 2002.1 Scope of the part and applicability of other HUD regulations.

(a) *General.* This part contains the regulations of the Office of Inspector General, which implements the Freedom of Information Act (5 U.S.C. 552). It informs the public how to request records and information from the Office of Inspector General and explains the procedure to use if a request is denied. Requests for documents made by subpoena or other order are governed by procedures contained in part 2004 of this chapter. In addition to the regulations in this part, the following provisions of part 15 of this title covering the production or disclosure of material or information apply (except as limited in paragraph (b) of this section) to the production or disclosure of material in the possession of the Office of Inspector General:

§ 15.2 What definitions apply to this part?

§ 15.3 What exemptions are authorized by 5 U.S.C. 552?

§ 15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

§ 15.110 What fees will HUD charge?

(b) *Limited applicability of § 15.110 of this title.* For purposes of this part, paragraphs (d) through (k) of § 15.110 of this title are not applicable.

(c) *Use of the term ''HUD''.* For purposes of this part, and when the words ''HUD'' or ''Department'' are used in this part or §§ 15.2(b), 15.3, 15.108 and 15.110 of this title, the term means the Office of the Inspector General.

(d) *Request for declassification and release of classified material.* Section 15.107 of this title contains provisions for requesting declassification and release of declassified material.

3. Section 2002.3 is revised to read as follows:

§ 2002.3 OIG's overall policy concerning discloseable records and requests for OIG records.

(a) The Office of Inspector General will fully and responsibly disclose its identifiable records and information consistent with competing public interests, such as national security, personal privacy, grand jury and investigative secrecy, complainant confidentiality, agency deliberative process, as are recognized by FOIA and other federal statutes.

(b) A request for Office of Inspector General records may be made in person during normal business hours at any office where Office of Inspector General employees are permanently stationed. Although oral requests may be honored, a requester may be asked to submit the request in writing. A written request shall be addressed to: The Office of Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Suite 8260, Washington, DC 20410.

(c) Each request must reasonably describe the desired record including the name, subject matter, and number or date, where possible, so that the record may be identified and located. The request should also include the name, address and telephone number of the requester, and the format in which the requester would like the desired record to be reproduced. In order to enable the Office of Inspector General to comply with the time limitations set forth in § 2002.17, both the envelope containing a written request and the letter itself should clearly indicate that the subject is a Freedom of Information Act request.

(d) The request must be accompanied by the fee or an offer to pay the fee as determined in § 15.110 of this title.

(e) Copies of available records will be made as promptly as possible. Copying service will be limited to not more than 10 copies of any single page. Records that are published or available for sale need not be reproduced.

(f) To the extent that records are readily reproducible, the Office of Inspector General will send records in the form requested, including electronic format.

4. Section 2002.7 is revised to read as follows:

§ 2002.7 OIG processing of requests.

(a) *Multitracking.* (1) The Office of Inspector General places each request in one of two tracks. The Office of Inspector General places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors the Office of Inspector General will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from more than one organizational unit. Within each track, the Office of Inspector General processes requests in the order in which they are received.

(2) For requests that have been sent to the wrong office, the Office of Inspector General will assign the request within each track using the earlier of either:

(i) The date on which the request was referred to the appropriate office; or,

(ii) The end of the ten (10) working day period in which the request should have been referred to the appropriate office.

(b) *Expedited processing.* The Office of Inspector General may take your request or appeal out of normal order if the Office of Inspector General determines that you have a compelling need for the records or in other cases as determined by the Office of Inspector General. If the Office of Inspector General grants your request for expedited processing, the Office of Inspector General will give your request priority and will process it as soon as practicable. The Office of Inspector General will consider a compelling need to exist if:

(1) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or,

(2) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

5. Section 2002.9 is revised to read as follows:

§ 2002.9 Where to review records.

(a) You may inspect and copy hardcopy records that section 552(a)(2) of FOIA requires the Office of Inspector General make available to the public in reading rooms. At the Headquarters and DC Offices, this would be at HUD's Library, Suite 8141, 451 Seventh St., SW, Washington, DC 20410, and should be coordinated through Counsel's Office to the Inspector General, Suite 8260. Local offices may coordinate for local requests.

(b) For records created on or after November 1, 1996, this information is available to you through the Office of Inspector General's Internet website at *http://www.hud.gov/oig/oigindex.html.*

6. In § 2002.11, paragraph (a) is revised to read as follows:

§ 2002.11 Review of records, aggregating requests and waiving or reducing fees.

(a) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for the time HUD spends reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time HUD analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Review time will be assessed at the same rates established for search time in § 15.110 of this title.

* * * * *

7. In § 2002.15, paragraph (b) is revised to read as follows:

§ 2002.15 Advance Payments.

* * * * *

(b) When HUD acts under paragraph (a)(1) or (a)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after HUD has received fee payments described in paragraph (a) of this section.

8. In § 2002.17, paragraph (a) is revised to read as follows:

§ 2002.17 Time limitations.

(a) Upon receipt of a request for records, the appropriate Assistant Inspector General or an appointed designee will determine within twenty

(20) working days whether to grant the request. The Assistant Inspector General or designee will notify the requestor immediately in writing of the determination and the right of the person to request a review by the Inspector General of an adverse determination.

* * * * *

9. Sections 2002.5, 2002.13, 2002.19, 2002.21, 2002.23 and 2002.25 shall remain as they currently exist.

Dated: February 4, 2002.

David C. Williams,

Acting Inspector General.

[FR Doc. 02–5874 Filed 3–11–02; 8:45 am]

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